



FAIR POLITICAL PRACTICES COMMISSION

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May 6, 2013

Pamela Wilson, Esq.
Law Office of Pamela Lawton Wilson
o/b/o Michele Fort-Merrill

REDACTED

Re: Advisory Letter
FPPC No. 10/1089: Michele Fort-Merrill

Dear Ms. Wilson:

The Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”)¹. As you are aware, the Commission received a complaint against your client alleging violations of the conflicts of interests and economic disclosure provisions of the Act. Specifically, the complaint alleged that your client retained her husband and his firm, Best, Best & Krieger, LLP (BB&K), to perform legal work for SDCOE on multiple occasions, and that even though your client disclosed BB&K as a source of income to her (as spouse’s salary) on her Statements of Economic Interests (SEIs), your client failed to disclose on her SEIs her husband’s income as a shareholder (equity income) of BB&K.

The Commission has completed its investigation of the facts in this case, has decided to close this case with this Advisory letter.

A. Conflicts of Interests Analysis

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use her official position to influence a governmental decision in which she knows or has reason to know she has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official’s economic interests, (4) are the official’s economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest. (See Regulation 18700.)

The Commission has completed its investigation of the facts in this case. Specifically, the Commission found that, as the Executive Director of Human Resources for the SDCOE, your client was a public official under the Act. Additionally, during the applicable time period, Best, Best & Kreiger, LLP (BB&K) was an investment interest and source of income to your client.

However, regarding the conflict of interest allegations in the complaint, your client did not make, participate in making or attempt to influence a governmental decision. Your client did not have any discretion to choose or not choose BB&K when SDCOE needed to retain legal services for an HR matter. Additionally, your client's role in the payment process was ministerial because she only identified which items on an invoice should be charged to her department and approved the electronic payment request prepared by an admin clerk. She did not approve the purchase order, reconcile the purchase order with the invoice, approve the final payment to BB&K, or issue the warrant to BB&K, and hers was one of many steps in the payment procedure controls for SDCOE.

However, the investigation also revealed that your client made and/or participated in making decisions regarding whether particular SDCOE matters required the SDCOE to hire outside counsel, and your client made and/or participated in making decisions regarding the management of cases which had been referred to outside counsel. However, under the Act, BB&K was indirectly involved in each individual decision, and the financial effect of each individual decision did not reach the materiality threshold required in Regulation 18705.1, subdivision (c)(4).

B. Statements of Economic Interests Analysis

The Conflict of Interest Code for the SDCOE, designates the Executive Director of Human Resources as a person who must file statements of economic interest under the Act. Additionally, the SDCOE Conflict of Interest Code requires Executive Directors to disclose in those statements:

Investments and business positions in business entities, and sources of income, which manufacture, sell or provide services, supplies, materials, books, machinery or equipment of the type utilized by the County Office of Education.

The investigation revealed that your client properly reported all income from BB&K on her SEIs, and therefore, your client did not violate the SEI disclosure provisions of the Act.

C. Conclusion

The Enforcement Division has decided to close this case with this Advisory letter. Your client's conduct created an appearance of a conflict of interests. Even though her actions did not rise to the level of a conflict of interests under the Act, your client was making and/or participating in making decisions indirectly involving her husband's employer, and was reviewing invoices from her husband's employer for services provided to her department.

An express purpose of the Act as set forth in Section 81002, subdivision (c), is to ensure that in appropriate circumstances, public officials should be disqualified from acting in order that conflicts of interests may be avoided. Your client's failure to comply with the provisions of the Act in the future may result in an enforcement action against you, including monetary penalties of up to \$5,000 for each violation.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act. If you or your client needs forms or manuals, or guidance regarding your client's obligations, please call the Commission's Technical Assistance Division at 1-866-275-3772. Please also visit our website at www.fppc.ca.gov. If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED.

Angela Y. Brereton
Senior Commission Counsel
Enforcement Division