



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

June 25, 2012

Barry Talbot

REDACTED

Warning Letter Re: FPPC No. 10/642, Barry Talbot

Dear Mr. Talbot:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code section 81000, et seq. This letter is in response to a complaint filed with the FPPC alleging you violated the conflict of interest provision of the Act while serving as a city councilmember for the City of Canyon Lake ("City") by voting during a City Council ("Council") meeting in favor of the City paying you for legal fees you incurred in attempting to obtain a restraining order against a citizen of the City.

The FPPC has completed its investigation of the facts in this case. The FPPC found that during a meeting of the City's Finance Committee on February 22, 2010 you had a verbal exchange with a citizen who challenged the veracity of a statement you made. After the meeting, the citizen confronted you and a verbal confrontation ensued during which you allege the citizen disparaged you and challenged you to a fight. You obtained a temporary restraining order requiring the citizen to stay at least 100 yards away from you. But the Superior Court denied your request for a permanent restraining order after a hearing on the matter.

In seeking the injunction, you incurred \$4,945.87 in legal fees. You submitted a request for reimbursement to the City Manager for the amount of the legal fees. At a City Council meeting on July 14, 2010, you participated in a discussion with other councilmembers regarding

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.

your request that the City pay your legal fees and you voted in favor of the City compensating you for the legal fees you incurred. Two other councilmembers also voted in favor of “reimbursement” and one voted against.

Section 87100 of the Act (the “Act”), states: “No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” In order to find that an individual has a qualifying conflict of interest, the FPPC determines: 1) whether the individual was a public official; 2) whether the official made, participated in making, or used or attempted to use his/her official position to influence a governmental decision; 3) the public official’s economic interests; 4) whether an official’s economic interest is directly or indirectly involved in the decision; 5) whether the official’s economic interest was materially affected by the decision; and 6) whether it was reasonably foreseeable that the decision would have a material financial effect on an economic interest of the official. (See California Code of Regulations (“CCR”), Title 2, Section 18700.)

Your actions violated the Act because, as a councilmember, you were a public official who, by voting to have the City pay your legal fees, participated in making a governmental decision in which you had a direct economic interest in that you stood to receive nearly \$5,000 from the City, which far exceeds the regulatory minimum to be considered a “material” financial effect. Lastly, the financial effect was reasonably foreseeable since the City Council action was to approve a payment to you for the amount of your legal fees.

There is no indication the City was obligated to pay your legal fees. The fees were not incurred to defend or indemnify you for actions taken within the scope of your official duties. (See *Cronin* Advice Letter, No. A-97-579.) Nor would the legal fees qualify as a necessary expense for which you would be entitled to reimbursement under the City’s ordinance and policies and procedures concerning reimbursement for councilmembers. That being the case, it was a conflict of interest under the Act for you to vote on the proposed payment to you.

Despite your violation of the Act, mitigating factors exist such that the FPPC has decided to issue you a warning letter rather than impose a fine. According to your own statements and those of the City Attorney, you contacted the City Attorney prior to voting on the matter to inquire if it would be a conflict of interest. The City Attorney mistakenly informed you that voting on the payment would not present a conflict of interest under the Act. You also conferred with the City Attorney immediately after the vote to confirm your vote had not constituted a conflict of interest. While receiving inaccurate advice from an attorney does not absolve you of responsibility for the violation, it does evidence a desire to comply with the Act. Also, according to the City Manager, with your agreement, the City’s check for your legal fees was withdrawn

from the City Council claims and demands roll at a subsequent City Council meeting and never issued to you. This shows an effort to correct your mistake.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. The warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

If you need forms or a manual, or guidance regarding your obligations, please call the Commission's Toll-Free Advice Line at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Please feel free to contact me at (916) 322-7181 with any questions you may have regarding this letter.

Sincerely,

REDACTED 

Dave Bainbridge
Staff Attorney

cc: John Zaitz
