



## FAIR POLITICAL PRACTICES COMMISSION

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November 16, 2009

Mr. Felipe A. Martinez

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### **Advisory Letter FPPC Case No. 070820; Felipe Martinez**

Dear Mr. Martinez:

The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act ("Act"),<sup>1</sup> found in Government Code section 81000, et seq. This letter is in response to both your self-referred inquiry received by our office on December 11, 2007, regarding a potential violation, as well as a separate formal complaint received by our office on December 13, 2007, which resulted in two cases that were merged into one investigation. Your inquiry and the complaint both indicated that you may have violated one provision of the Act on at least two specific occasions as a result of two governmental actions. Specifically, the complaint alleges that:

On March 6, 2007, as a Porterville City Council Member, you participated in Council Action: M.O. 17-030607 – Regulations considered concerning the Regulation of Card Tables where you may have had a conflict of interest, in violation of section 87100 of the Act.

On March 20, 2007, as a Porterville City Council member, you moved for a second reading of Ordinance 1718 to replace City of Porterville Municipal Code Concerning Gambling Regulations, Article I, Section 15-20, where you may have had a conflict of interest, in violation of section 87100 of the Act.

Additionally, the complaint alleges that following receipt of a cashiers check from David Gonzalez on January 24, 2007, you made, participated in making, or influenced governmental decisions involving the Tule River Tribe of the Tule River Indian Reservation ("Tribe") where you had a conflict of interest in violation of section 87100 of the Act.

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<sup>1</sup> 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.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found insufficient evidence to show that you did make, participate in making, or influence a governmental decision where you had an economic interest in violation of the conflict of interest sections of the Act.

The Act provides that government officials are prohibited from acting where there is a conflict of interest. Specifically the Act provides that 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 his official position to influence a governmental decision in which he knows or has reason to know he has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the FPPC 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 their 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 involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.<sup>2</sup> (Regulation 18700.)

An official has an economic interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any source of income amounting to \$500 or more, received within 12 months preceding the decision. (Section 87103(c); Regulation 18703.3(a)(1).)

Your actions did not violate the Act because it does not appear that you made, participated in making, or influenced a governmental decision involving your economic interest related to David Gonzales and you did not have an economic interest in the Tribe. As a city council member you are a public official under the Act. Porterville City Council records indicate that you did vote in Council Action: M.O. 17-030607 on March 6, 2007. Later on March 20, 2007, you moved for a second reading of Ordinance 1718 to replace City of Porterville Municipal Code Concerning Gambling Regulations, Article I, Section 15-20. You reported on your Statement of Economic Interests income resulting from a \$10,000 finder's fee payment by David Gonzales for finding a buyer for a card license owned by Mr. Gonzalez's wife's business partner, James Pondergos. Pursuant to a finder's agreement with David Gonzales, you referred the Tribe as a possible buyer to David Gonzales in December 2006, and received payment in the form of a cashiers check from David Gonzales on January 24, 2007, prior to the specified governmental decisions. The source of the income from the finder's fee agreement appears to be David Gonzales. Under the Act, your economic interest is David Gonzales. The governmental decisions noted in the complaint do not directly or indirectly involve David Gonzales; therefore, we find no violation of section 87100 of the Act.

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<sup>2</sup> The additional two steps of the analysis, whether the public generally exception applies and whether the individual is legally required to participate in the governmental decision, are inapplicable to this matter.

In addition to the decisions noted above, we reviewed records of various decisions pertaining to the Tribe where you did make governmental decisions in 2007. However, we found no evidence where you had an income from, or economic interests related to, the Tribe. Therefore, we find no violation of section 87100 of the Act based on the additional general allegation in the complaint.

If you had made, participated in making, or in any way used or attempted to use your official position to influence a governmental decision in which you knew or had reason to know you had a disqualifying conflict of interest, you would have violated section 87100 of the Act. However, we have determined that an enforcement action for a violation is not warranted in this case because your economic interest appears to be in David Gonzales and his wife, who do not appear to be directly or indirectly involved in your governmental decisions under the Act. We have no evidence that you had an economic interest in the Tribe during the periods investigated. Although we have decided not to pursue an enforcement action in this matter, you are advised that your failure to comply with the provisions of the Act in the future could result in an enforcement action.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

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Ty D. Moore  
Commission Counsel  
Enforcement Division