



FAIR POLITICAL PRACTICES COMMISSION

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August 24, 2009

Mr. James Watts
c/o Steven Churchwell

REDACTED

**Re: Advisory Letter
FPPC Case No. 07/0815; James Watts**

Dear Mr. Churchwell:

The Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”)¹. As you may be aware, the Commission received a complaint against your client, James Watts, alleging a violation of the conflict of interest provisions of the Act. Specifically, the complaint alleged that your client, Mr. Watts, attempted to influence a governmental decision that had a reasonably foreseeable material financial effect on his economic interest while he was employed as an architect for the San Diego Unified School District (“District”). The Commission has decided to close this case with this advisory letter.

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 his/her official position to influence a governmental decision in which he/she knows or has reason to know he/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 involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official’s economic interest.² (See Regulation 18700.)

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.

² 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.

Mr. Watts was employed by the District since 1989. The complaint filed against Mr. Watts was an allegation that Mr. Watts violated the conflict of interest laws while he was serving as District Architect for the District. As District Architect Mr. Watts was a public official under the Act. (Sections 82019 and 82048.) The complaint alleged that Mr. Watts violated the conflict of interest laws when his wife, Ms. Janice Fahey, was employed as an architect for Platt/Whitelaw Architects, Inc. ("Platt/Whitelaw"), and he continued to be involved in dealings with Platt/Whitelaw on behalf of the District. Based upon the complaint, our investigation examined whether Mr. Watt's made, participated in making, or used or attempted to use his official position to influence the award or payment of fees for school construction projects to Platt/Whitelaw, beginning with Ms. Fahey's employment with Platt/Whitelaw in June 2002, through June 2007.

Following Ms. Fahely joining Platt/Whitelaw in 2002, Mr. Watts met with the District's General Counsel to seek advice regarding the potential for a conflict of interest. After the meeting, in a memo Mr. Watts sent to the District dated June 30, 2002, Mr. Watts stated, that he would "no longer be a reviewer/signatory on any contractual documents, including payment requests, new contracts and contract amendments" for Platt/Whitelaw because of his economic interest. Thereafter, although he was one of four signatories on the Route for Approval and on the Application and Certificate for Payment forms for Platt/Whitelaw services, our investigation has determined that his signature was not necessary for the approval or payment of these invoices, rather his review, if anything, was technical only and his signature on these documents was purely ministerial, which is permitted under the Act. (See Regulation 18702.4). The investigation has also determined that Mr. Watts was not involved in making recommendations, negotiating fees, or selecting or awarding contracts to Platt/Whitelaw during that time period.

Therefore, we have found insufficient evidence under these circumstances to support the complaint that Mr. Watts made, participated in making, or used or attempted to use his official position to influence the award or payment of fees for school construction projects to Platt/Whitelaw creating an economic interest to him. As a result, we are closing this case with this advisory letter.

For information regarding conflict of interest provisions of the Act (Sections 87100 and following.), the Commission publishes forms and manuals to facilitate compliance. For guidance regarding the obligations under these provisions, please call the Commission's Technical Assistance Division at 1-866-275-3772 and 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,

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Mellonie S. Yang
Assistant Chief of Enforcement