FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

October 29, 2009

Tedd A. Mehr
o/b/o Thomas Reische
Mehr & Mehr

REDACTED

RE: **Advisory Letter**
FPPC Case No. 06/712, Thomas Reische

Dear Mr. Mehr:

The Fair Political Practices Commission (FPPC) enforces the provisions of the Political Reform Act (the Act) found in Government Code section 81000, and following. We received a complaint alleging that Thomas Reische, a member of the Colusa City Council, has violated the conflict of interest provisions of the Act. Specifically, the complaint alleged that while Mr. Reische has been a member of the Colusa City Council and the managing partner of George L. Messick Co., a local hardware company, the City has made purchases from the George L. Messick Co., and that Mr. Reische has voted to approve the consent calendar which includes payment to the George L. Messick Co. After a full investigation, we have decided to close this matter with an advisory letter.

The primary purpose for the conflict of interest provisions of the Act is to ensure that public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001, subd. (b).) As a result, Section 87100 prohibits public officials from making, participating in making, or attempting to use their official position to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. 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. A governmental decision includes voting to approve the consent calendar; (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.[1] (See Regulation 18700.)

Pursuant to Section 87105 and Regulation 18702.5, when a public official whose office is listed in Section 87200 who has a financial interest in a decision within the meaning of Section 87100, upon identifying a conflict of interest or potential conflict of interest, he must immediately prior to the discussion of the conflict or potential conflict of interest item, in relevant part:

> (1) publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, and
> (2) recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

However, Section 87105 and Regulation 18702.5 does not require the public official to leave the room so long as the matter has been placed on the portion of the agenda reserved for uncontested matters, which include matters placed on the consent calendar.

Please be advised that according to the *Reiter* advice letter, A-08-003, even if the conflict of interest item is only a "received and filed" item, if it is part of the consent calendar, then Section 87105 and Regulation 18702.5 apply. However, this advice letter was written after the complaint against you was received. Therefore, we have decided to close this matter with this advisory letter.

Failure to comply with the provisions of the Act in the future may result in an enforcement action against your client, including monetary penalties of up to $5,000 for each violation.

The FPPC publishes forms and manuals to facilitate compliance with the Act. If your client needs forms, amendments, a manual, or guidance regarding his/her obligations, please call the FPPC's Technical Assistance Division at (866) 275-3772. Please also visit our website at www.fppc.ca.gov.

If you have questions regarding this matter, please contact us at (916) 322-5660.

Sincerely,

REDACTED

Bridgette Castillo
Commission Counsel
Enforcement Division

[1] The additional two steps of the analysis are inapplicable in this matter.