

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 14/116
13 LARRY MOODY)
14 Respondent.) STIPULATION, DECISION and
15) ORDER
16)
17)

18 Complainant, the Fair Political Practices Commission, and Respondent Larry Moody agree that
19 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
20 regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Larry Moody violated the Political Reform
4 Act by participating in making and making a governmental decision in which he had a financial interest,
5 in violation of Government Code Section 87100 (1 count). This count is described in Exhibit 1, which is
6 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
7 accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Three Thousand Dollars (\$3,000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

20
21 Dated: _____
22 Gary S. Winuk, Chief of Enforcement
23 Fair Political Practices Commission

24 Dated: _____
25 Larry Moody, Respondent
26
27
28

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Larry Moody,” FPPC No. 14/116,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondent Larry Moody is a member of the East Palo Alto City Council. As a member of the City Council, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent made a governmental decision in which he had a financial interest, on November 6, 2013, when he voted to award a \$77,000 grant to New Creation Home Ministries and Able Works (“New Creation”), where his wife is a parenting class coordinator.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On November 6, 2013, as a member of the East Palo Alto City Council, Respondent Larry Moody participated in making and made a governmental decision in which he had a financial interest, by proposing an amendment to, and voting to approve, Policy and Action Item 21, the award of a \$77,000 grant to New Creation Home Ministries and Able Works, in which he had a financial interest, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

Conflicts of Interest

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, subdivision (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

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 18109 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 Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.2, subdivision (b), a public official "participates in making a governmental decision" when the official makes recommendations to the decisionmaker either directly or without significant intervening substantive review. Under Regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter, obligates his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (c), a public official has a financial interest in any source of income of \$500 or more, including those of his or her immediate family.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1, subdivision (a)(2), a person, including sources of income, is directly involved in a decision before an official's agency when that person, either directly or by an agent is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Fifth, under Regulation 18705.3, subdivision (a), any financial effect of a governmental decision on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the source of income.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

Respondent Larry Moody was a member of the East Palo Alto City Council at all times relevant to this complaint. Respondent’s wife, Lisa, received income from New Creation Home Ministries, where she worked as a parenting class coordinator. She began working for new Creation on February 17, 2011, and was employed there at the time of the governmental decision. New Creation paid her income totaling \$2,992.54 in 2011, and income totaling 4,152.62 in 2012.

Participation Exception (Section 87101, Regulation 18708) apply to this case.

On November 6, 2013, at an East Palo Alto City Council meeting, Respondent discussed and voted on, Policy and Action Item 21. During discussion on the item, Respondent offered an amendment to the first motion to pull \$26,333 in funding from one recipient entity (Cassey and Grupo Palo Alto) and split the \$163,333 between the collaborate of Drew Health Foundation, Inc. and East Palo Alto Boxing Club and the collaborative of New Creation Home Ministries and Able Works. Respondent later withdrew the amendment, and the funding was approved as originally proposed. After discussion on the matter, Respondent voted on Policy and Action Item 21, to award a \$77,000 grant New Creation Home Ministries and Able Works. Subsequently, at the February 4, 2014 city council meeting, the city council voted to rescind the decision on Policy and Action Item 21.

COUNT 1

PARTICIPATING IN MAKING AND MAKING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. **Respondent Was a Public Official as Defined by the Act**

As a member of the East Palo Alto City Council, on November 6, 2013, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against attempting to use his official position to influence a governmental decision in which he has a financial interest under Section 87100.

2. **Respondent Participated in Making and Made a Governmental Decision**

On November 6, 2013, Respondent participated in discussions on, and voted to approve, Policy and Action Item 21, the award a \$77,000 grant to New Creation Home Ministries and Able Works. Consequently, Respondent attempted to use his official position to influence a governmental decision for purposes of Regulation 18702.1, subdivision (a),

3. **Respondent Had an Economic Interest**

At the time of the governmental decisions, Respondent's wife received income from New Creation, totaling approximately \$4,000. At the time of the decision, Respondent had an economic interest in New Creation as a source of income of \$500 or more, to a member of his immediate family, for the purposes of Section 87103, subdivision (c).

4. **Respondent's Economic Interest Was Directly Involved in the Decision**

New Creation was a named party in Policy and Action Item 21. Therefore, the governmental decision made on November 6, 2013 to grant \$77,000 to New Creation directly involved Respondent's economic interest under Regulation 18704.1, subdivision (a)(1) and (2).

5. **Applicable Materiality Standard**

Because Respondent's source of income was directly involved in the governmental decision, any financial effect of the decisions on his source of income is presumed to be material. (Regulation 18705.3(a))

6. **It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met**

The governmental decision which Respondent made on November 6, 2013 involved the allocation of \$77,000 to New Creation. It was reasonably foreseeable at the time the

governmental decision occurred that vote would increase funding to New Creation in the amount of \$77,000; causing a financial effect on Respondent's source of income.

By making a governmental decision in which he had a financial interest, Respondent Moody violated Section 87100 of the Act.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Respondent Moody should have known of the conflict of interest requirements pertaining to directly involved sources of income. There is no history of prior violations of the Act by Respondent.

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

Other similar cases regarding a violation of Section 87100 that have been recently approved by the Commission include:

In the Matter of Tim Ward, FPPC Case No. 05/652, had a similar fact pattern; involving a municipal design review commission member and architect, who recommended approval of a client's project to fellow commission members, despite the existence of an obvious conflict. The agreed upon penalty in that case, approved by the Commission on June 12, 2008, was \$3,000.

Another similar case, *In the Matter of Harold Griffith*, FPPC No. 12/192, had a similar fact pattern; involving the President of the Rancho Adobe Fire Protection District, who attempted to use his official position to influence a governmental decision in which he had a material financial interest, by testifying before the City of Cotati Design Review Committee regarding the proposed roadway modification component of the Old Redwood Highway rehabilitation project, adjacent to his real property and business. The agreed upon penalty in that case, approved by the Commission on December 13, 2012, was \$3,000 for the count.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division recommends the imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).