



## FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

March 22, 2012

Jennifer A. Mizrahi  
Deputy City Attorney  
Green, de Bortnowsky & Quintanilla, LLP  
28301 Calabasas Road, Suite 1015  
Calabasas, CA 91302

Re: Your Request for Advice  
Our file No. A-12-036

Dear Ms. Mizrahi:

This letter responds to your request for advice, on behalf of Victorville Mayor Ryan McEachron, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that the Commission does not provide advice on bodies of law outside the confines of the Act. Thus, we offer no opinion on the application of other incompatible activities and conflict-of-interest laws that may apply including, but not limited to, common law conflict of interest and Government Code Section 1090.

### QUESTION

If Mayor McEachron has a disqualifying economic interest in the city council's decisions related to a Wal-Mart Project, may the mayor voice his general opinion regarding the project (1) before the city council, as a member of the public, during public council meetings or (2) to members of the general public including the press outside of the city council forum?

### CONCLUSION

Assuming a disqualifying conflict-of-interest, Mayor McEachron does not appear to have a "personal interest" in decisions related to the Wal-Mart Project and may not appear before the

---

<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.

city council, even as a member of the audience, to discuss the project during the council's deliberations. Mayor McEachron may however communicate with the general public or the press outside of the city council forum.<sup>2</sup>

## FACTS

You are the Deputy City Attorney for the City of Victorville and are seeking advice on behalf of Victorville Mayor, Ryan McEachron. The City of Victorville is a California charter city with five elected city council members. Mayor McEachron serves as one of the five city council members.

Currently, Wal-Mart is a project applicant and is proposing an amendment to Victorville's General Plan, along with several other proposed entitlements (the "Wal-Mart Project"). The Wal-Mart Project will be coming before the Victorville City Council (the "City Council") in the near future. Previously, your office has determined that Mayor McEachron would be prohibited under the Act from taking part in a decision related to the Wal-Mart Project with a material and reasonably foreseeable financial effect on the Spring Valley Lake Association ("the Association"), which is a client of Mayor McEachron's insurance company.

For purposes of this request for advice, you have asked only for general guidance related to Mayor McEachron voicing his personal opinion regarding the Wal-Mart Project before the City Council in a manner consistent with other members of the public and before the general public or the press assuming Mayor McEachron has a disqualifying conflict-of-interest.

## ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will 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(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. An official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).) However, you question concerns only the second step of the analysis, the

---

<sup>2</sup> We note that you have not provided sufficient facts to analyze whether Mayor McEachron has a disqualifying conflict-of-interest in a decision related to the Wal-Mart Project. Accordingly, we must proceed with our analysis, as to whether the mayor may take part in a decision as a member of the public, under the assumption that the mayor has a disqualifying conflict-of-interest. However, the facts provided strongly indicate that Mayor McEachron may not have a disqualifying conflict-of-interest based upon his economic interest in the source of income you have identified. If you need additional assistance regarding the mayor's disqualification from decisions related to the Wal-Mart Project it is advisable that you seek further assistance providing additional information pertaining to the potential financial effect on the Spring Valley Lake Association.

determination of whether you would be making, participation in making, or influencing a governmental decision.

The Act's conflict-of-interest provisions apply only when a public official "make[s], participate[s] in making, or in any way attempts to use his [or her] official position to influence a governmental decision in which he [or she] knows or has reason to know he [or she] has a financial interest." (Section 87100; Regulation 18700(b)(2).) In other words, under the Act's conflict-of-interest provisions an official is not prohibited from contacting an agency if the official is not making, participating in making, or influencing a governmental decision. The Commission has adopted a series of regulations defining "making," "participating in making," and "influencing" a governmental decision. (Regulations 18702-18702.3.)

***Making a Governmental Decision:*** A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Section 87100; Regulation 18702.1(a).)

***Participating in Making a Governmental Decision:*** A public official "participates in making a governmental decision" when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises or makes recommendations to the decision-maker regarding the governmental decision. (Section 87100; Regulation 18702.2.)

***Influencing a Governmental Decision:*** There are two rules that address whether a public official is using or attempting to use his or her official position to influence a governmental decision. The first rule applies when the governmental decision is within or before the public official's own agency or an agency appointed by or subject to the budgetary control of the public official's agency. (Regulation 18702.3(a).) In these cases, if "the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency" then he or she is attempting to influence a governmental decision. This includes, but is not limited to, "appearances or contacts by the official on behalf of a business entity, client, or customer."

The second rule applies when the governmental decision is within or before an agency other than the public official's own agency, or an agency appointed by or subject to the budgetary control of the public official's agency. (Regulation 18702.3(b).) Under this rule, the official cannot act or purport "to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency" to influence a decision that will have a material financial effect on his or her economic interests.

Regulation 18702.4 provides several exception to the general rules that determine when an official is making, participating in making, or influencing a governmental decision. In pertinent part, an official is not making, participating in making, or influencing a governmental decision if the official appears in the same manner as any other member of the general public

before his or her agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her "personal interests." (Regulation 18702.4(a)(2) and (b)(1).)

An official's "personal interests" include, but are not limited to the following:

"(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

"(B) A business entity wholly owned by the official or members of his or her immediate family.

"(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control." (Regulation 18702.4(b)(1).)

Moreover, pursuant to Regulation 18702.4(b)(3), an official is not attempting to use his or her official position to influence a governmental agency before his or her agency if the official is only communicating with the general public or the press.

**Appearance to represent a "personal interest" before an official's own agency:**

Based upon the facts you have provided, Mayor McEachron would like to voice general opinions regarding the Wal-Mart Project, as a member of the public, during a meeting of the City Council despite his economic interest in the Association, a client of his insurance company, and the fact that you have asked us to determine whether the mayor may take part in the decision as a member of the public under the assumption that the decision will have a reasonable foreseeable and material financial effect on the Association. Accordingly, your question implicates the scope of Regulation 18702.4(a)(2) and (b)(1).

Previously, we have cautioned that the exceptions to general conflict-of-interest rules requiring disqualifications, including Regulation 18702.4(a)(2) and (b)(1), must be construed narrowly. (See *Oderman* Advice Letter, No. A-00-082 and *Torrance* Advice Letter, No. A-94-084.) Most significantly, examples of a "personal interest" as provided by Regulation 18702.4(b)(1) evidence the Commission's intent to limit the "personal interest" exception to decisions with an effect on an interest such as a business or property that would not be adequately represented absent an official's participation as a member of the public.

Based upon the facts you have provided, the only interests in the Wal-Mart Project Mayor McEachron appears to have are his general opinion and concerns regarding the project. However, neither Regulation 18702.4(a)(2) nor (b)(1) have been previously interpreted to permit an official to appear before his or her agency merely because of a general opinion or concerns arising from the decision. (See *Cline* Advice Letter, No. A-11-212 and *Mason* Advice Letter, No. A-08-029.) Absent an effect on a more specific interest of the mayor's such as a business or

property, Mayor McEachron does not appear to have a "personal interest" in decisions related to the Wal-Mart Project and may not appear before the city council, even as a member of the audience, to discuss the project during the council's deliberations.<sup>3</sup>

**Communications with the press or public:**

An official is not attempting to use his or her official position to influence a governmental decision of an agency if the official communicates with the general public or the press. (Regulation 18702.4(b)(2).) For instance, we have previously advised that a city councilmember may express his or her opinion to reporters and media outlets by writing a newspaper article or appearing on a radio program regarding the matter in which he or she has a conflict-of-interest under the Act. (*Edelen* Advice Letter, No. I-07-059 and *Acker* Advice Letter, No. A-01-117.)

Therefore, the Act does not prohibit Mayor McEachron from discussing the Wal-Mart Project with the press, friends, neighbors or other members of the community, even if he does so in an attempt to rally support or opposition to the project, unless they are members, officers, employees, or consultants of the city. (*McHugh* Advice Letter, No. I-98-324.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl

---

<sup>3</sup> Pursuant to Section 87105, Mayor McEachron must: (1) verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in Regulation 18702.5(b)(1)(B), on the record of the meeting and immediately prior to the discussion of the item; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.