

FAIR POLITICAL PRACTICES COMMISSION

1100 K Street
Sacramento 95814
(916) 322-5660



October 27, 1976

Mr. John Woodhead
City Attorney
3900 Main Street
Riverside, California 92501

76-10-214

Dear Mr. Woodhead:

I have been asked to respond to your letter of September 24, 1976, with attached legal opinion, in regard to a possible conflict of interest between membership in the Riverside Fireman's Benefit Association, Inc. and fire prevention duties performed by various employees of the City Fire Department.

I am in accord with your opinion that membership in the Association would not require disqualification from making or participating in making official decisions with regard to persons named as "designated employees" in the Department's Conflict of Interest Code.

The financial benefits accruing to members of the Association, as enumerated in Mr. Duddy's memorandum of September 14, 1976, to William Cornett, City Manager of Riverside, do not come within the definition of "financial interest" as used in Government Code Section 87103. More specifically, Government Code Section 82034 excludes "any insurance policy" from the definition of "investment". Thus, both the \$1,000 life insurance policy and, arguably, the additional sick leave benefits available, after exhaustion of the City's sick leave benefits, would be excluded. This leaves only the \$500 retirement benefit and the annual dues paid to the California State Fireman's Association as possible investment interests. As the dues amount only to \$12 per year, confirmed by Ms. Lynn Nelson of your office, the total potential investment interest falls far short of the \$1,000 fair market value required by both Government Code Sections 82034 and 87103(a).

I similarly conclude that the enumerated benefits, when considered as a source of income, do not come within the definition of "financial interests" in Government Code Section 87103. Income from a source must amount to \$250, or more, annually, pursuant to that Section. The \$500 retirement benefit will not be received until retirement. If we assume that this interest meets the "promised" requirement of Section 87103(c), and we prorate the benefit over a 20-year period, we credit \$25 per year to each member.

1:40.a


Mr. John Woodhead

October 27, 1976

Government Code Section 82030(a) defines income to include "...contribution to an insurance ... program paid by any person other than an employer,". As the California State Fireman's Association is not an employer of each member, we must credit each member with the cost of the \$1,000 life insurance policy. According to Ms. Lynn Nelson, this amounts to 49 cents per month per member, or \$6 per year. We then add \$12 for the annual Association dues. Finally, we must value the cost of providing additional sick leave benefits upon expiration of City sick leave benefits. According to Ms. Nelson, there has been only one payment of sick leave benefits to a member by the Association over the years. The payment was to one fireman for \$1,400. Actuarially, on this experience record, the cost per annum for each member should not exceed a few dollars. If we generously attribute a \$50 cost per annum per member for this benefit, the total income attributed to each member would be: \$25 (retirement benefit) + \$6 (life insurance) + \$12 (Association dues) + \$50 (sick leave benefits), for a total of \$93 per annum per member. Government Code Section 87103(c) requires aggregate income of \$250 or more in value received to come within the definition of financial interest. Accordingly, the enumerated benefits, considered as a source of income, do not come within the definition of Government Code §87103(c).

I hope that these informal remarks are of some benefit to you. Again, let me say that we appreciate your efforts to provide guidance with regard to possible conflicts of interest by rendering opinions to requesting parties. As I pointed out above, we are in accord with the results of your opinion. We express no opinion with respect to the analysis of the issue of the exercise of discretion on the part of the City's Firemen.

Sincerely,


Edgar A. Kerry
Staff Attorney
Conflicts of Interest Division

EAK:mra

CITY OF

Riverside

OFFICE OF CITY ATTORNEY

3500 Main Street · Riverside, California 92501 · 714/787-7567



JOHN WOODHEAD
City Attorney

September 24, 1976

F P P C
SEP 27 8 43 AM '76
76214

Daniel H. Lowenstein, Chairman
Attention: Conflict of Interest Division
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804

Re: Request for Opinion


Dear Mr. Lowenstein:

The City Manager of the City of Riverside requested our opinion in regard to a possible conflict of interest between membership in the Riverside Firemen's Benefit Association, Inc. and fire prevention duties performed by various employees of the City Fire Department. We furnished the City Manager with our opinion that the circumstances did not disqualify members of the Association from performing their fire prevention duties. A copy of our opinion is attached. We believe it contains the pertinent facts.

The City Manager has asked us to seek the Commission's advice on the question. We therefore request that the Commission review the matter and provide us with such response as it deems appropriate.

Please let us know if more information is desired.

Very truly yours,


JOHN WOODHEAD
City Attorney

JW/ED/ln

attachment

cc: Wm. Cornett, City Manager

DATE September 14, 1976

TO: William Cornett, City Manager

RECEIVED
SEP 14 1976

FROM: Edward Duddy, Assistant City Attorney

CITY MANAGER'S OFFICE

SUBJECT: Conflict of Interest Code - Membership in Riverside
Firemen's Benefit Association, Inc.

On August 5, 1976, you inquired orally whether membership in the Riverside Firemen's Benefit Association, Inc. ("Association") would require disqualification from official action for certain employees covered by the Conflict of Interest Code adopted by the Fire Department pursuant to the Political Reform Act of 1974. In our opinion no such disqualification is required.

Our understanding of the circumstances which prompt your concern is that there are financial benefits arising out of Association membership, and the funding for those benefits is possible largely because of a fire extinguisher sales and service business owned and operated by the Association. Practically all employees of the Fire Department, to and including the Fire Chief, belong to the Association.

Financial benefits accruing to members of the Association include: a payment of \$500.00 upon retirement, a life insurance policy of \$1,000.00, payment of the member's dues in the California State Firemen's Association, and sick leave payments upon expiration of sick leave benefits granted by the City.

Section 6 of the Fire Department's Conflict of Interest Code deals with disqualification, and reads as follows:

"Section 6: Disqualification:

Designated employees must disqualify themselves from making or participating in the making of any decisions in which they have a reportable financial interest, when it is reasonably foreseeable that such interest may be materially affected by the decision. No designated employee shall be required to disqualify himself with respect to any matter which could not be legally acted upon or decided without his participation. The fact that such designated employee's vote may be needed to

break a tie does not make his participation legally required for purposes of this Section." (underlining added).

The underlined language has been newly defined by the State Fair Political Practices Commission to mean that a designated employee makes or participates in the making of a decision when he or she "negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review". [2 Cal. Adm. Code §18700(c)].

Designated employees under the Departmental Conflict of Interest Code who might be in the decision-making process as it applies to fire extinguishing equipment are the Fire Chief, Assistant Fire Chief, Fire Battalion Chief (assigned to fire prevention), Fire Captain (Prevention), and Firefighter (Prevention). Department personnel assigned to fire prevention duties inspect premises where fire extinguishers are required by law to be kept and maintained in effective condition. The employee who makes the inspection can order that a fire extinguisher be installed or that an existing extinguisher be serviced. There is no significant substantive review of such orders. Review would normally be made only upon complaint that an order was incorrectly issued. It appears clear then, that Department personnel in position to issue such orders participate in the making of decisions within the meaning of the Conflict of Interest Code.

Whether or not such participation requires the employee to divest himself of Association membership, or, alternatively, to disqualify himself from fire prevention duties of the type described, depends in part upon the effect which enforcement orders exert upon Association income. To find that the Disqualification provision of the Conflict of Interest Code should be invoked, requires a finding that it is reasonably foreseeable that issuance or failure to issue such orders will materially affect the Association's sale and service business, and that the employee has a real discretion as to the issuance of an order.

The classified advertisement section (yellow pages) of the current Riverside telephone directory has nine listings under "Fire Extinguishers". Two of the nine are extra listings for two of the remaining seven. Of the seven separate businesses listed only the Association and one other business are located within the City of Riverside. In addition to the regular

listing, the Association has a one-eighth page advertisement under its full name, "Riverside Firemen's Benefit Association, Inc.". In the Association's 1972-1973 fiscal year, the Association's fire extinguisher business reported \$49,791 in gross income from 2,071 accounts. (There are between 5500 and 6500 occupancies in the City which are required to keep and maintain fire extinguishers). In 1974, the Riverside Press-Enterprise reported that ninety percent of the 1972-1973 operating and maintenance costs of the Association's headquarters building was paid for out of income from the fire extinguisher business.

It seems reasonably foreseeable that the enforcement orders issued or not issued by a fireman are going to collectively have a material effect on the Association's income. At the same time, it seems reasonably well established that membership in the Association carries with it a substantial financial benefit which is in turn substantially dependant upon the Association's income from its extinguisher business.

However, it does not appear to us that the issuance or non-issuance of enforcement orders is a matter which is lawfully within the discretion of the Department employees in question. The premises which are required to have extinguishers are determined by law, not by any arbitrary judgment of a City employee. The employee may only determine the applicability of the law. The same applies to orders for repair or maintenance of an extinguisher. The extinguisher either meets or does not meet clearly defined criteria for effectiveness. Barring unlawful conduct, Department personnel will not be exercising any real discretion in relation to issuance of enforcement orders.

Further, Section 87103 of the Political Reform Act sets the criteria for determining when a designated employee has a financial interest in a decision. In pertinent part, Section 87103 reads:

"An official has a financial interest in a decision within the meaning of Section 87100 [Section 87302 by reference] if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);".

From the circumstances presented, it does not appear that members of the Association have what can be called an "investment"

in the Association, as "investment" is defined in the Political Reform Act. Therefore, no cause for disqualification from official action would exist.

In reaching our conclusion that no disqualification is required, we have kept in mind that conflict of interest regulations should be construed to prohibit interests which might interfere with the unbiased discharge of a public employee's duty, and that the presence or absence of actual interference with duty is not a necessity. However, we are of the opinion that such construction must at the same time presume that official duties will be lawfully performed.

Please let us know if there is any further question.

ED/ln

