

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

February 14, 1984

Allen Grimes
City Attorney
P.O. Box 749
Atascadero, CA 93423

Re: Advice Letter No. A-84-012

Dear Mr. Grimes:

Thank you for your request for advice on behalf of Mr. Jud Porter, a potential candidate for a position on the Atascadero City Council. Mr. Porter is a copublisher of the Atascadero News, which is the city's only newspaper of general circulation. For the past 4-5 years, the City has used the newspaper to publish its legal notices, although a formal contract has never been executed.^{1/} Funds for the advertising are approved by the City Council as part of each year's budget. During the year, the City is billed by the newspaper for services rendered and the payments are eventually approved by the Council, as is the case with all of the City's bills. Mr. Porter has asked how the provisions of the Political Reform Act apply to these facts.

DISCUSSION

The provisions of the Political Reform Act will not prevent Mr. Porter from being a City Council candidate. If Mr. Porter is elected, the Act's provisions may affect his decisionmaking. Government Code Section 87100^{2/} provides that no local public official shall make or participate in the making of a governmental decision if he knows or has reason to know that he has a financial interest. An official has a financial interest

^{1/} This is the entire time that the City has published its notices.

^{2/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect on:

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

* * *

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to . . . the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official . . . holds any position of management.

(Section 87103.)

The Atascadero News is a business entity in which Mr. Porter has both an investment interest and a position of management. The newspaper is also a source of income to him. If he is elected, Mr. Porter must disqualify himself from making or participating in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the Atascadero News. A decision's effect on the newspaper will be "material" if it will increase or decrease:

(A) The annualized gross revenues by the lesser of:

1. One hundred thousand dollars (\$100,000);
or

2. One percent if the effect is one thousand dollars (\$1,000) or more; or

(B) Annual net income by the lesser of:

1. Fifty thousand dollars (\$50,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more; or

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(C) Current assets or liabilities by the lesser
of:

1. One hundred thousand dollars (\$100,000);
or
2. One half of one percent if the effect is
one thousand dollars (\$1,000) or more.

(2 Cal. Adm. Code Section
18702(b) (1) (A)-(C).)

It is foreseeable that the City Council's annual budget decision on the allocation of money for advertising will have an effect on the Atascadero News because the newspaper has always provided the advertising for the City and it appears that it will continue to do so in the future. Thus, if the annual amount of advertising money being approved is such that the receipt or loss of it by the Atascadero News will have a material financial effect on the newspaper, Mr. Porter must disqualify himself from participating in this aspect of the budget.^{3/}

Once the budget, including the advertising allocation, is approved, Mr. Porter will generally be able to approve the City's payment of bills submitted by the newspaper. This is because, in most cases, the approval will be purely ministerial in nature and will not constitute "making or participating in the making of a decision." (See the enclosed copy of 2 Cal. Adm. Code Section 18700(d) (1).) However, if a particular payment is contested in some fashion, the approval will no longer be ministerial and Mr. Porter may be required to disqualify himself.

I hope that I have clarified the provisions of the Political Reform Act for you. You indicated in your letter that you will be seeking the advice of the Attorney General's Office on the

^{3/} See the enclosed copy of the Cook advice letter (A-83-163), which describes how an official can disqualify himself from one aspect of a budget.

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possible application of Section 1090. If you have any additional questions, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosures

ADMINISTRATION BUILDING
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PHONE: (805) 466-8000

CITY COUNCIL
CITY CLERK
CITY TREASURER
CITY MANAGER
FINANCE DEPARTMENT
PERSONNEL DEPARTMENT
PLANNING DEPARTMENT
PUBLIC WORKS DEPARTMENT
RECREATION DEPARTMENT



CITY ATTORNEY
POST OFFICE BOX 749
ATASCADERO, CALIFORNIA 93423
PHONE: (805) 466-5678

POLICE DEPARTMENT
POST OFFICE BOX 747
ATASCADERO, CALIFORNIA 93423
PHONE: (805) 466-8600

FIRE DEPARTMENT
6005 LEWIS AVENUE
ATASCADERO, CALIFORNIA 93422
PHONE: (805) 466-2141

CONFIDENTIAL

January 16, 1984

Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95814

Attn: Diane Maura Fishburn
Counsel, Legal Division

Subject: Conflict of Interest Opinion

Dear Ms. Fishburn:

I have received an urgent confidential inquiry in my capacity as City Attorney of the City of Atascadero concerning the possible application of the Fair Political Practices Act to a potential candidate for election to the City Council at the forthcoming election on June 5, 1984. Due to the time factors involved, I would appreciate it if you could give me an advance oral opinion as to whether any conflict of interest exists in the situation, and then confirm later by confidential letter.

The facts are these: The City of Atascadero is a general law city. It has called a general municipal election pursuant to state law for June 5, 1984. Three positions of the five-member Council (with an appointive Mayor) will be available for filling at the election.

There is only one newspaper of general circulation in the City of Atascadero (Govt Code § 6000), a biweekly newspaper, The Atascadero News. There are other newspapers of general circulation in other cities in the County of San Luis Obispo. Section 20169 of the Public Contract Code requires bidding for publication of legal advertising in a city where there is more than one newspaper of general circulation printed and published in the city. When there is only one such newspaper, the section authorizes the legislative body of the city to contract with the newspaper without advertising for bids. The City of Atascadero has not been executing an annual contract for legal advertising with The Atascadero News. Funds for legal advertising are included in the annual city budget, which is approved by the Council. The City places its legal advertising in The Atascadero

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News and pays the newspaper for services rendered upon receipt of the statements. All demands and payments of the City are eventually approved by the Council.

The potential candidate for a position on the Council is one of three co-publishers of The Atascadero News and has a pecuniary proprietary interest in the newspaper.

All this sums up to the question as to whether if the interested candidate were to run and be elected to the Council, and remain as a co-publisher of The Atascadero News, and the City continued to publish its legal ads in that newspaper, would there be a disqualifying conflict of interest?

I perceive there is also a Government Code § 1090 aspect to this situation, and an opinion on that will have to be pursued through other channels. However, if you do have communication on matters of this kind with the Attorney General's Office, I would certainly appreciate any oral opinion that may be offered, and particularly whether the "Rule of Necessity" established by the Appellate Courts might apply under these circumstances.

We do appreciate your assistance.

Sincerely,



ALLEN GRIMES
City Attorney

AG:fr

P.S. See opinion of the Legislative Counsel, 1972, A.J. 2913.