



California Fair Political Practices Commission

July 11, 1988

Honorable Ray T. Watson
City Councilmember
City of Walnut
P.O. Box 682
Walnut, CA 91788-0682

Re: Your Request for Advice
Our File No. I-88-222

Dear Councilmember Watson:

This is in response to your letter regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Because of the general nature of your question we treat your request as one for informal assistance.^{2/}

You have submitted to us a copy of an advice memorandum prepared by the city attorney for the City of Walnut. The facts presented in the memorandum, and again in your letter, state that you are a newly elected councilmember and a deputy for the Los Angeles County Sheriff's Department. The City of Walnut contracts with the L. A. County Sheriff's Department for

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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general law enforcement services. In addition, the city has numerous contracts with the County of Los Angeles for other services.

The question presented is whether, as an employee of the Los Angeles County Sheriff's Department, you are prohibited from participating in decisions of the city council when matters concerning Los Angeles County or the Sheriff's Department come before you.

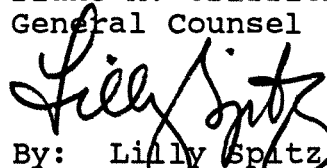
The conclusion reached in the city attorney's advice memorandum is that you have no legal conflict of interest pursuant to the Act, but you may have a conflict of interest pursuant to Section 1090.

We concur with the conclusion reached by your city attorney concerning the Act. Thus, there is no need for us to provide an independent analysis at this time. Unfortunately, we are unable to offer any assistance with interpretation of Section 1090, as that is outside the jurisdiction of the Commission. As I noted to you in our telephone conversation, you may wish to seek further advice from the Attorney General's Office on this issue.

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

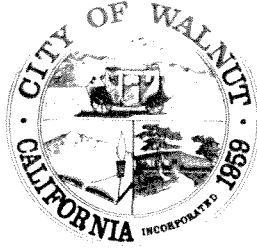
Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

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CHARLES D. RICHARDSON
Mayor Pro Tem
"BERT" ASHLEY
H. THOMAS SYKES
RAY T. WATSON
Council Members

CITY OF WALNUT

June 9, 1988

California Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Dear Commission:

I am a newly elected member of the Walnut City Council and a Deputy for the Los Angeles County Sheriff's Department. I am concerned that I take appropriate action when matters concerning the County of Los Angeles or the Sheriff's Department come before the City Council.

Attached is a report from the Walnut City Attorney, in response to my request for an opinion on this issue. As you can see, there is no clear answer on the matter. I am, therefore, seeking your opinion.

The City of Walnut is a "contract city" with numerous contracts for providing services. We contract with the Los Angeles County Sheriff's Department, who provides general law enforcement services out of the Walnut Sheriff's Station. In addition, we have numerous contracts with the County of Los Angeles for road repair services, animal control, weed abatement, etc.

My Deputy assignment is as a driver trainer specialist, working out of the Pomona Fairgrounds. I do not report to anyone at the Walnut Sheriff's Station, and my assignment has no impact on the Walnut operations. I have absolutely no control over contracts for various County programs through my Deputy position. My position as a City Councilmember does not allow me to vote on Sheriff Department salaries or benefits, but my expertise in law enforcement does allow me an opportunity to play a beneficial role as an elected official in my community.

I would appreciate your review and response on this matter. Thank you for your assistance.

Sincerely,

Ray T. Watson
City Councilmember

RTW:lh

MEMORANDUM

June 7, 1988

TO: COUNCILMEMBER WATSON

COPIES: ✓ CITY COUNCIL
CITY MANAGER
CITY CLERK

FROM: CITY ATTORNEY

SUBJECT: CONFLICT OF INTEREST BETWEEN POSITION OF CITY COUNCIL AND POSITION OF DEPUTY SHERIFF

Councilmember Ray Watson has requested an opinion as to whether his position as a newly elected councilmember of the City of Walnut creates a conflict of interest with his position as a Deputy County Sheriff?

Answer: There is no legal conflict of interest for councilmember Watson in holding the positions of City Councilmember and Deputy Sheriff pursuant to the Political Reform Act, but he may have a conflict of interest pursuant to Government Code Sec. 1090.

GOVERNMENT CODE SECTION 1090

Govt. Code Sec. 1090 prohibits a city officer or employee from being financially interested in any contract made by them in their official capacity. It also prohibits the City Council from entering into a contract if any member of the Council has a financial interest in the contract.

A contract entered into in violation of Govt. Code Sec. 1090 is absolutely void. A violation of Sec. 1090 is a felony punishable by a fine of up to \$1,000, and disqualification from ever holding public office. Obviously, the penalties may be severe. (Govt. Code 1097).

The difficulty in analyzing a case pursuant to Sec. 1090 is that the statute itself does not define what constitutes being

"financially interested" in a contract. Neither are there any administrative guidelines to help the determination. My research indicates that the precise issue of whether a county employee who is a city councilmember may participate in making a contract between the City and the County, has never been decided by any authoritative decision or opinion. Therefore, one must analyze the situation by reference to similar cases, and applicable portions of the statute.

Govt. Code Sec. 1091 provides a limited exemption from the prohibitions of Section 1090. If a city councilmember has a "remote interest" as defined by Sec. 1091, then the remainder of the Council may enter into the contract provided:

1. The councilmember with the "remote interest" does not vote, participate, or attempt to influence the decision.
2. The councilmember with the "remote interest" discloses his financial interest on the record to the City Council.

As relates to Councilmember Watson, a person has a "remote interest" if he is one of more than ten employees of the party contracting with the City, and has been employed by that contracting party for more than three years prior to assuming office. Councilmember Watson does fit this exemption. Therefore, at a minimum, the Council may enter into contracts with the County following the above procedures.

The more important, and more difficult question is whether Councilmember Watson has even less than a "remote interest"? In other words, is Mr. Watson's financial interest in the County contract so remote and so insignificant as to be no real financial interest at all?

In one case the court held that a councilperson could not make or participate in making a contract with the councilperson's employer. The employer was Shell Oil Company and the councilperson was the manager of the Shell Oil Company plant in the City. He also owned a large amount of Shell Oil stock. The court determined that the city could not contract with Shell Oil for the provision of petroleum products for city use. The councilperson had a financial interest in the contract, and the contract would be void. (Miller v. City of Martinez (1938) 28 Cal. App. 2d 364, 82 P.2d 519).

In another case a councilperson had a contract to provide managerial consultation to a construction company. The councilperson also had an option to purchase stock in the

Whether a proscribed financial interest exists in any particular situation is peculiarly a question of fact in each situation. (People v. Darby, (1952) 114 CA2d 412).

In view of the severe penalties for a violation of Govt. Code Sec. 1090, care and caution should be exercised by Councilperson Watson in relation to City-County contracts. Mr. Watson should remember that if Sec. 1090 applies, it prohibits him from advising, participating, or voting on a City-County contract. If Sec. 1090 applies, he must also refrain from attempting to influence the decision of other Councilpersons concerning a City-County contract.

POLITICAL REFORM ACT

The Political Reform Act, known as Proposition 9, is contained in sections 87100 et seq. of the Government Code. The conflicts of interest provisions of the Act are contained in Govt. Code sections 87100 et seq. Govt. Code sec. 87100 provides:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

In other words, if a matter may affect a councilmember monetarily, positively or negatively, the councilmember may not vote, participate, or attempt to influence a decision concerning the matter.

As relates to Councilmember Watson Govt. Code sec. 87103 states that an official has a "financial interest" in a decision if it is foreseeable that the decision will have a material financial effect on "any source of income, ...aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made."

Since the City of Walnut contracts with the Sheriff's Department for police services, Councilmember Watson, will be making decisions which have a material financial effect on the County of Los Angeles, which is a source of income (salary) to Councilmember Watson. Therefore, a potential conflict of interest exists. However, the definition of "income" in the Act excludes "salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and

reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization."

Since Councilmember Watson's salary is excluded from the definition of income, the County of Los Angeles is not a source of "income", and Mr. Watson does not have a conflict of interest in voting or participating in decisions which affect the County of Los Angeles. (3 FPPC Opinions 33).

As a practical matter Councilmember Watson may wish to avoid the appearance of a conflict of interest by abstaining from voting or participating in decisions involving the County of Los Angeles. Additionally Mr. Watson may wish to avoid the uncomfortable possibility of "being put in the middle" on political issues affecting the County and the City.

wlntmemo