



California Fair Political Practices Commission

October 31, 1989

Richard Helman
1225 Johnson Avenue
Marysville, CA 95901

Re: Your Request for Informal Assistance
Our File No. I-89-560

Dear Mr. Helman:

This is in response to your letter of September 23, 1989 requesting advice concerning your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

You have inquired whether your employment as an associate planner for the County of Yuba would create a conflict of interest if you were elected to the position of councilmember for the City of Marysville.

CONCLUSION

The Act does not prohibit you from seeking election to the position of councilmember for the City of Marysville. However, because other legal provisions could impact on your situation, you should contact your city attorney or county counsel as to those matters, as discussed in this letter.

FACTS

You are a candidate for the position of City of Marysville councilmember. The Yuba County Counsel has informed you that under the county's ordinances your employment as an associate planner would not be incompatible with the position of city councilmember.

ANALYSIS

Every employee of a local government agency is considered a "public official" for purposes of the Act. (Section 82048.)

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.

Under the facts in this instance, by definition this includes your present employment with the County of Yuba and would also include your contemplated position as an elected member of the City of Marysville City Council. Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

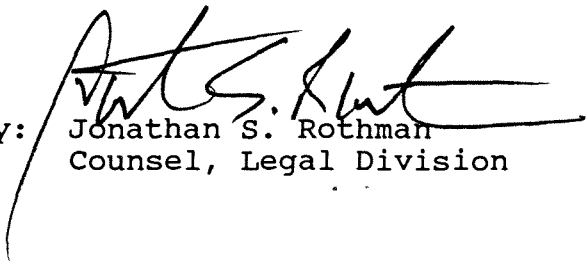
Although public officials must generally refrain from participating in decisions which will have a material financial effect on sources of income to them (Section 87103(c)), salary from a federal, state, or local government agency is not "income" under the Act. (Section 82030(b)(2).) Thus, neither your present salary as a county employee, nor any salary received as a councilmember, would give rise to a conflict of interest under Section 87103(c). Therefore, the Act would not prevent you from participating in governmental decisions upon election to the Marysville City Council despite your county employment.

Because the advice provided by the Fair Political Practices Commission is limited to the provisions of the Act, other legal provisions, such as Government Code Section 1090, the general doctrine of incompatible offices, or any local ordinances which may have some bearing on your situation are beyond the scope of this letter. You should contact your city attorney and county counsel for advice as to these matters.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

By: 
Jonathan S. Rothman
Counsel, Legal Division

KED:JSR:plh

Let's Grow Marysville

FPPC

SEP 27 8 59 AM '89

ELECT RICK
HELMAN
MARYSVILLE CITY COUNCIL

September 23, 1989

Rick Helman
1225 Johnson Avenue
Marysville, CA 95901

Fair Political Practices Commission
428 "J" Street, Suite 800
Post Office Box 807
Sacramento, CA 95804-0807
Attention: Enforcement Division

Subject: Request for Legal Opinion

To Whom It May Concern:

I am campaigning for the position of City Council Member for the City of Marysville. I am employed full time by the County of Yuba as an Associate Planner.

Prior to my decision to file for this November 7th special election, I requested an opinion from Yuba County Counsel (opinion enclosed) as to whether I would have a conflict of interest voting on an item affecting the County. County Counsel stated that my position as a salaried employee would not be incompatible with the position of City Council Member.

In the course of my campaigning, a City Council Member/local business owner has publically stated that there would be a conflict of interest if I were to hold the elected office of Councilman and continue my County employee status as Associate Planner. I am writing to the Enforcement Division at this time to seek a second opinion on this matter.

If you have any questions or need additional information, please do not hesitate to contact me at (916)743-0210. Your prompt attention to this matter will be appreciated.

Sincerely,

Rick Helman

Rick Helman

COMMITTEE TO ELECT RICHARD "RICK" HELMAN
MARYSVILLE CITY COUNCIL
1225 JOHNSON AVENUE
MARYSVILLE, CA 95901

Yuba County

memorandum

September 1, 1989

TO: RICK HELMAN, ASSOCIATE PLANNER
FROM: TIM P. HAYES, COUNTY COUNSEL
RE: PROPRIETY OF HOLDING OFFICE AS CITY COUNCILMAN

REC-
SEP 15 1989
COUNTY OF YUBA
PLANNING DEPARTMENT

This is in response to your request that we confirm in writing what we have already informed you orally that it is our opinion that you may continue to be employed as an Associate Planner in the Yuba County Planning and Building Services Department if you are elected as a City Councilman for the City of Marysville.

Your position as an Associate Planner is not considered a "public office", and as a result would not come under the "incompatibility of office" doctrine which refers to a public office who is appointed or elected to another public office as the doctrine requires that that individual must vacate the first office if the two are incompatible. Since it is our opinion that your position as an Associate Planner is not considered a public office, our analysis as to whether the two positions are incompatible is not necessary.

The Yuba County Ordinance Code in section 3.05.180 prohibits any employee of Yuba County from engaging in any outside employment for compensation which is inconsistent, incompatible or in conflict with his duties as a county employee. Said section goes on to list specific situations concerning outside employment which are prohibited. It is our opinion that your holding office as city councilman would not cause you to come within any of those prohibitions.

If we can be of further assistance in this matter, please do not hesitate to contact us.

TPH:eod

condition, age, ancestry or national origin is alleged and proven, the Hearing Officer shall have the authority to reinstate the employee without prejudice where such decision is supported by the written findings of the Hearing Officer.

(2) For employees in positions funded in whole or in part by the federal or state government which come under §19800 of the Government Code of the State of California, the decision of the Hearing Officer, in matters of demotion or dismissal, is final and binding upon all parties within the limits and the authority of Hearing Officers as may be found in relevant sections of this Code.

(3) The Hearing Officer shall have no power to alter, amend, change, add to or subtract from any ordinance, resolution, rule or regulation approved by the Board of Supervisors.

(4) The Hearing Officer shall have no power to award punitive damages.

(5) The Hearing Officer's findings and award shall be based solely on the evidence presented at the hearing.

(6) The decision of the Hearing Officer, as outlined in Paragraphs (1) and (2) above, shall not be subject to modifications by the Board of Supervisors and shall be implemented by Board order.

6. Exclusions.

(a) Notwithstanding the provisions of this section, except as otherwise provided by law, all department heads, the Undersheriff, and all licensed physicians may be suspended, demoted, or dismissed without cause and shall have no right to appeal from such action.

The undersheriff, upon notice of termination of appointment by the Sheriff, except for cause, may elect demotion to the last Sheriff's Department classification in which permanent status was achieved under the County's merit system, providing no break in service occurred prior to appointment to the Undersheriff position. If no such position was previously held by said Undersheriff, he shall have no rights to continued County employment. If upon such election to demote there is no vacant position in said class, an additional position is hereby created. Upon attrition of an employee in that class, said additional position shall be eliminated.

(b) Elected department heads shall have the right to remove without cause their respective assistant department heads during the first six weeks after such elected department head assumes office following his election or appointment, and said assistant department head shall have no right to appeal such action. Following such period the assistant department head may be dismissed with or without cause only with approval of the Board of Supervisors.

Notwithstanding any other provisions of this chapter, and except as otherwise provided by law, such assistant department heads shall serve a probationary period of one (1) year to run from the first day of the month following the date of employment in such position, or in the event the date of employment is on the first working day of the month, then from that date. Elected department heads shall have the right to remove without cause such assistant department heads during the probationary period, and said assistant department head shall have no right to appeal such action. (#603, as amended by #633, #758, #795, #821, #831, #867, #897, #910, #941, #944, and #991)

3.05.180 Prohibited Activities

1. General policy No employee of Yuba County shall engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his or her duties as a county officer or employee or with the duties, functions, or responsibilities of the appointing authority or Yuba County.

2. Prohibitions. No employee of Yuba County shall:

(a) Represent or counsel for compensation any individual, group of individuals or private or public organization, in legal or administrative actions against Yuba County;

(b) Use for private gain or advantage, Yuba County time, facilities, equipment or supplies or his or her badge, uniform, prestige or influence as a Yuba County Officer or employee.

(c) Receive or accept compensation or other consideration from an individual, group of individuals or private or public organization other than Yuba County for the performance of an act which the officer or employee would render during regular work hours as part of such officer's or employee's assigned or prescribed duties;

(d) Be involved in performing an act for compensation outside of employment with Yuba County which may later be subject directly or indirectly to control, inspection, review, audit or enforcement by any officer or employee of Yuba County; and

(e) Be involved in employment outside of his or her duties with Yuba County which would render performance of his or her duties with Yuba County less efficient.

3. Disciplinary Action. Any employee who receives compensation or other consideration for an act prohibited by this Section shall be subject to the disciplinary actions and have the appeal rights as outlined under §3.05.170 of this Ordinance. (#603)

3.05.190 Employee Performance Appraisal and Evaluation.

1. Purpose. Through the following written and oral review procedures, all aspects of regular employee, except elected officials and department heads, work performance will be reviewed and assessed as a means of enhancing employees career growth and development; identifying above and below satisfactory work performance; fostering employer-employee relations; providing a high level of service to the public and effectively utilizing human resources to carry out the public business.



California Fair Political Practices Commission

October 2, 1989

Rick Helman
1225 Johnson Avenue
Marysville, CA 95901

Re: Letter No. 89-560

Dear Mr. Helman:

Your letter requesting advice under the Political Reform Act was received on September 27, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jonathan Rothman an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh



City of Roseville

Office of the City Attorney

FPPC
SEP 27 8 57 AM '89

Phone 781-0325
311 Vernon Street
Roseville, California
95678

September 25, 1989

John Wallace
Staff Attorney
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: Request for Opinion

Dear Mr. Wallace:

During our conversation on September 21, 1989, you suggested that my question should be put to you in writing so that you may confirm your answer and provide an opinion on which I might rely. This letter therefore asks the Commission for advice pursuant to the Political Reform Act.

I am the appointed City Attorney of the City of Roseville. As such, I provide advice to the Council which appoints me, the City's various commissions, and the staff regarding the various development projects which come before a City. I am also the President and a member of the Board of Directors of the Sunrise Jewish Congregation, a not for profit corporation. I receive no salary or other remuneration from Sunrise.

Sunrise is in the process of acquiring certain real property for the purpose of building a sanctuary. The real property is located outside of the corporate limits of the City of Roseville, and in a different county. A number of developers who do business in Roseville, and who share our religious objectives, have expressed a willingness to make donations to the building fund of Sunrise, or provide in-kind services.

Please provide your opinion as to whether or not a conflict of interest will arise should such donations be made or if I solicit other developers for donations on behalf of Sunrise.

Thank you for your cooperation.

Very truly yours,


MICHAEL F. DEAN
City Attorney

MFD/mlc



California Fair Political Practices Commission

October 2, 1989

Michael F. Dean
City Attorney
311 Vernon Street
Roseville, CA 95678

Re: Letter No. 89-559

Dear Mr. Dean:

Your letter requesting advice under the Political Reform Act was received on September 27, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh