



California Fair Political Practices Commission

December 11, 1989

Cathy Wilcox-Barnes
City Clerk
317 Broad Street
Nevada City, CA 95959

Re: Your Request for Informal Assistance
Our File No. I-89-658

Dear Ms. Wilcox-Barnes:

This is in response to your letter of November 14, 1989, requesting advice concerning the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since the advice you requested is of a general nature and does not name a specific party, we consider your request to be for informal assistance. Consequently, we can only provide the following informal guidelines with respect to your questions.²

QUESTION

You have inquired whether an employee of the City of Nevada may serve as an elected member of the City Council without creating a conflict of interest under the Act.

CONCLUSION

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

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. (Section 83114; Regulation 18329(c)(3).)

FACTS

An employee of the City of Nevada City ("the employee") intends to be a candidate for the city council of that city.

ANALYSIS

Every employee of a local government agency is considered a "public official" for purposes of the Act. (Section 82048.) Under the facts in this instance, by definition this includes the employee's present employment with the city and would also include his contemplated position as an elected member of the City of Nevada City 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.

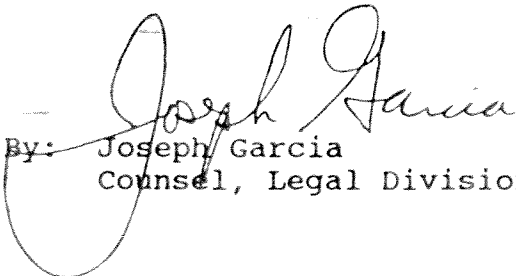
Although public officials must generally refrain from participating in decisions which will have a material financial effect on sources of income to them (Section 87103(c)), salary from a federal, state, or local government agency is not "income" under the Act. (Section 82030(b)(2).) Thus, neither the employee's salary as a county employee nor any salary received as a councilmember would, in themselves, give rise to a conflict of interest under Section 87103(c). Therefore, the Act would not prevent him from participating in governmental decisions upon election to the city council solely because of his city 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 the situation are beyond the scope of this letter. You or the employee should contact the 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: Joseph Garcia
Counsel, Legal Division



CITY OF NEVADA CITY

CALIFORNIA

November 14, 1989

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**Nevada City
A Bicentennial
Community**

California Fair Political Practices Commission
Technical Assistance and Analysis Division
Attn: Lynne Martin
P.O. Box 807
Sacramento, CA 95804-0807

RE: Question on Eligibility to Run for City Council Position

Dear Lynne:

I have been asked by an employee of the City of Nevada City if he can run for a seat on the City Council. He resides within the City Limits and is a registered voter. Nevada City is a General Law City and the Council seat is a volunteer (unpaid) position.

I was unable to answer his question and thought that you might be able to assist me.

If you need any further information from me, don't hesitate to contact me. I appreciate any assistance you can give me on this matter.

Sincerely,

Cathy Wilcox-Barnes
City Clerk



California Fair Political Practices Commission

November 20, 1989

Cathy Wilcox-Barnes
City Clerk, City of Nevada City
City Hall, 317 Broad Street
Nevada City, CA 95959

Re: Letter No. 89-658

Dear Ms. Wilcox-Barnes:

Your letter requesting advice under the Political Reform Act was received on November 16, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Joe Garcia 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