



# California Fair Political Practices Commission

March 11, 1993

Philip D. Kohn  
City Attorney  
City of Laguna Beach  
Bank of the West, Suite 1400  
611 Anton Boulevard  
Costa Mesa, California 92626-1998

Re: Your Request for Advice  
Our File No. A-93-052

Dear Mr. Kohn:

You have requested advice on behalf of Councilmembers Kathleen Blackburn, Lida Lenney and Robert Gentry regarding their duties and obligations under the conflicts-of-interest provisions of the Political Reform Act (the "Act")<sup>1</sup>.

## QUESTIONS

1. Under the Act, may Councilmembers Kathleen Blackburn and Lida Lenney participate in decisions regarding warrants on the calendar with respect to the city's payment of bills from GTE for telephone service provided to the city?

2. Under the Act, may Councilmember Robert Gentry participate in decisions regarding warrants on the consent calendar with respect to the city's payment of bills from GTE for telephone service provided to the city?

3. Under the Act, may Councilmember Lida Lenney participate in decisions regarding warrants on the consent calendar with respect to:

(a) the city's payment of bills from Waste Management for collection services provided to the city, and/or

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<sup>1</sup> 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.

(b) payment of franchise fees to Waste Management collected through property tax bill assessments on the residents?

4. If a councilmember is disqualified from participating in a decision on a warrant item on the consent calendar, may the councilmember have a standing disqualification as to that item and participate in decisions regarding other items?

#### CONCLUSIONS

1. Councilmembers Blackburn and Lenney may not participate in any decision regarding the payment of bills to GTE.

2. Councilmember Gentry may participate in decisions regarding the payment of bills to GTE if there will not be a material financial effect on GTE pursuant to Regulation 18702.2.

3. Councilmember Lenney may not participate in any decision regarding the payment of bills or fees to Waste Management, Inc.

4. As a practical matter, it would be best to remove from the consent calendar the items for which the councilmembers are disqualified. This would enable each councilmember to participate in decisions regarding the consent calendar.

#### FACTS

The City Council is required to ratify all warrants for expenditures and liabilities incurred by the city. This item is typically placed on a consent calendar with other ministerial or administrative-type matters which are acted upon as a group rather than individually. Three affirmative votes of the city council are required to adopt a warrant list.

The spouses of Councilmembers Kathleen Blackburn and Lida Lenney own shares of stock in GTE (General Telephone) having a value in excess of \$10,000. GTE is the telephone service provider for the region in which the city is located.

Councilmember Robert Gentry owns shares of stock in GTE having a value in excess of \$1,000, but less than \$10,000.

Councilmember Lida Lenney's spouse owns shares in Waste Management, Inc. having a value in excess of \$10,000. Waste Management, Inc. is the city's solid waste disposal franchisee.

#### ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.

An official has a financial interest in a governmental decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of the official's immediate family, or on:

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

Section 87103(a)

For purposes of Section 87103, indirect investment or interest includes any investment or interest owned by the spouse of a public official.

Accordingly, an official may not make, participate in making, or attempt to use his or her official position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any of the official's economic interests, which in this case includes an investment interest in stock.

Section 82034 defines "investment" as:

"Investment means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or has done business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value equals or exceeds one thousand dollars (\$1,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a

pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater. The term "parent, subsidiary or otherwise related business entity" shall be specifically defined by regulations of the commission."

Regulation 18702.1 determines materiality when an official's economic interest is directly involved in a decision. This would be the case when the warrants in which the officials have a direct or indirect investment interest come up on the consent calendar. Pursuant to Regulation 18702.1(a)(2), the effect of a decision is material if:

Any business entity (other than one covered by Section 18702.2(a) or (b)) in which the official has a direct or indirect investment of \$1,000 or more, any business entity covered by Section 18702.2(a) or (b) in which an official has a direct or indirect investment of \$10,000 or more, or any business entity in which the official is an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in a decision before the official's agency;...

Councilmembers Blackburn and Lenney have a direct or indirect investment of \$10,000 or more in GTE, which is listed on the New York Stock Exchange (18702.2(a)). Therefore, they may not participate in any decisions regarding the payment of bills to GTE.

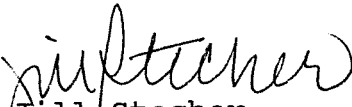
Councilmember Gentry's investment in GTE is less than \$10,000; therefore, it appears that he may participate in decisions regarding the payment of bills to GTE. However, an official may still have a conflict of interest in a decision if there is an indirect effect on a business entity which is one of his economic interests (Regulation 18702.2). Therefore, it is incumbent upon Councilmember Gentry to consult Regulation 18702.2(a) to ensure that the warrant decisions will not have a material financial effect on GTE. (See Johns Advice Letter, No. A-92-657, copy enclosed.)

Councilmember Lenney also has a direct or indirect investment in Waste Management, Inc. of \$10,000 or more. Therefore, she may not participate in any decisions regarding the payment of bills or fees to Waste Management, Inc.

I trust this answers your questions.

Sincerely,

Jeff Marschner  
General Counsel

By:  Jill Stecher  
Counsel, Legal Division

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