



# California Fair Political Practices Commission

February 17, 1994

Becky Klisch, CPS  
Assistant City Clerk  
City Hall  
Fresno, CA 93721

Re: Your Request for Advice  
Our File No. A-94-039

Dear Ms. Klisch:

This is in response to your letter requesting advice on behalf of William McCallum regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

#### QUESTION

If Mr. McCallum is appointed to the Clovis Planning and Development Commission, will he have a conflict of interest by virtue of his employment with the City of Fresno at the Fresno Regional Wastewater Treatment Plant?

#### CONCLUSION

Neither Mr. McCallum's salary from nor employment with the City of Fresno will create a conflict of interest in decisions of the Clovis Planning and Development Commission.

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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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

DISCUSSION

Incompatible Offices

The Act does not prohibit a public official from holding multiple public positions, either within a single agency or different agencies. However, the conflict-of-interest provisions of the Act (Section 87100 et seq., discussed below) do prohibit a public official from participating in a decision that will have a financial effect on his or her economic interests. However, this prohibition is applied on a decision-by-decision basis.

Please note that other laws do restrict the ability of public officials to hold two different public offices simultaneously if the offices are determined to be "incompatible offices." It would be advisable to contact the Attorney General's Office with respect to the doctrine of "incompatible offices" and other provisions of law that might apply to your facts.

Conflicts of Interest

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Section 87103 specifies that a public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her 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.

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(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c)  
and (d).

A. Interests in Business Entities

For example, if Mr. McCallum was employed with a business entity, his position with the business entity would result in the business becoming an economic interest. However, Section 82005 defines "business entity" as an organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. Since a local government agency is not an organization or enterprise operated for profit, it is, therefore not a "business entity" as defined by the Act. Thus, Mr. McCallum's employment at the Fresno Regional Wastewater Treatment Plant will not result in the City of Fresno becoming an economic interest of Mr. McCallum. (Section 87103(d); Section 82005; Darcy Advice Letter, No. I-87-296.)

B. Sources of Income

Entities also become economic interests of an official if they are sources of income to the official. For example, if Mr. McCallum received income from a person or business entity, the source of the income would be an economic interest of Mr. McCallum. (Section 87103(c).)

However, salary and reimbursement for expenses or per diem received from a state, local or federal government agency is not regarded as income for purposes of the Act. (Section 82030(b)(2).) Since the Fresno Regional Wastewater Treatment Plant is owned by the City of Fresno, a local governmental agency, and Mr. McCallum is a salaried employee of the city, Mr. McCallum would not have an economic interest in the City of Fresno by virtue of the income.

Thus, where decisions of the Clovis Planning and Development Commission will affect Fresno, by virtue of the City of Clovis' use of the plant, Mr. McCallum will be able to participate in the decision.

Absent some other disqualifying financial interest as set forth in Section 87103, or some direct financial effect on Mr. McCallum personally resulting from a governmental decision,<sup>2</sup> Mr. McCallum will not have conflicts of interest due to his position with the City of Fresno. (Sampson Advice Letter, No. I-

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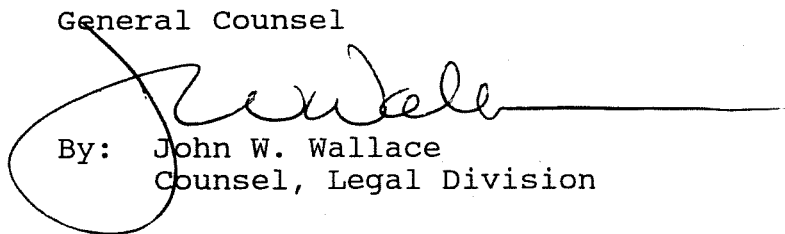
<sup>2</sup> For example, if a decision will result in the personal expenses, income, assets (other than interests in real property), or liabilities of an official or his or her immediate family increasing or decreasing by at least \$250, this would also constitute a conflict of interest.

89-196.) However, please note, as stated above, our advice is limited to the Political Reform Act.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>3</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

cc: William McCallum  
5607 West Jenson Avenue  
Fresno, CA 93706

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<sup>3</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.