



# California Fair Political Practices Commission

March 16, 1994

Joseph A. Soldani  
City Attorney  
City of Madera  
205 West 4th Street  
Madera, CA 93637

Re: Your Request for Advice  
Our File No. A-94-042

Dear Mr. Soldani:

This is in response to your letter requesting advice on behalf of Madera City Administrator David R. Tooley regarding his responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

## QUESTION

May Mr. Tooley, city administrator for the City of Madera, participate in city decisions regarding the Madera County Action Committee, a nonprofit social service agency, where Mr. Tooley's spouse has received income from the MCAC in excess of \$500 in the past 12 months?

## CONCLUSION

If the Madera County Action Committee would be considered a local government agency pursuant to In re Siegel ((1977) 3 FPPC Ops. 62) as discussed below, Mr. Tooley may participate in city

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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.

decisions which have effects that flow through the Madera County Action Committee and benefit a significant segment of the city. It appears that the decisions relating generally to the operation of the Madera County Action Committee meet that definition.

#### FACTS

Mr. Tooley is the city administrator for the City of Madera. Mr. Tooley's spouse owns an accounting business that has clients in the jurisdiction. The business recently contracted with a nonprofit entity in the jurisdiction, the Madera County Action Committee (the MCAC), to provide accounting services. The business has received payments from the MCAC in excess of \$500 in the past 12 months.

The MCAC, and other community action committees, grew out of an Act of Congress in 1964 creating the Office of Economic Opportunity (in 1974, this office was renamed the Community Services Administration) which receives funds and disburses the funds to local community action boards.

In 1965, the MCAC was established and incorporated as a nonprofit entity. The goals of the MCAC are to:

1. Develop, conduct, and administer programs as established under provisions of the "Economic Opportunity Act of 1964" as amended.
2. Significantly and meaningfully involve the poor in developing and carrying out antipoverty programs.
3. Mobilize public and private resources in support of antipoverty programs within the boundaries of Madera County.
4. Coordinate efforts throughout Madera County to avoid duplication, improve delivery of services, and relate programs to one another.
5. Plan and evaluate both long and short range strategies for overcoming poverty in Madera County.
6. Serve as an advocate of the poor on matters of public policy which affect their status, promoting institutional improvement and desirable changes in social policy.
7. Encourage administrative reform and protect individuals or groups against arbitrary action.
8. Conduct in its own right, or delegate to other agencies, subject to the approval of the grantor, the conduct of programs financed through Economic Opportunity Act funds or other available funds.

In furtherance of these goals, the MCAC currently runs several programs in the county including child care food service programs, headstart programs (for migrant workers and handicapped children), mental health services, and domestic violence services. You stated that the MCAC receives the vast majority of its funding from governmental agencies (county, state, and federal government).

The MCAC is controlled by a 51 member board which consists of one-third public officials; one-third representatives of the poor; and the remainder representatives of business, industry, labor, religious, education, significant minority groups and/or other private groups and interests in the community. The Madera County Board of Supervisors are the designated officials for the MCAC and select the appointed officials to serve on the board.

The board is empowered to select an executive director and make policy (with review and ratification by the board of supervisors). The board of supervisors determines major fiscal and program policies, determines overall program plans and priorities, and approves program proposals, budgets, studies and reports.

The MCAC is currently seeking assistance from the city, including the leasing of parking facilities from the city and having the city pay to maintain the MCAC's vehicles. You have asked whether Mr. Tooley, city administrator for the City of Madera, may participate in city decisions regarding the Madera County Action Committee, a nonprofit social service agency, where Mr. Tooley's spouse has received income from the MCAC in excess of \$500 in the past 12 months.

#### ANALYSIS

##### Local Government Agencies

Section 87300 provides:

Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

Section 82003 defines "agency" to include any state or local government agency. Section 82041 defines "local government agency" to mean a county, city, or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. Thus, if the Madera County Action Committee is a local government agency, it is subject to the requirements of the Act and must comply with Section 87300.

In 1977, the Commission considered the definition of "local government agency" in In re Siegel, 3 FPPC Ops. 62. The Commission applied a four-part test to determine whether an organization is a "local government agency" for purposes of the Act.

1. Whether the impetus for formation of the entity originated with a government agency.

The impetus for formation of the entity originated with Congress in 1964. Currently, one-third of the board is composed of public officials who are appointed by the county board of supervisors.

2. Whether the entity is substantially funded by, or its primary source of funds is a government agency.

The MCAC receives funding predominantly from governmental agencies, including federal funds and funds from the State of California and Madera County.

3. Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.

The reason the MCAC was formed was to administer programs established under the Economic Opportunity Act of 1964 and implement antipoverty programs and mobilize public and private resources in support of such programs, much of these duties are performed in conjunction with the county board of supervisors. While nonprofit entities perform such functions, so do public entities. In addition, few nonprofit entities perform such functions in a manner that is so intertwined with a local governmental agency. According to the bylaws of the MCAC, the board of supervisors determines (1) major fiscal and program policies, (2) overall program plans and priorities, and (3) approves program proposals, budgets, studies and reports.

4. Whether the entity is treated as a public entity under other statutory provisions.

Finally, you stated that the MCAC has determined it is a governmental agency under the Brown Act.<sup>2</sup>

Consequently, pursuant to the test in Siegel, the Madera County Action Committee could be considered a local government

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<sup>2</sup> As stated previously, the Commission does not act as the finder of fact in providing advice. Moreover, the Commission does not advise on the Brown Act. Our jurisdiction is limited to the provisions of the Political Reform Act.

agency under the Act and subject to the conflict-of-interest provisions of the Act.<sup>3</sup>

As stated above, Section 87300 provides that every agency must adopt and promulgate a conflict of interest code. Section 87302 requires that every conflict of interest code must specifically enumerate the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

In addition, the code must contain requirements that each designated employee must file statements disclosing reportable investments, business positions, interests in real property and income. (Section 87302(b).) Finally, the code must state the specific types of investments, business positions, interests in real property, and sources of income which are reportable. (Section 87302(a).) Disqualification must be required by the conflict of interest code when the designated employee has a financial interest as defined in Section 87103, where it is reasonably foreseeable that the financial interest will be affected materially by the decision. (Section 87302(c).)

The code must be submitted to the code-reviewing body (the county board of supervisors) within six months after the agency comes into existence for the code-reviewing body's approval. (Section 82011(b); Section 87303.)

#### Conflict of Interest

Section 87100 of the Act 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. As a designated employee of the Madera County, Mr. Tooley is a public official under the Act. (Section 82048; Regulation 18700.)

Section 87103 specifies that a public official has a financial interest in a decision 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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<sup>3</sup> We note that you have not stated that you were expressly authorized to request advice on behalf of the MCAC or Madera County. Since, assuming your facts to be accurate, the MCAC would qualify as a county agency, we have also sent a copy of this analysis to Madera County. As stated previously, the Commission does not act as the finder of fact.

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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.

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For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103(c),  
emphasis added.

Clearly, Mr. Tooley has an interest in his spouse's business. (Section 87103(a).)<sup>4</sup> In addition, Section 82030 provides that the income of an individual also includes any community property interest in the income of a spouse, including income received by Mr. Tooley's spouse through her business.<sup>5</sup>

Consequently, if any person or business has been a source of income to Mr. Tooley of \$250 or more, or to his spouse of \$500 or more (making Mr. Tooley's community property share \$250) within the past 12 months, the source of income is a potentially disqualifying economic interest as described in Section 87103.

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<sup>4</sup> To determine whether the accounting business would be materially affected by a decision, you would use the applicable standards in Regulation 18702.2 (copy enclosed). You have not indicated that any of the decisions in question will affect the accounting business. Thus, we are only providing this general outline.

<sup>5</sup> Section 82030 provides that income of an individual also includes a pro-rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater.

You stated that Mr. Tooley's spouse has contracted with the MCAC and has received more than \$500 from the MCAC<sup>6</sup> in the past 12 months. Thus, the MCAC is a source of income to Mr. Tooley, and absent an exception, Mr. Tooley may not participate in any governmental decision which will have a foreseeable<sup>7</sup> and material financial effect on the MCAC.

The Commission has adopted differing guidelines to determine whether an effect is material, depending on the specific circumstances of each decision. Where a source of income is directly before the city, as an applicant or the subject of the decision, Regulation 18702.1(a) provides that the effect of the decision on the source of income is deemed material and disqualification is required.<sup>8</sup> (Combs Advice Letter, No. A-89-177.)

However, an official may still participate in a governmental decision that will materially affect the official's economic interest if the effect on the official's economic interest is not distinguishable from the effect on the public generally. (Regulation 18703 (copy enclosed); In re Owen (1976) 2 FPPC Ops. 77.)

We have previously advised that if a decision affects a public agency, in many cases we presume that the effect of a decision flows to residents in the jurisdiction. (Sigurdson Advice Letter, No. I-93-452.) If the effect is substantially the same on the public, or a significant segment of the public, the

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<sup>6</sup> "Salary" which is received by an employee of a state, local, or federal government agency is exempted from the definition of "income" for purposes of the Act. (Section 82030(b)(2).) However, the term "salary" has been narrowly construed and does not apply to situations where the recipient is not an employee of the agency, such as where the payments are received under a contract. This would be considered disclosable income.

<sup>7</sup> Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular decision. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.)

<sup>8</sup> A source of income is directly before the city when the source (1) initiates the proceeding by filing an application, claim, appeal, or similar request, (2) is a named party in the proceeding, or (3) is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity. (Regulation 18702.1(b).)

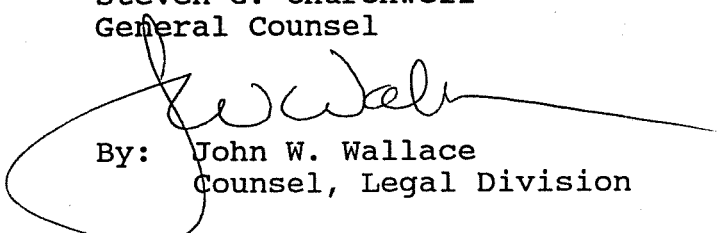
"public generally" exception would apply.<sup>9</sup> (Douglas Advice Letter, No. I-90-128A.)

Under your facts, the MCAC appears to be a public agency that serves the entire county, including the City of Madera. Therefore, decisions relating generally to the operation of the MCAC would fall within the "public generally" exception (Regulation 18703(a)(1)(D)) so long as the benefits flowing from of the decisions will affect the population of Madera in substantially the same manner. Presumably, the decisions that assist the MCAC in providing services to residents of the city would meet this standard.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>10</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

**ENCLOSURES**

cc: Jeffrey L. Kuhn  
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<sup>9</sup> This would not be the case where a decision were to result in a special benefit on the population that is not considered "significant" under the Act.

<sup>10</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.