



California
Fair Political
Practices Commission

SUPERSEDED
by 18702.1(a)(4)

June 10, 1994

Honorable Helen Fisicaro
Councilmember, City of Colma

Honorable Dennis Fisicaro
Councilmember, City of Colma

490 D Street
Colma, CA 94014

Re: Your Request for Advice
Our File No. A-94-178

Dear Councilmembers:

You have requested advice concerning the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ We have previously provided advice in the form of informal assistance to Councilmember Dennis Fisicaro in the Cornell Advice Letter, No. I-91-212, regarding a similar set of facts.

In the Cornell Advice Letter, supra, we concluded that payments received by firefighter volunteers of the Colma Fire Protection District are governmental salary. Thus, the payments would not create a conflict of interest with respect to Colma City Council decisions affecting the Colma Fire Protection District. This letter confirms that the advice is still applicable.

In addition, please note that our advice is limited to the Political Reform Act. You may wish to contact the Attorney General's office with respect to other provisions of the law such as Government Code 1090 and the law governing incompatible offices.

QUESTION

As members of the Colma City Council, may you participate in city council decisions which may affect the Colma Fire Protection

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

District where Councilmember Dennis Fisicaro is a volunteer firefighter compensated for services on a per-call basis?

CONCLUSION

Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency is exempt from the definition of "income" for purposes of the Act. Moreover, local government agencies are not considered "business entities" under the Act. Thus, neither one of you will have a conflict of interest by virtue of Councilmember Dennis Fisicaro's employment with the Colma Fire Protection District.

However, neither one of you may participate in any decision that will materially affect your personal expenses, income, assets, or liabilities by \$250 or more.

FACTS²

You are both incumbent city councilmembers for the City of Colma. You are also each other's spouse.

Councilmember Dennis Fisicaro is also a volunteer firefighter for the Colma Fire Protection District (the "district"). The district is controlled by an elected commission and is staffed by volunteers.

The district's firefighter volunteers receive no salary but do receive compensation for each actual call. There are some additional minor benefits, such as dinners at the firehouse.

ANALYSIS

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. A "public official" is defined in Section 82048 and Regulation 18700 as every natural person who is a member, officer, employee, or consultant of a state or local government agency. This definition would include members of the Colma City Council.

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,

² The facts concerning Councilmember Dennis Fisicaro are identical to those set forth in the Cornell Advice Letter, supra. However, that letter also discussed the responsibilities of Councilmember Ray Boudewyn under conflict-of-interest provisions of the Act.

distinguishable from the effect on the public generally, on the official or a member of his or her immediate family³ or on:

(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(c) and (d)
(emphasis added).

According to your facts, while the volunteer firefighters with the Colma Fire Protection District are not considered regular "employees" of the district, they receive compensation for each call as they are needed. Moreover, they receive meals at the firehouse while on call. In the Cornell Advice Letter, supra, we advised that the payments received by the firefighters are in the form of governmental salary and do not create a conflict of interest with respect to decisions affecting the fire district. (Section 82030(b)(2) and Section 87103(c).)

We relied on the reasoning in the Jenke Advice Letter, No. A-83-001, which concerned employees of a public hospital where the hospital could arrange for physician services on a part-time or as-needed basis. There, we advised that in the case of a small hospital, payments received by a doctor under this arrangement were salary from a local governmental entity, subject to the exclusion under subdivision (b)(2) of Section 82030.

Section 82030(b)(2) expressly exempts salary from a state, local, or federal government agency from the definition of "income" for purposes of the Act. (Also see, Maness Advice Letter, No. A-93-282; Morita Advice Letter, No. I-93-053; Fatland Advice Letter No. I-89-419.) Thus, on the basis of the reasoning applied in the Jenke Advice Letter, supra, and as previously advised in the Cornell Advice Letter, supra, the payments Councilmember Fisicaro receives as a volunteer firefighter are salary from a local government agency and are excluded from the definition of "income" under the Act.

³ "Immediate family" means the spouse and dependent children. (Section 82029.)

Thus, Councilmember Dennis Fisicaro's salary from the district does not create a conflict of interest for either of you with respect to city decisions affecting the district. (Sampson Advice Letter, No. I-89-196.) In addition, because a local government agency is not an organization or enterprise operated for profit, it is not a "business entity" as defined by the Act. (Section 82005.)

However, a conflict of interest may still exist where a decision will result in the personal expenses, income, assets, or liabilities of a public official or his or her immediate family increasing or decreasing by \$250, irrespective of the source of the increase or decrease. (Regulation 18702.1(a)(4); Torrance Advice Letter, No. I-89-142.) Thus, for example, this provision contemplates even increases and decreases to income received from governmental agencies as being within the parameters of the regulation. Therefore, you may be disqualified from participating in city decisions which would have a direct personal effect on either one of you.

This might be the case, for example, if a city decision involved the hiring, firing, promotion, demotion, or discipline of Councilmember Dennis Fisicaro as a firefighter, or the setting of a salary for the councilmember which is different from salaries paid to other employees of the fire district. (Regulation 18702.1(c).) It would appear that it is unlikely that the city would be involved in these fire district decisions, however.

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

Sincerely,

Steven G. Churchwell
General Counsel,



By: Luisa Menchaca
Counsel, Legal Division