

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 26, 1995

Susie Rossi
Merced Downtown Assn., Inc.
1722 Canal Street
Merced, CA 95340

Re: Your Request for Informal Assistance
Our File No. I-95-271

Dear Ms. Rossi:

This is in response to your request for assistance under the conflict-of-interest provisions of the Political Reform Act.^{1/} Since you do not have a specific decision before you at this time, we are treating your request as one for informal assistance.^{2/}

QUESTION

Will your position as Managing Director, Promotions & Special Events for the Merced Downtown Association, Inc., ("Association") prevent you from participating in decisions which may affect the Merced downtown area?

CONCLUSION

Since the Association is a source of income to you, if elected to the Merced City Council, you would be prohibited from participating in any decisions which may have a material financial effect, as described below, on the Association.

^{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 18000-18995. 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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

You are the Managing Director, Promotions & Special Events for the Merced Downtown Association, Inc. This agency is a nonprofit agency and derives some of its money from a double business license tax. Your role with the Association requires you to raise additional money, through special events.

You are running for election to the Merced City Council and would like to know if the Act's conflict-of-interest provisions will prevent you from participating in governmental decisions. In your letter you stated that you understand that if elected, you will not be able to participate in approving the Association's annual contract.

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.

A public official has a financial interest in a 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,^{3/} 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^{4/} in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

* * *

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

^{3/} An official's "immediate family" are his or her spouse and dependent children. (Section 82029.)

^{4/} "Business entity" means any organization or enterprise operated for profit. A nonprofit organization is not a "business entity."

Since the Association is not an entity operated for profit, your position with the Association is not an economic interest which would require disqualification. However, the salary you receive from the Association is "income" as used in Section 87103(c). Accordingly, you may not make, or participate in the making of governmental decisions, if it is reasonably foreseeable^{5/} that those decisions will have a material financial effect, distinguishable from the effect on the public generally, on the Association.

The Commission has developed a regulation to provide guidance in determining when a decision will have an indirect material financial effect on a nonprofit entity.^{6/} The regulation provides standards which differ depending on the annual gross receipts of the entity.

For example, the effect of a decision on the Association is considered material if the Association's annual gross revenues are between \$100,000 and \$1,000,000, and any of the following apply:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$50,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$50,000 or more.

(Regulation 18702.5(c).)

You have not provided the figures which represent the annual gross receipts for the Association in order for us to apply the applicable standard. I have enclosed Regulation 18702.5 for your use to determine which standard will have an indirect material

^{5/} 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 case. 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.)

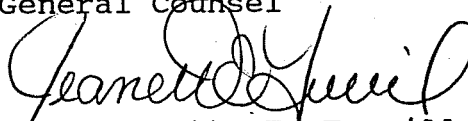
^{6/} Where a source of income is directly affected by a decision, such as a decision to award a contract to the Association, Commission Regulation 18702.1 would apply (enclosed).

financial effect on the Association. If any decision should have such an effect on the Association, you may not make, or participate in the making, or use your official position to influence the making, of any such governmental decision.

I hope this guidance has been helpful to you. Should you be successful in your election attempt and need advice regarding a specific decision, please feel free to call or write the Commission's Legal Division at (916) 322-5901 for assistance.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

SGC/JET
Enclosure