

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 16, 1995

Orry Korb  
Galt City Attorney  
380 Civic Drive  
Galt, CA 95632

Re: Your Request for Advice  
Our File No. A-95-328

Dear Mr. Korb:

This is in response to your letter requesting advice on behalf of Galt City Councilmember Robert C. Kraude 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 Councilmember Kraude participate in the Galt City Council's decision to provide financial assistance to the Galt Joint Union High School District for the completion of a gymnasium at Galt High School where the councilmember teaches?

---

<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 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSION

Councilmember Kraude may participate in consideration of a request from the Galt Joint Union High School District for financial assistance the district needs to complete the gymnasium project. Pursuant to your facts, Galt Joint Union High School District is not considered an economic interest of the councilmember for purposes of the disqualification provisions of the Act.

### FACTS

Councilmember Kraude is a member of the Galt City Council. In his private capacity, the councilmember has been employed by the Galt Joint Union High School District (the "district") since 1979 as a teacher at Galt High School. The district encompasses the city and certain contiguous portions of the unincorporated area in Sacramento and San Joaquin Counties. Galt High School is located in the City of Galt.

The district is currently involved in the construction of a new gymnasium at Galt High School. However, the district recently determined that there is a \$2 million shortfall in the district's capital budget and that the shortfall may affect the completion of the gymnasium project. It is anticipated that the district may approach the city council to request financial assistance for the completion of the gymnasium. If the city provides these funds, their use would be limited to the gymnasium project, and would not go into teacher salaries. The councilmember has asked whether he may participate in the decision to provide financial assistance to the district.

### 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. 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 (\$1000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more.

(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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to subdivision (d) of Section 89504.

Section 87103(a)-(e).

As a public official, Councilmember Kraude may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any economic interest noted above.

However, while the district pays the councilmember a salary, Section 82030(b)(2) excludes from the definition of "income" salary and reimbursement for expenses or per diem received from a state, local or federal government agency. Moreover, since a local government agency is not an organization or enterprise operated for profit, it is not a "business entity" for purposes of Section 87103(d).<sup>2</sup>

Consequently, absent some other economic interest as set forth in Section 87103 that will be affected by the decision in question, Councilmember Kraude may participate in the decisions

---

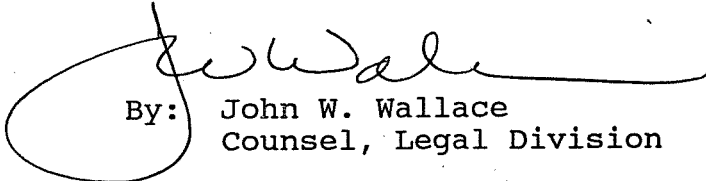
<sup>2</sup> Section 82005 defines "business entity" as an organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

concerning the gymnasium project. However, please note that our advice is limited only to the Political Reform Act.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.<sup>3</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

---

<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.