

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 22, 1996

Mr. Rene Auguste Chouteau
City Attorney
City of Santa Rosa
Office of the City Attorney
Post Office Box 1678
Santa Rosa, California 95402-1678

Re: Your Request for Advice
Our File No. A-96-030

Dear Mr. Chouteau:

This is in response to your request for advice on behalf of City of Santa Rosa Mayor Sharon Wright and Councilmember Janet Condron regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Do Mayor Wright or Councilmember Condron's positions as Executive Director of the Sonoma County Alliance and Education Director of the Santa Rosa Chamber of Commerce, respectively, create a conflict of interest that will prevent them from participating in the city council's decision regarding extension of a garbage collection services contract?

CONCLUSION

Based on the facts provided, it does not appear that the decision would have a material financial effect on the nonprofit organizations that are sources of income to Mayor Wright or Councilmember Condron. Therefore, Mayor Wright and Councilmember Condron would not be required to disqualify themselves from participating in the Council's decision regarding the extension of

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.

Empire Waste Management's exclusive franchise unless there is a nexus between the purpose for which either of them receives income in their private capacity and the governmental decision.

FACTS

In the past, the City of Santa Rosa awarded an exclusive franchise for the provision of garbage collection services to Empire Waste Management. At its meeting on January 9, 1996, the city council considered a request by Empire Waste Management that its franchise be extended an additional six years. During presentation of the item, a question was raised as to a possible conflict of interest involving two of the five members of the city council.

Mayor Sharon Wright is employed as the executive director by the Sonoma County Alliance ("SCA"), an advocacy group focusing on business and economic issues. She receives a salary from SCA in excess of \$250 per year. SCA is classified as a 501(c)(6) nonprofit corporation under the Internal Revenue Code. SCA is supported by dues paid by its members. In 1995, SCA received gross receipts in the amount of \$93,751. During that same year, Empire Waste Management paid a total of \$1,206 to SCA. This amount consisted of \$500 in dues, \$516 for an advertisement in the annual report, and \$190 for meals and meetings.

Councilmember Janet Condron is employed as the education director by the Santa Rosa Chamber of Commerce. She receives a salary from the Chamber of Commerce in excess of \$250 per year. The Chamber of Commerce is classified as a 501(c)(6) nonprofit corporation under the Internal Revenue Code. The Chamber is supported by dues paid by its members, which are, by and large, business entities with offices in the City of Santa Rosa. The gross receipts of the Chamber in 1995 were \$1,375,320. Empire Waste Management, the city's franchisee for the collection of garbage, paid dues and made other contributions to the Chamber of Commerce in 1995 in the amount of \$2,706. In addition, Empire Waste Management contributed \$5,000 to the Sonoma County Business/Education Roundtable, a separate 501(c)(3) nonprofit corporation which contracts with the Chamber for management services. Councilmember Condron spends one-half of her work week serving as executive director for the Roundtable, but her entire salary is paid by the Chamber.

ANALYSIS

Economic Interests

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:

(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.

According to the facts you provided, SCA is a source of income to Mayor Wright and the Chamber of Commerce is a source of income to Councilmember Condron.² Therefore, Mayor Wright and Councilmember Condron are prohibited from making, participating in making, or otherwise using their official position to influence a decision if it is reasonably foreseeable³ that the decision will have a material financial effect on SCA or the Chamber of Commerce, respectively, which is distinguishable from the decision's effect on the public generally.

Materiality

The standard to determine materiality differs depending on whether a source of income is directly or indirectly involved in the decision. Generally, if the official's source of income is directly involved in a decision, the effect is deemed to be material.

SCA or the Chamber of Commerce would be directly involved in a city council decision if either of the organizations: (1) initiates the proceeding; (2) is a named party in or the subject of the proceeding; or (3) is the subject of the proceeding because the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with the organization. (Regulation 18702.1(b).) You have not requested advice pertaining to a decision in which

² Please note, generally we would not find that the individual or business members of SCA or the Chamber of Commerce are sources of the income received by Mayor Wright or Councilmember Condron, respectively. (Libow Advice Letter, No. A-93-047; and Best Advice Letter, No. A-81-032.)

³ 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.)

SCA or the Chamber of Commerce will be directly involved under this regulation.

In addition, SCA or the Chamber of Commerce is considered to be directly involved in a decision where there is a nexus between the purpose for which the official receives income and the governmental decision. (Regulation 18702.1(a)(1); See, e.g., Wallace Advice Letter, No. I-94-184 (copy enclosed). Under the Act, a nexus exists if Mayor Wright or Councilmember Condrón receives income from SCA or the Chamber of Commerce, respectively, to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the governmental decision in question (extension of Empire Waste Management's contract). (Regulation 18702.1(d).) As executive director of an advocacy group and Education Director of the Chamber/Executive Director of its Business and Education Roundtable, it appears that Mayor Wright and Councilmember Condrón, respectively, receive income to further the policies and positions of these organizations.

In the past we have described the nexus test as follows:

[I]f [the nonprofit] took a position on a particular proposal before [the agency]... disqualification on the matter would be required.

Best Advice Letter, No. A-81-032.

If you vote on a decision to provide a grant to the [nonprofit], you are accomplishing as a public official what you are paid to do in your position with the [nonprofit].

Cornelius Advice Letter, No. A-82-104.

In the Scheidig Advice Letter, No. A-82-212, we advised that the Mayor of Concord who received income from the Bay Area Council ("BAC") for work with BAC's Housing Advocacy Program was disqualified from housing decisions before the Concord City Council on which BAC had taken a particular position, had a specific policy or position, or had a general policy that clearly implied a specific result on a decision.

You are requesting advice regarding the council's decision whether to extend Empire Waste Management's exclusive franchise for the provision of garbage services to the City of Santa Rosa. You have not provided facts that indicate whether SCA or the Chamber of Commerce has or will take a position on this issue. However, under the Act's nexus provision, Mayor Wright or Councilmember Condrón would be disqualified from participating in the city council's decision regarding Empire Waste Management's contract if SCA or the Chamber of Commerce has taken a position on this issue, or if either of these organization's general policies clearly implies that it would support or oppose extension of the contract.

In addition, even if SCA or the Chamber of Commerce is not directly involved in a governmental decision, Mayor Wright or Councilmember Condron's disqualification might still be required if SCA or the Chamber of Commerce would be indirectly affected by the Council's decision and the effect would be considered material under Commission regulations. Regulation 18702.5 sets forth the standards of materiality for nonprofit organizations. Whether an effect is considered material depends on the financial size of the nonprofit organization.

Because SCA had gross annual receipts in 1995 of \$93,751, Regulation 18702.5(f) applies. A decision that indirectly affects SCA would be considered material if it would result in an increase or decrease in SCA's (a) expenses by \$2,500 in a fiscal year, (b) gross annual receipts by \$10,000 or more in a year, or (c) assets or liabilities by \$10,000.

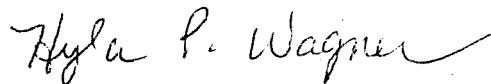
Because the Chamber of Commerce had gross annual receipts of \$1,375,320 in 1995, Regulation 18702.5(d) applies. A decision that indirectly affects the Chamber of Commerce would be considered material if it would result in an increase or decrease in the Chamber of Commerce's (a) expenses by \$25,000 in a fiscal year, (b) gross annual receipts by \$100,000 or more per year, or (c) assets or liabilities by \$100,000.

You stated that in 1995, Empire Waste Management paid a total of \$1,206 to SCA and contributed a total of \$2,706 to the Chamber of Commerce. Applying the thresholds set forth in Regulation 18702.5 to these facts, it does not appear that the council's decision regarding extension of Empire Waste Management's contract would increase or decrease the gross receipts or expenses of SCA or the Chamber by the amounts specified.

I trust this provides you with the guidance you requested. If you have any further questions regarding this matter, please contact me at 916/322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Counsel, Legal Division

Enclosure

SGC:HPW:ak