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FAIR POLITICAL PRACTICES COMMISSION

August 22, 1996

Gregory W. Stepanicich
City Attorney
City of Beverly Hills
c/o Richards, Watson & Gershon
Thirty-eighth Floor
333 South Hope Street
Los Angeles, California 90071-1469

Re: Your Request for Advice
Our File No. A-96-217

Dear Mr. Stepanicich:

This is in response to your request for advice on behalf of Allan Alexander, City Councilmember for the City of Beverly Hills, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

(1) May Councilmember Alexander participate in the decision to permit religious or nonreligious privately owned displays in Beverly Gardens Park because of the possible impact of the decision on his wife's employment with the American Jewish Committee?

(2) Is the possibility that Councilmember Alexander's wife may be viewed more or less favorably by her employer due to Councilmember Alexander's decisions sufficient to find that it is reasonably foreseeable that the decision will have a financial effect on him or on a member of his family?

CONCLUSIONS

(1) and (2) Councilmember Alexander may participate in the decision regarding religious or privately owned displays in Beverly Garden Park if there will not be a reasonably foreseeable

¹ Government Code Sections 81000-91015. Commission regulations appear at Title 2, Sections 18000-18995 of the California Code of Regulations.

material financial effect on his wife's income or on her employer, the American Jewish Committee. Based upon the facts provided, it is not reasonably foreseeable that the decision will affect Councilmember Alexander's wife's income or employment. It also does not appear that the decision will have a reasonably foreseeable material financial effect on the American Jewish Committee.

Under the Act, a conflict of interest exists when a governmental decision has a reasonably foreseeable material financial effect on a public official's financial interest. A mere perception is not enough for the effect of a decision to be considered reasonably foreseeable.

FACTS

Allan Alexander is an elected member of the City Council of the City of Beverly Hills. His wife, Joan Alexander, is employed by a nonprofit organization, the American Jewish Committee (the "committee"). Ms. Alexander's annual income from the committee will exceed \$500 for the 12-month period immediately preceding the upcoming decision described below.

Since 1986, the city has permitted a privately owned Menorah to be placed adjacent to a Christmas tree and a "Seasons Greetings" display owned by the city during the winter holidays in the city's Beverly Gardens Park. The presence of these displays has been a controversial issue in the city with various organizations taking positions in favor and against the practice, particularly with respect to the placement of the privately owned Menorah in the park. Litigation brought by the American Jewish Congress and four individual city residents who are opposed to the placement of a religious symbol on public property is currently ongoing. The "committee" has not been involved in any way with this litigation.

Chabad, a Jewish religious organization, owns the Menorah and has been the applicant for a permit to display the Menorah during Hanukkah each year since 1986. The committee is not affiliated with either the American Jewish Congress or Chabad and does not provide financial or managerial assistance to either organization. The committee has never applied to erect any displays in the park. In the past, the committee has expressed viewpoints similar to those of the American Jewish Congress on the issue of displaying religious symbols on public property.

The city council may consider adopting regulations which would prohibit all privately owned displays in the park. The outcome of that decision will determine if the city council will consider Chabad's specific application for the Menorah later this year.

Because of his wife's employment with the committee, Councilmember Alexander abstained last year from the decision to

grant Chabad's application. Neither Councilmember Alexander nor Ms. Alexander believe that either Councilmember Alexander's vote on the park regulations or Chabad's application would affect her employment with the committee or her level of compensation.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) 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 its effect on the public generally, on the official or a member of his 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.

(Section 87103(a)-(d).)

As a member of the Beverly Hills City Council, Mr. Alexander may not participate in the decision regarding public displays if it is reasonably foreseeable that the decision will have a material financial effect on the American Jewish Committee, which is a source of income to him and his wife. (Section 87103(c).) Income of an official includes any community property interest in the income of a spouse. (Section 82030(a).)

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, an effect that is merely a possibility is not reasonably foreseeable. (Downey Cares v. Downey Community

Development Com. (1987) 196 Cal.App.3d 983; In re Thorner 1 FPPC Ops. 198.)

According to your facts, the decision will not affect the committee or Ms. Alexander's employment or level of compensation. However, Councilmember Alexander has concerns that his vote could affect how Ms. Alexander is viewed by her employer. A mere perception is not enough for the effect of a decision to be considered reasonably foreseeable.

However, if facts are brought to Mr. or Ms. Alexander's attention indicating that the committee may alter Ms. Alexander's employment on the basis of the councilmember's decision, it would be reasonably foreseeable that Councilmember Alexander's financial interests may be affected. If that is the case, you must further determine if his interests will be materially affected.

Materiality

The Commission has adopted several regulations to determine whether a decision will have a material financial effect. These regulations contain different standards depending on: (1) whether the decision pending before the city council directly or indirectly affects an economic interest, and (2) the type of economic interest which would be affected by the decision.

It is necessary to analyze if the decision will have a material financial effect on the committee, a nonprofit entity, which is a source of income to Councilmember Alexander. Regulation 18702.5 (copy enclosed) sets forth certain dollar amounts to determine if the effect of a decision on a nonprofit entity is material. You did not submit any facts to show that the decision would have any financial effect on the committee. You did state that the committee is not involved in the ongoing litigation over this issue. Please consult Regulation 18702.5 to determine if the decision will have a material financial effect on the committee.

It appears that the greater concern is how Councilmember Alexander's vote on the matter will be viewed by Ms. Alexander's employer. Under the Act, a conflict of interest exists when a financial interest is materially affected by a decision. Under Regulation 18702.1(a)(4), copy enclosed, the effect of a decision is material if the decision will result in the personal expenses, income, assets (other than interest in real property), or liabilities of the official or his immediate family increasing or decreasing by \$250 in any 12 month period.


You stated that both Mr. and Ms. Alexander believe that Councilmember Alexander's vote on either the park regulations regarding displays or Chabad's application will not affect Ms. Alexander's employment with the committee or her level of compensation. If that is the case, Regulation 18702.1 does not apply.

From the facts provided, it does not appear that the American Jewish Committee or any of Mr. and Ms. Alexander's financial interests will be materially affected by the decision regarding displays. Therefore, he may participate in the decision.

I trust this answers your questions.

Sincerely,

Steven G. Churchwell
General Counsel


By: Jill Stecher
Counsel, Legal Division

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Enclosures