

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

May 16, 1997

Mark J. Doane
City Attorney
City of Roseville
311 Vernon Street, #202
Roseville, California 95678

**Re: Your Request for Advice
Our File No. A-97-211**

Dear Mr. Doane:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Regulation 18329 requires that in order for this office to render formal advice, a request for advice made by one writing on behalf of another must include a specific statement that the requestor is an authorized representative. (Regulation 18329(b)(2)(A), copy enclosed.) Because your letter does not contain such a statement, we are treating this as a request for informal assistance.² Please bear in mind that nothing in this letter should be construed as an evaluation of any conduct which may already have taken place. Further, this letter is based on the facts surrounding your questions as you have presented them to us. The Commission does not act as finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. If Councilmember Pauline Roccucci ("Roccucci") and her spouse gift their shares of stock in Roseville Communications Company ("RCC") to their adult child, will Roccucci continue to have a conflict of interest such that she will be disqualified from participating in any decision of the City Council concerning RCC?

2. Do dividends received by Roccucci from the RCC stock constitute income such that Roccucci would be disqualified from participating in any decision concerning RCC without

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, 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; Regulation 18329(c)(3).)

regard to the gift of the stock?

CONCLUSIONS

A gift by Roccucci and her spouse of their shares of RCC stock to their adult, non-dependent child will sever any interest Roccucci may have in RCC for conflict of interest purposes. Additionally, the RCC stock dividends paid to Roccucci are not income under Section 82030(b)(5) and, therefore, will not result in her disqualification from deciding RCC matters before the Roseville City Council.

FACTS

The RCC is a private telephone company providing local and toll telephone service throughout Roseville and immediately adjacent areas in Placer and Sacramento Counties. The RCC issues stock and is registered with the Securities and Exchange Commission (the "SEC"), but the stock is not traded on any exchange.

Roccucci is a member of the Roseville City Council. Roccucci owns, through her spouse,³ stock in RCC valued at more than \$1,000. Beginning in May, the Roseville City Council will be considering matters involving RCC; Roccucci desires to avoid disqualification from participating in the decisions on these matters. To that end, she and her spouse propose to make a gift of the RCC stock to one of their adult children who does not live with them, does not receive support from them, and is not claimed as a dependent of the Roccuccis for tax purposes.

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. As a city Councilmember, Roccucci is a public official and Section 87100 would apply to her. 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, among other things, the official, or a member of the official's immediate family or on any business entity in which the official has a direct or indirect investment of \$1,000 or more. In this matter, because Roccucci holds stock of RCC in an amount in excess of \$1,000, Section 87103 requires that we consider whether the decision of the city council concerning RCC will have a material financial effect on Roccucci's financial interest, RCC.

The Commission has adopted several regulations which define the term "material

³ We assume Roccucci has a community property interest in the RCC stock based on your phraseology "owns through her spouse." For the purposes of determining a financial interest, a public official will be deemed to have an indirect investment or interest if the investment or interest is owned by the spouse of the public official. (Section 87103.)

financial effect.” Regulation 18702 sets forth the general guidelines for determining whether the effects of a decision will be material with respect to the official’s financial interest. If the official’s financial interest is directly involved in the decision, Regulation 18702.1 applies to determine materiality. If the official’s financial interest is indirectly affected by the decision, Regulations 18702.2 through 18702.6 (depending on the type of interest involved) will apply to determine whether the effect of the decision is material.

Regulation 18702.1 provides, in relevant part, that an official’s financial interest will be **directly** involved in a decision and that decision will have a material effect if: (1) any person (including a business entity), which has been a source of income to the official of \$250 or more in the preceding 12 months, is directly involved in a decision before the official’s agency; (2) any business entity (other than one covered by Regulation 18702.2(a) or (b)) in which the official has a direct or indirect investment of \$1000 or more is directly involved in a decision before the official’s agency; or (3) the decision will result in the personal expenses, income, assets or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250 in any 12 month period. For purposes of this Regulation, a person or business is “directly involved in a decision” when that person or entity:

- “(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
- (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency.” (Regulation 18702.1(b).)

A person or entity is the “subject of a proceeding,” as that term is used in the quoted language above, if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contact with, the subject person or business entity. (Regulation 18702.1(b)(3).)

You have not provided to us the details of the decisions to be made by the City council concerning RCC, but we will assume that RCC is, at least, a named party in or is the subject of the hearings before the City Council. With this assumption, Roccucci’s economic interest would be directly involved in the City Council’s decision such that Regulation 18702.1 would apply.

I. Will the City Council’s decisions have a material effect on Roccucci’s present financial interest(s)?

The facts of this matter implicate three potential financial interests for Roccucci: her own (she receives dividends from RCC), a business entity in which she has an interest (RCC); and a member of her immediate family (her spouse). These interests are discussed separately, below.

A. Is the RCC a present source of income to Roccucci under Regulation 18702.1(a)(1)?

You state in your letter that dividends have been paid to Roccucci from the RCC stock.

As you correctly point out, Section 82030(b)(5) exempts from the definition of "income" dividends paid on a security which is registered with the SEC. In applying Section 82030 to the conflict-of-interest provisions of the Act, this office has stated that the security registration exemption prevents dividends from becoming disqualifying income. (*Rudnansky* Advice Letter, No. A-92-036, copy enclosed.) Therefore, given that the RCC stock is registered with the SEC, the dividends paid to Roccucci and her spouse are not income and do not disqualify Roccucci from participating in decisions concerning RCC.

B. Does Roccucci have a direct or indirect investment in RCC of \$1,000 or more?

Roccucci holds stock in RCC valued in excess of \$1,000. These stock holdings are either a direct or indirect investment as required by Regulation 18702.1(a)(2). (Section 82034; *Stevenson* Advice Letter, No. I-89-719.) Regulation 18702.1(a)(2), however, provides that if the business entity is one covered by Regulation 18702.2(a) or (b), and the official's investment is between \$1,000 and \$10,000, then materiality will be analyzed under Regulation 18702.2.

You do not provide us any information regarding the financial size of RCC. In previous letters submitted to this office on behalf of Roccucci, the description of a company known as Roseville Telephone Company ("RTC") has fallen under subdivision (e) of Regulation 18702.2. (*Doane* Advice Letter, No. A-96-143.) Assuming RCC is a successor entity to RTC, or the same company using a different name, RCC would fall under subdivision (e) of Regulation 18702.2. Because, then, RCC is not nominally an entity covered by Regulation 18702.2(a) or (b), Regulation 18702.1(a)(2) applies exclusively to determine materiality. Under this Regulation, Roccucci's investment in RCC and RCC's direct involvement in the decisions to be made by the City Council mean that the effect of the City Council's decisions will be material to Roccucci's financial interest.

C. Will the City Council's decisions concerning RCC result in an increase or decrease in the personal expenses, income, assets or liabilities of Roccucci or her immediate family?

Because Roccucci and her spouse presently hold title to the RCC stock, this question applies only to them. We are unaware of the decisions to be made by the City Council regarding RCC, and consequently, we cannot determine if the decisions will present a conflict for Roccucci under this portion of Regulation 18702.1.

II. If Roccucci gifts the RCC stock to her adult child, will she still retain a financial interest?

In the *Brazelton* Advice Letter, No. I-93-175 (copy enclosed), we concluded that the public official's transfer of a partnership interest to an adult child resulted in no direct or indirect interest for the public official as long as the public official did not receive payment in exchange for the transfer. Therefore, if Roccucci and her spouse transfer the RCC stock to the adult child and no consideration is received by them in exchange (in other words, the transfer is intended

and treated as a gift), Roccucci will have no direct or indirect investment or interest in RCC.

As set forth previously, materiality under Regulation 18702.1 can be found if the decision to be made by the official financially impacts members of the official's "immediate family." (Regulation 18702.1(a)(4).) Consequently, Roccucci may still have a conflict of interest in the RCC decisions if the gift of the stock is to an "immediate family" member.

Section 82029 defines the immediate family as the spouse of the public official and his or her dependent children. This definition applies to Regulation 18702.1. (*Brea* Advice Letter, No. I-92-503.) We have advised previously that a dependent child is a child under the age of eighteen (18) years whom the public official claims (or may claim) as a dependent for federal income tax purposes. (*Winters* Advice Letter, No. A-94-374; *Tremlett* Advice Letter, No. I-89-386.) In your letter you do not provide the age of Roccucci's child, although you do indicate that this person is an "adult" and is not claimed by the Roccuccis as a dependent for tax purposes. Based on your description of Roccucci's child, we conclude that she or he would not be a dependent.

Since Roccucci's adult child is not a dependent, as long as the RCC stock is gifted to the child described in your letter and no portion of the stock is retained by Roccucci or her spouse, the City Council's decisions will not impact Roccucci or an immediate family member.

For the reasons set forth above, Roccucci's receipt of dividends prior to any transfer of the stock do not create a conflict of interest for her since the dividends do not constitute income.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Lisa L. Ditora
Staff Counsel, Legal Division

SGC:LLD:ak