



## FAIR POLITICAL PRACTICES COMMISSION

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May 13, 1998

Steven S. Lucas  
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP  
591 Redwood Highway, #4000  
Mill Valley, California 94941

**Re: Your Request for Advice  
Our File No. A-98-109**

Dear Mr. Lucas:

This letter is in response to your request for advice on behalf of Mayor Sharon Wright regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. When does Mayor Wright know or have reason to know that a governmental decision indirectly involves the bank that is a source of income to her?
2. Does Mayor Wright have the affirmative obligation to make herself aware of the bank's customers?

### CONCLUSIONS

1. Mayor Wright "knows" when a governmental decision indirectly involves the bank that is a source of income to her when she *actually* knows that the governmental decision indirectly involves the bank that is a source of income to her. Mayor Wright "has reason to know" that a governmental decision indirectly involves the bank whenever a reasonable person, under the same circumstances, would be aware of the decision's probable impact on the bank. If Mayor Wright "knows or has reason to know" that a decision may impact the bank, she must then make a good faith determination whether the decision will have a reasonably foreseeable and material financial effect on the bank.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

2. No. Mayor Wright does not have an obligation to inform herself of the bank's customers.

### **FACTS**

Within the past 12 months, Mayor Wright's husband has been employed by the National Bank of the Redwoods (the "bank"), and has received income in excess of \$250. Mayor Wright's community property share of her husband's income from the bank during the previous 12 months also exceeds \$250. The Mayor's husband is currently on long term disability leave with the bank.

The bank is listed on the American Stock Exchange but is not listed in the Fortune Magazine directory of the largest U.S. corporations.

Mayor Wright and her husband have an investment interest in the bank, in the form of stock and/or stock options. However, such investment constitutes less than 10 percent ownership interest in the bank.

### **ANALYSIS**

#### **Introduction**

The Act was adopted by the people of the State of California by initiative in 1974. The purpose of the conflict-of-interest provisions of the Act is to insure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who support them. (Section 81001(b).) In furtherance of this goal, Section 87100 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 "knows or has reason to know" he or she has a financial interest.

#### **Financial Interests**

Mayor Wright is a public official. (Section 82048.) 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, among other things, any source of income of \$250 or more during the previous 12 months. Income includes the community

property interest in the income of the spouse. You have stated that Mayor Wright's community property share of her husband's income from the bank during the previous 12 months constitutes at least \$250.<sup>2</sup>

### Foreseeability

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 a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.) The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Since you are not asking about a specific governmental decision, we can only provide you with the applicable standard for foreseeability.

### Materiality

Assuming foreseeability, disqualification is still only required where the foreseeable effect on the public official's economic interest is material. The Commission has adopted a series of regulations that provide guidance concerning whether the foreseeable financial effects of a decision are material. (Regulation 18702.) The standard of materiality differs depending on the type of economic interest involved and whether the economic interest is directly or indirectly involved in a decision.<sup>3</sup> You seek advice regarding only those governmental decisions where Mayor Wright's economic interest, the bank, is indirectly involved.

When a source of income is a business entity indirectly involved, Regulation 18702 provides the applicable standard of materiality. The exact standard depends on the size of the business entity. Pursuant to Regulation 18702.2(a)(1)-(3), the effect of a governmental decision involving the bank is material if there is either (i) an increase or decrease in the gross revenues of

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<sup>2</sup> Since Mayor Wright and her husband's investment interest in the bank is less than 10 percent, sources of income to the bank are not deemed sources of income to Mayor Wright or her husband. (Section 82030.)

<sup>3</sup> "A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent: (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. (3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit or other entitlement to, or contract with, the subject person or business entity." (Regulation 18702.1(b).)

the bank of at least \$250,000, (ii) an increase or decrease of the expenses of the bank of at least \$100,000, or (iii) an increase or decrease of the assets or liabilities of the bank of at least \$250,000. Again, you do not seek advice regarding a specific governmental decision. Therefore, we can only provide you with the applicable standard of materiality.

### 1. **Knows or as Reason to Know**

As mentioned earlier, Mayor Wright may not participate in decisions in which she “knows or has reason to know” she has a financial interest as defined in Section 87013. (Sections 87100 and 87103.) You have written specifically to determine what exactly is required by Mayor Wright under the “knows or has reason to know” standard of Section 87100 in decisions indirectly involving the bank, a source of income to Mayor Wright.

The Commission has delineated the “knows or has reason to know” standard in past advice letters. First, a public official knows that he or she has a financial interest in a governmental decision when the official actually knows the identity of a source of income and knows that it is reasonably foreseeable that a decision will materially affect the source of income. (*Price* Advice Letter, No. A-85-165.) Second, a public official has reason to know that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would (i) be likely to know the identity of the source of income and (ii) would be aware of the decision’s probable impact on that source of income. (*Price* Advice Letter, *supra*.)

Third, when a public official knows or has reason to know that a person or entity who is a source of income of \$250 or more will be affected by a decision, he or she must then determine if it is reasonably foreseeable that the decision will have a material financial effect on the source of income. (*Elam* Advice Letter, No. I-89-467; *Levy* Advice Letter, No. A-97-222.) Last, it is incumbent upon the public official to make a good faith effort to determine the material financial effect of the decision on his or her economic interest. (*Vadon* Advice Letter, No. A-97-502; *Weedman* Advice Letter, No. I-90-759.)<sup>4</sup>

Because we do not have all the facts material to this question, it is difficult to provide you with more than the general guidance provided above. However, in the *Burnham* Advice Letter, No. A-82-039, we did advise in an analogous situation that a public official was not under an obligation to inform herself of the bank’s customers. Similarly, Mayor Wright does not have an affirmative duty to inform herself of the identity of the bank’s customers.

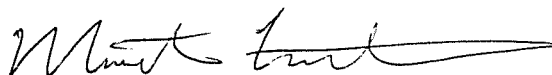
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<sup>4</sup> Remember, under the indirect standard found in Regulation 18702.2(a) mentioned above, only decisions with a large effect on the bank will lead to a conflict of interest.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink, appearing to read "Marte Castaños", with a long horizontal flourish extending to the right.

By: Marte Castaños  
Staff Counsel, Legal Division

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