



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

September 30, 1999

Stephen Miller  
Bruggeman, Smith & Peckham, LLP  
524 North Mountain View Avenue  
San Bernardino, California 92401-1295

**Re: Your Request for Advice  
Our File No. A-99-240**

Dear Mr. Miller:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> You are seeking advice on behalf of your client, Gary Penrod, the Sheriff of San Bernardino County.

### QUESTIONS

- 1) May The Counseling Team, which is owned by Dr. Bohl, provide services to the County of San Bernardino while Sheriff Gary Penrod and Dr. Nancy K. Bohl are involved in a personal relationship?
- 2) Does Sheriff Penrod have an obligation to report business dealings that The Counseling Team has with the County of San Bernardino and/or the San Bernardino County Sheriff's Department as long as Sheriff Penrod and Dr. Bohl are involved in a personal relationship?
- 3) Is Sheriff Penrod required to report the home and real property that he co-owns with Dr. Bohl on his Statement of Economic Interests and to what extent is he required to report any commercial loans that the two of them have obtained for the financing of their residence and real property?

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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.

## CONCLUSIONS

- 1) Yes; The Counseling Team may provide services to the county.
- 2) Sheriff Penrod does not have a reportable economic interest in The Counseling Team since it is not a source of income to him and he does not have a financial or investment interest in the business.
- 3) Sheriff Penrod is not required to report his personal residence on his Statement of Economic Interests. Sheriff Penrod is not required to report the commercial loan he received to purchase the home if the loan meets the criteria in Section 82030(b)(8), as discussed below.

## FACTS

Sheriff Gary Penrod began his first term as Sheriff for San Bernardino County in January 1995. He was subsequently reelected and began a second term in January 1999. Prior to first being elected sheriff in November 1994 he was a deputy chief with the department and held other positions previous to that.

On December 7, 1987, the Board of Supervisors of San Bernardino County ("the Board") approved a contract with a group called "The Counseling Team." The Counseling Team was retained to provide screening for entry level positions as well as evaluations for peace officers. Nancy K. Bohl, Ph.D., the owner of The Counseling Team, signed the contract. On December 7, 1987, Floyd Tidwell was sheriff and Gary Penrod was a lieutenant with the Sheriff's Department.

On November 9, 1993, the Board approved a new contract with The Counseling Team. The minutes of the Board indicate that The Counseling Team was to provide psychological screening for deputy sheriff applicants and in-service counseling to the sheriff's department safety employees. The sheriff at the time of the November 9, 1993, approval by the Board was Richard G. Williams. Gary Penrod was a deputy chief at the time this contract was approved and Dr. Bohl signed the contract for The Counseling Team as a director.

On September 12, 1995, the contract which had previously been approved on November 9, 1993, was amended with the approval of the Board. This amendment specifically addressed the providing of psychological screening for deputy sheriff applicants and in-service counseling to current sheriff's department safety employees. Gary Penrod was the Sheriff and Dr. Bohl signed the amendment as the director of The Counseling Team.

On March 19, 1996, the Board approved the contract with The Counseling Team to provide applicant psychological screening and counseling services. This approval also canceled the contract that had been approved in November 1993. Gary Penrod was the sheriff when this new contract was approved in March 1996 and Dr. Bohl, director, signed the contract on behalf of The Counseling Team.

In approximately June of 1996 Sheriff Penrod and Dr. Bohl began a personal relationship that developed to the point that they now live with one another. On or about September 1, 1998, they purchased a home together. They are not currently married to one another.

In September or October of 1998, a high level manager with the San Bernardino County Sheriff's Department retained The Counseling Team to provide professional services, including team building and counseling to dispatch employees employed by the sheriff's department. To the best of our belief, the Sheriff was not involved in selecting or retaining The Counseling Team to provide this service which cost \$12,600.

Since the team building and counseling services were provided to dispatch employees, Sheriff Penrod has directed that no sheriff's department employee is to be involved in recommending, selecting, retaining or approving any type of counseling service of the type provided by The Counseling Team. He has directed that the Human Resources Agent for the County of San Bernardino take over the responsibility for making such selections and recommendations.

Sheriff Penrod has no financial interest in The Counseling Team which is owned by Dr. Bohl. He receives no income from that business. The property they purchased together produces no income and no business is operated out of the house that they purchased together and share. Dr. Bohl does not provide any source of income to Sheriff Penrod and has not loaned him any money. Together they did obtain a commercial loan for the purchase of the home and the property on which it sits. Neither Dr. Bohl nor The Counseling Team have made contributions to the sheriff's election campaigns. Sheriff Penrod and Dr. Bohl do give each other gifts as a part of their personal relationship. They share mortgage and household expenses on an equal basis.

### ANALYSIS

The Act prohibits any public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the official has a financial interest. (Section 87100.)

A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step analysis for deciding whether a public official has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b).) The following advice applies some of that analysis to your question.

### 1. Public Official.

As the Sheriff of San Bernardino County, Mr. Penrod is a public official under the Act. (Section 82048.)

### 2. Making, participating in making or using official position to influence governmental decisions.

The Act's conflict of interest provisions apply only when the public official "*make[s], participate[s] in making, or in any way attempts to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.*" (Section 87100, emphasis added.) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision. (Regulations 18702-18702.4, copies enclosed.)

From the facts that you have provided, neither Sheriff Penrod nor anyone in the sheriff's department is involved in any governmental decision regarding The Counseling Team. However, please refer to the regulations referenced above, as involvement in a governmental decision is much broader than voting on a matter.

### 3. Identifying the economic interests.

The Act's conflict of interest provisions apply only to conflicts arising from *economic interests*. (Section 87103.) The "economic interests" from which conflicts of interest may arise are defined in Section 87103 and Regulations 18703-18703.5. Section 87103 provides as follows:

"A public official has a financial interest in a decision within the meaning of Section 87100 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, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) 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.<sup>2</sup>

(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 (f) of Section 89503.”

You stated that Sheriff Penrod has no financial interest in The Counseling Team and he does not receive any income from that business. In addition, Dr. Bohl has provided neither income nor a loan to the sheriff. They obtained a commercial loan for the purchase of their home<sup>3</sup> and they share mortgage and household expenses equally. We have previously advised that when two unmarried individuals who are involved in a bona fide dating relationship live together, the mere fact of living together does not create an economic interest in the other. (*Munoz* Advice Letter, No. I-98-281; *Budge* Advice Letter, No. I-93-460.) We have also said that where there is a mere joint tenancy arrangement, no economic interest is created between the joint tenants. (*Biondo* Advice Letter, No. A-86-238.) We have also advised that an official who shares living expenses with her fiancé did not have an economic interest in her fiancé under the bona fide dating relationship exception. (*Brown* Advice Letter, No. A-96-155.)

Sheriff Penrod and Dr. Bohl do exchange gifts. A “gift” is “any payment to the extent that consideration of equal or greater value is not received.” (Section 82028(a).) The statute excepts gifts from spouses and certain family members. However, the statute does not provide an exception for persons who are dating each other. Nevertheless, the Commission has advised that gifts of a truly personal nature, such as entertainment, meals, personal property or recreational travel, received within the context of an established “bona fide dating relationship,” are not gifts for purposes of the Act. Such a relationship is similar to a familial or spousal relationship, in which personal gifts are frequently exchanged and disclosure would not further the purposes of the Act. (*Shea* Advice Letter, No. A-84-085; *DeRosa* Advice Letter, No. I-98-284.)

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<sup>2</sup> The gift limit is now \$300.

<sup>3</sup> We have no information regarding the commercial loan and assume that each individual obtained his/her own loan.

**4. Is it reasonably foreseeable that the decision will have a material financial effect on the official's economic interests?**

Since Sheriff Penrod is not involved in any governmental decision involving The Counseling Team, there is nothing to give rise to a conflict of interest at the present time.

Your questions are addressed as follows:

1) The Act does not prevent the Counseling Team from providing services to the County of San Bernardino and the sheriff's department. However, Sheriff Penrod has directed that only the Human Resources Agent for the County of San Bernardino has the responsibility for any decisions regarding county contracts with The Counseling Team.

2) Sheriff Penrod has a responsibility to report all of his economic interests on his Statement of Economic Interests (Form 700). If neither Dr. Bohl nor The Counseling Team is a source of income to him, there is no reportable economic interest from either of these sources.

3) Sheriff Penrod and Dr. Bohl obtained a commercial loan for the purchase of their home. Any loan from a commercial lending institution which is made in the lender's regular course of business on terms available to members of the public without regards to official status is not required to be reported if: (1) the loan is secured by the principal residence of the filer or (2) the balance owed does not exceed \$10,000. (Section 82030(b)(8).)<sup>4</sup> We have no facts regarding the loan.

A public official is not required to report a residence which is utilized exclusively as his/her personal residence. (Section 87206(f).) We have interpreted this to mean that the residence is not also a place of business (e.g. farm, rental, retail business). Since the facts state that there is no business activity from the house that the sheriff and Dr. Bohl purchased, Sheriff Penrod is not required to report his personal residence on his Statement of Economic Interests.


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<sup>4</sup> Please note, however, that one's personal residence may be a disqualifying economic interest. (Section 87103(b).)

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

Sincerely,

Steven G. Churchwell  
General Counsel

By:   
Jill Stecher  
Staff Counsel, Legal Division

SGC:JS:tls  
Enclosures