



FAIR POLITICAL PRACTICES COMMISSION

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March 6, 2000

Veronica A. F. Nebb
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670 West Napa, Suite F
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**Re: Your Request for Advice
Our File No. I-00-017**

Dear Ms. Nebb:

This letter is in response to your request for advice on behalf of Novato City Councilmember Dr. John Mani regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ We are treating your request as one for informal assistance since you have not provided any details about a specific governmental decision in which the councilmember wishes to participate.² (Regulation 18329(b)(2)(B).)

QUESTION

May Councilmember Mani participate in a governmental decision if the decision will have a financial effect on his adult son, Steven Mani, or his son's employer?

CONCLUSION

A public official cannot participate in a governmental decision that has a personal financial effect on the official or a member of his or her immediate family. The Act, however, does not prohibit a public official from participating in a governmental decision merely because the decision will financially affect his or her adult child.

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

² Informal assistance does not provide the immunity conferred by formal written advice. (Regulation 18329(c)(3).)

FACTS

Councilmember Mani was elected to the Novato City Council in November 1999. His son, Steven Mani, is an outside buyer for a local lumber company. As an outside buyer, Steven Mani solicits contractors to purchase lumber for local development projects. In this regard, he provides estimates on the amount and cost that a developer may need for a given project. He receives a salary and a small commission from the lumber company. Steven Mani was an outside buyer before Councilmember Mani was elected to the city council.

Steven Mani is an adult and does not live with his father. He receives no income or financial support directly from his father. However, Steven Mani's son attends a private elementary school, and Councilmember Mani pays some of the tuition. In addition, Steven Mani is a beneficiary of the councilmember's living trust, but the trust will not provide any income to Steven Mani during the councilmember's lifetime. The Manis typically exchange birthday and holiday gifts, and occasionally treat each other to lunch or dinner. There are no outstanding loans or other debts between Councilmember Mani and his son. Furthermore, Steven Mani provides no income or financial support to the councilmember.

The city council will be voting on several planning projects proposed by individual developers for whom Steven Mani has supplied, or hopes to supply, lumber.

ANALYSIS

The Act prohibits financial conflicts of interest. Section 87100 provides that no public official may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. (Section 87100.)

The Commission has developed an eight-step approach for determining whether an individual has a disqualifying financial interest in a decision. (Regulation 18700(b).)

1. Definition of "Public Official"

The prohibition only applies to public officials. (Section 87100.) As a member of the Novato City Council, Dr. Mani is a public official subject to the prohibition. (Section 82048.)

2. Conduct Covered

The prohibition covers specific conduct: making, participating in making, or attempting to use one's official position to influence a governmental decision. (Section 87100.) Regulations 18702-18702.4 define these terms. By deliberating and voting on a development project, Dr. Mani will be engaging in conduct regulated by the prohibition.

3. Economic Interest

An official has a disqualifying 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, his or her immediate family, or on the following enumerated economic interests:

1. Any business entity in which the official has an investment worth \$1,000 or more.
2. Any real property in which the official has an interest worth \$1,000 or more.
3. Any source of income of \$250 or more provided to the official within 12 months before the decision.
4. Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
5. Any donor of gifts worth \$300 or more provided to the official within 12 months before the decision. (Section 87103(a)-(e).)

A decision will have a personal financial effect "on the official," within the meaning of Section 87103, if the decision will affect his or her personal expenses, income, assets, or liabilities, or those of his or her immediate family. (Regulation 18703.5.) An official's "immediate family" means the official's spouse and dependent children. (Section 82029.) A child is considered "dependent" for purposes of the Act if the child is under 18 years old, and can be claimed as a dependent for income tax purposes. (*Fitch Advice Letter*, No. A-96-104.)

You have not identified any economic interests that will lead to a conflict of interest for Councilmember Mani. First, Steven Mani is not Councilmember Mani's "immediate family" for purposes of the Act. He is an adult, and the councilmember cannot claim him as a dependent. Therefore, the familial relationship between the councilmember and his son does not, by itself, create a conflict of interest for the councilmember.

In addition, it does not appear that Steven Mani is a "source of income" to the councilmember. (Section 87103(c).) According to your facts, Steven Mani does not provide any financial support to the councilmember, and there are no outstanding loans or debts between them. Finally, under your facts, Steven Mani is not a "source of a gift" for purposes of the Act. (Section 87103(e).) The definition of "gift" excludes gifts from an individual's child. (Section 82028(b)(3).)

Since Councilmember Mani does not have a financial relationship with his son, the councilmember does not have a conflict of interest in a decision solely on the basis that it will have a financial effect on his son, or his son's employer.

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

Sincerely,

Luisa Menchaca
Assistant General Counsel



By: Julia Bilaver
Staff Counsel, Legal Division

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