



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807
(916) 322-5660 • Fax (916) 322-0886

February 18, 2000

Linda Downs
Linda Downs for Supervisor
P.O. Box 823
Olivehurst, California 95961

**Re: Your Request for Advice
Our File No. I-00-021**

Dear Ms. Downs:

This letter responds to your request for advice regarding provisions in the Political Reform Act (the "Act").¹ Because your request does not relate to a specific governmental decision, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c).²

QUESTION

If you are elected to the Yuba County Board of Supervisors, what decisions would create conflicts of interest for you, due to your husband's employment with the Yuba County Sheriff's Department?³

CONCLUSION

If elected, you may not make, participate in making, or use your official position to influence decisions to hire, fire, promote, demote, or discipline your husband, or set his salary to

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

² Informal assistance does not provide you with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

³ This advice letter does not address your husband's involvement in the collective bargaining "management association," as described in your telephone conversation with me on February 15, 2000. More detailed facts, or a governmental decision pertaining to his involvement, are necessary before the FPPC can provide written advice.

a level that is different from salaries paid to other employees of the Sheriff's Department who hold the same job classification or position as your husband.

FACTS

You are a candidate for member of the Yuba County Board of Supervisors. Your husband is a lieutenant who works for the Yuba County Sheriff's Department.

ANALYSIS

A. Introduction

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, 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 has a financial interest. As a member of Yuba County Board of Supervisors, you would be a public official under the Act. (Section 82048; Regulation 18701.)

The conflict of interest analysis under the Act consists of several tests, including: (1) A public official must be making, participating in making, or using his or her official position to influence a governmental decision, (2) and it must be reasonably foreseeable that, (3) the decision will have a material financial effect, (4) distinguishable from the effect on the public generally, on the official, a member of the official's immediate family, or on any one of six statutorily identified economic interests of the official.

You will have a conflict of interest in a governmental decision if the decision will have a reasonably foreseeable⁴ material financial effect on your economic interests which is distinguishable from the effect on the public generally.

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

The Act's conflict of interest provisions apply only where the public official "make[s], participate[s] in making, or in any way attempts to use his official position to influence a

⁴ Whether the financial consequences of a given governmental decision are reasonably foreseeable at the time the decision is made is highly situation-specific. A financial effect need not be a certainty to be considered reasonably foreseeable; a substantial likelihood that it will occur suffices to meet the standard. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198; Regulation 18706.)

governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.)

A public official "makes a governmental decision" when the official, among other things, votes on a matter. (Regulation 18702.1.) A public official "participates in making a governmental decision" when he or she, among other things, advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by conducting research or making any investigation that requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision, or by preparing or presenting any report, analysis, or opinion, orally, or in writing, that requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision. (Regulation 18702.2.) Using one's official position to influence a decision includes contacts, appearances before, or otherwise attempting to influence any member, officer, employee, or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer. (Regulation 18702.3(a).)

C. Economic interests

1. Introduction

The Act's conflict of interest provisions apply only to conflicts arising from economic interests. "Economic interests" are identified by referring to Section 87103. Section 87103 recognizes six kinds of economic interests from which conflicts of interest may arise:

- (1) A business entity in which the public official has a direct or indirect investment⁵ of \$1,000 or more;
- (2) Real property in which the public official has a direct or indirect interest of \$1,000 or more;
- (3) Any source of income which aggregates to \$250 or more within 12 months prior to the decision;
- (4) A business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management;
- (5) A donor of gifts to the public official if the gifts aggregate to \$300 or more within 12 months prior to the decision;
- (6) Finally, the public official has an economic interest in his or her personal finances and

⁵ Section 87103 defines an 'indirect investment' or interest as any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

those of his or her immediate family. (Regulation 18703.5)⁶

2. Government Salary

A public official's income, for purposes of the Act, includes his or her community property interest in the income of his or her spouse. (Section 82030(a).) Generally, a public official's community property interest in his or her spouse's income would be considered income to the public official, and the public official would have an economic interest in the source of that income. (*Ibid.*; Section 87103(c).) However, salary and reimbursement for expenses from a state, local, or federal government agency are expressly excluded from the Act's definition of income. (Section 82030(b)(2).) The Yuba County Sheriff's Department is a local agency. (*Ibid.*; Section 82041.) Therefore, you do not have an economic interest in your husband's salary, per diem, or reimbursement for expenses that he receives from the Sheriff's Department.

Accordingly, the income your husband receives as an employee of the Yuba County Sheriff's Department does not make the County a source of income to him because of the "government salary" exception just described. Thus, your community property interest in your husband's income from the County does not, by itself, present a conflict of interest that would prohibit you from taking part in Board of Supervisor decisions that affect the County. (See *Dean* Advice Letter, No. I-99-152). In short, the mere fact that a public official's spouse is employed by the same agency (or a related agency) does not in and of itself present a conflict. (See, e.g., *Ibid.*; *Stewart* Advice Letter, No. I-98-310; *Rowe* Advice Letter, No. I-98-070; and *Griffin* Advice Letter, No. I-98-012.)

You may not, however, make, participate in making or use your official position to influence Board of Supervisor decisions to hire, fire, promote, demote, or discipline your husband, or set his salary to a level that is different from salaries paid to other employees of the Sheriff's Department in the same job classification or position. (Regulation 18705(c).)⁷

D. Summary of advice

We advise that if you become a member of the Yuba County Board of Supervisors, and your husband continues to work for the County Sheriff's Department, this in and of itself does not create a potentially disqualifying conflict of interest under the Act. You may not make, participate in making, or use your official position to influence decisions to hire, fire, promote, demote, or discipline your husband, or set his salary to a level that is different from salaries paid

⁶ In March 2000, it is anticipated that the Fair Political Practices Commission will amend regulation 18703.5 to define "economic interest" as the personal finances of a public official and those of his or her immediate family.

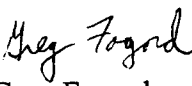
⁷ This language is proposed to be moved to another regulation in March 2000.

to other employees of the Sheriff's Department who hold the same job classification or position as your husband. Attached is a conflict of interest fact sheet for additional guidance. You may wish to contact the Attorney General's Office with respect to other provisions of law, such as the law governing incompatible public offices and Government Code Section 1090.

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

Sincerely,

Luisa Menchaca
Acting General Counsel


By: Greg Fayard
Legal Intern

LM:GF:tls