



FAIR POLITICAL PRACTICES COMMISSION

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January 2, 2001

Honorable William M. Molinari
Mayor, City of Montebello
301 Jacmar Drive
Montebello, CA 90640

**Re: Your Request for Advice
Our File No. A-00-251**

Dear Mayor Molinari:

This letter is in response to your request for advice regarding your duties as Mayor of the City of Montebello under the conflict-of-interest provisions¹ of the Political Reform Act (the "Act").²

QUESTIONS

Your spouse has been promised \$130,000 from the Montebello Firefighters Association, their political action committee, and four individual defendants to settle a personal injury lawsuit filed by your spouse. You state that a fourth individual defendant is not a member of the Montebello Firefighters Association. You have asked whether, despite this promise of income, you may participate in the City Council's consideration of the following:

- (1) The purchase of new fire equipment for the Montebello Fire Department; and
- (2) The provision of fire protection services to neighboring City of Commerce.

¹ Please note that the Commission has adopted various amendments to the conflict-of-interest regulations discussed below. These amendments will be effective February 1, 2001. You may wish to view these amendments on the Commission's website (www.fppc.ca.gov). The advice contained herein is based on the law existing as of the issue date of this letter.

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

CONCLUSIONS

(1) The personal injury financial settlement is “promised income.” However, it does not appear reasonably foreseeable that the City Council’s decision to purchase fire equipment will have any financial effect on any of the sources of this promised income.

(2) We reach a different conclusion with respect to the decision concerning the City of Commerce. It is foreseeable that contracting to provide fire protection service to the neighboring City of Commerce will financially affect the Montebello Firefighters Association if it results in increased receipts or expenditures. If the foreseeable financial effect is material, you may not participate in the decision concerning the providing of fire protection services to the City of Commerce.

FACTS

You are presented with a potential conflict of interest arising from a personal injury financial settlement your spouse is to receive from the Montebello Firefighters Association (the “association”), their political action committee, and three individual members of the association. A fourth individual defendant is not a member of the association. The lawsuit was based on an incident that occurred on the eve of a special election at which was considered the consolidation of the Montebello Fire Department with the Los Angeles County Fire Department. You stated that your spouse was harassed and assaulted and sustained personal injuries. The lawsuit she filed was settled for \$130,000 on October 16, 2000, however, the payment of the settlement amount is still pending. The Montebello Fire Department was not involved in the lawsuit, and no fire department or city funds are part of the settlement. Additionally, none of the members of the association are residents of the City of Montebello.

The City is currently considering two decisions related to the fire department:

- The purchase of new fire equipment for the Montebello Fire Department.
- The request from the City of Commerce for the City of Montebello to provide fire protection services, under contract, for residents of Commerce.

You ask whether a personal injury settlement is exempt from the Act’s definition of “income.” You also ask whether you have a conflict of interest in the two decisions affecting the city fire department.

ANALYSIS

Section 87100 of the Act prohibits a 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. In order to determine whether the

prohibition in section 87100 applies to a given decision, regulation 18700 provides the following eight-step analysis.

The first two steps in the analysis (step 1: Are you a public official? step 2: Are you making, participating in making, or influencing a governmental decision?) are not at issue in your letter. As Mayor of the City of Montebello, you are a public official. (Section 82048; Reg. 18701(a).) Your request for advice concerns whether you may *make and participate in decisions* concerning (1) the purchase of fire equipment and (2) the provision of fire protection services to a neighboring jurisdiction. We assume that you are making and participating in the making of a governmental decision.

The third step of the standard analysis is to identify the economic interests that may be impacted by the decision. Under section 87103 of the Act, there are six different types of economic interests which may result in a conflict of interest for a public official.

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a); Reg. 18703.1(a));
- A public official has an economic interest in a business entity in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d); Reg. 18703.1(b));
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b); Reg. 18703.2);
- An official has an economic interest in any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision (Section 87103(c); Reg. 18703.3);
- A public official has an economic interest in any source of gifts to him or her if the gifts total \$320 or more within 12 months prior to the decision (Section 87103(e); Reg. 18703.4);
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family - this is known as the "personal financial effects" rule (Section 87103; Reg. 18703.5).

You specifically asked whether you and your spouse's receipt of a cash payment to settle a personal injury lawsuit creates an "economic interest" in the source of the payment. A source of income is an economic interest under section 87103(c). "Income" is defined as "a payment received." (Section 82030(a).) "Payment" is defined as "a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.) A settlement payment is therefore "income." (*Herfert* Advice Letter, No. A-97-508.)

Section 87103 also provides that “promised” income creates an economic interest. Income is “promised” when the official has a legally enforceable right to the income. (Reg. 18703.3(a).) Consequently, the sources of the settlement payment (the Montebello Firefighters Association, their political action committee, and the four individual defendants) are sources of promised income and will continue to be considered sources of income for 12 months from the date you receive payment.

Are your economic interests directly or indirectly involved in the decision (step four)? As noted above, your sources of income are the Montebello Firefighters Association, their political action committee, and the four individual defendants. A source of income to an official is directly involved in a decision when it either initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request, or is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. (Reg. 18704.1(a)(1).) A source of income 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, that source of income. (Reg. 18704.1(a)(2).) If the source of income is not directly involved in the decision, the source is considered indirectly involved. (Reg. 18704.1(b).) In your case, none of the named defendants who are the source of the income in question are applicants or the subject of the decisions in question. Thus, the sources of income are indirectly involved in these decisions.

Will the financial effect of the decision on your economic interest be material and reasonably foreseeable (step five)? The Montebello Firefighters Association and their political action committee are nonprofit entities for purposes of the conflict of interest laws of the Act. Where the source of income is a nonprofit entity, regulation 18705.3(b)(2) applies. For example, regulation 18705.3(b)(2)(F) provides that for a nonprofit entity with gross annual receipts of \$100,000 or less, the effect of the decision is material if:

“(i) The decision will result in an increase or decrease of the entity’s gross annual receipts for a fiscal year in the amount of \$10,000 or more.

“(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$2,500 or more.

“(iii) The decision will result in an increase or decrease in the value of the entity’s assets or liabilities in the amount of \$10,000 or more.”

With respect to the individual defendants, the appropriate threshold is set out in regulation 18705.3(b)(3). Regulation 18705.3(b)(3) provides that the effect of a decision is material as to an individual who is a source of income to an official if any of the following applies:

“(A) The decision will affect the individual’s income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more;
or

“(B) The decision will affect the individual’s real property interest in a manner that is considered material under Title 2, California Code of Regulations, sections 18705.2(b) or 18705.2(c).”

Is it reasonably foreseeable that the financial effect of the decision on your economic interest will be material (step six)? Once a public official identifies his or her relevant economic interests, the official must evaluate whether it is reasonably foreseeable that the decision will have a material financial effect on one of those economic interests. (Reg. 18700(b)(6).) Regulation 18706 provides that “[a] material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§18704, 18705) applicable to that economic interest will be met as a result of the governmental decision.” A financial effect need not be a certainty to be considered reasonably foreseeable. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

You stated that it is not reasonably foreseeable that the purchase of fire equipment will have a material financial effect on the sources of income detailed above. If this is the case, you will not have a conflict of interest in those decisions.

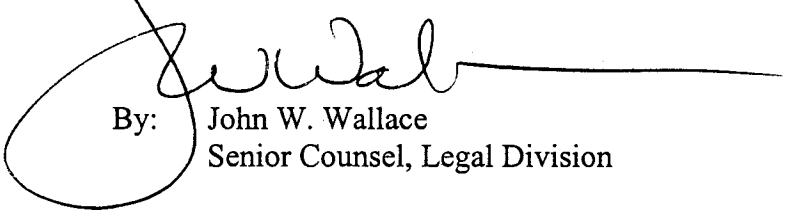
However, the decision concerning the request for fire services from the City of Commerce may have a financial effect on the association. If the association were to increase its membership by virtue of the decision to provide fire services to the City of Commerce, a financial effect on the association’s gross annual receipts would be foreseeable (although the foreseeable financial effect may not be *material* as described/defined above). If the increase in gross annual receipts meets the applicable materiality threshold set forth in regulation 18705.3(b)(2), the foreseeable and material financial effect will be disqualifying. We cannot make this factual determination as to

whether the resulting effect will reach the thresholds set forth in regulation 18705.3.
Thus, we must leave this factual determination to you.³

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

Sincerely,

Luisa Menchaca
Assistant General Counsel



By: John W. Wallace
Senior Counsel, Legal Division

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³ We have not gone on to analyze the latter two steps in the standard analysis. Step seven is whether the reasonably foreseeable and material financial effect on your economic interests is distinguishable from the effect on the public generally, and step eight is whether you are legally required to participate in the decision. You have provided no facts to indicate that these exceptions would apply to the decisions in question.