



FAIR POLITICAL PRACTICES COMMISSION

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October 17, 2001

Janet Kurvers
8884 Village Court
Cotati, CA 94931

**Re: Your Request for Advice
Our File No. A-01-178**

Dear Ms. Kurvers:

This letter is in response to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

QUESTION

May you participate in the same manner as a member of the general public in a hearing before the Cotati City Council regarding your husband's employment?

CONCLUSION

No. See discussion below.

FACTS

You are an elected official for the City of Cotati. Your husband has been on the Cotati Police Dept. for 19 years and is in the process of being terminated. His Skelly hearing was July 24, 2001. You have spoken with your city attorney and, if the case goes to the council, you will abstain due to a conflict of interest. You ask, however, whether you can participate in a public hearing as a citizen in the audience.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

ANALYSIS

Your question indicates that you will abstain from participating in a public hearing, should one occur, before your city council regarding your husband's employment with the Cotati Police Department. Though not asked to decide the question, we agree with your conclusion that you likely have a conflict of interest. A public official's immediate family, which includes one's spouse, is deemed to be directly involved in a governmental decision which has *any* financial effect on the personal finances her family. (§ 82029; Reg. 18704.5.) Thus, because a hearing before the council on your husband's employment status likely would have a material financial effect on him, you likely have a conflict of interest in such a decision.

As a result of your disqualification pursuant to the law explained above, you have certain obligations under the Act. First, you may not make, participate in making, or influence the decision. (§ 87100.) The meaning of the terms "making," "participating in making," and "influencing" are explained in detail in Regulations 18702.1-18702.4, which are enclosed. The definition of "influencing," as that term is used in the Act, expressly *excludes* "[c]ommunicat[i]ons with the general public or the press." (Reg. 18702.4, subd. (b)(2).)

Even if a conflict is present, a public official may be permitted to appear, as any member of the general public, before an agency in the course of its prescribed governmental function, to represent herself on matters related solely to her personal interests. (Reg's 18702.4(a)(2) and 18702.4(b)(1).) These regulations provide an exception to the rule prohibiting a public official from otherwise appearing before her agency to influence a decision with which she has a conflict of interest. As such, these regulations are subject to the traditional statutory construction that exemptions be construed narrowly. Regulation 18702.4 makes clear that an official may make "appearances" as a member of the general public "before an agency in the course of its prescribed governmental function" to represent herself on matters related *solely* to her personal interests, such as:

1. An interest in real property which is wholly owned by the official or members of his or her immediate family;
2. A business entity wholly owned by the official or members of his or her immediate family.
3. A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control. (Reg's 18702.4(a)(2) and (b)(1).)

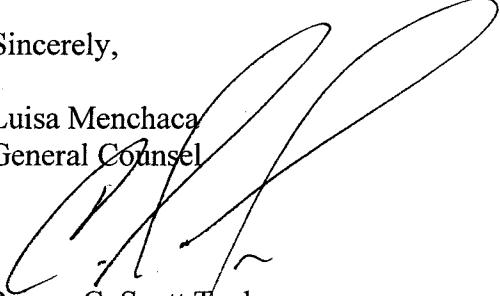
Regulation 18702.4, subdivision (b)(3), also provides for a specific exception allowing an official to negotiate his or her compensation or the terms or conditions of his or her employment or contract. This exception does not apply to your situation. As can be seen, the regulation makes no provision for decisions concerning the terms of

employment of a public official's spouse.² Therefore, you may not participate as a member of the general public before the council should it elect to hear the matter.

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

Sincerely,

Luisa Menchaca
General Counsel



By: C. Scott Tocher
Counsel, Legal Division

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² This is consistent with other regulations, as well. For instance, Regulation 18705.5 describes the materiality standard for economic interests in one's personal income. While the regulation states the financial impact on the government salary of a spouse shall not be deemed material, it expressly removes from that exception decisions to "hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action...." (Reg. 18705.5, subd.(b).)