



FAIR POLITICAL PRACTICES COMMISSION

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November 29, 2001

Leslie E. Murad, II
Office of the City Attorney
City of Redlands
Post Office Box 3005
Redlands, CA 92373-1505

**Re: Your Request for Advice
Our File No. A-01-267**

Dear Mr. Murad:

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

QUESTION

Will Councilmember Pepler have a conflict of interest solely by virtue of contributions she receives for her campaign?

CONCLUSION

No. A conflict of interest arises only from an economic interest. Councilmember Pepler will not have an economic interest in the source of a contribution to her because a contribution required to be reported by Chapter 4 of the Act does not constitute "income" to her. However, please note that section 84308 prohibits any officer of an agency from accepting, soliciting, or directing a contribution of more than two hundred fifty dollars (\$250) from any party or participant (or their agents) while certain proceedings are pending before the agency, and for three months following the date a final decision is rendered in a proceeding, if the officer knows or has reason to know that the participant has a financial interest in the proceeding.

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

FACTS

Susan Pepler is currently a city council member for the City of Redlands and is seeking election to the State Assembly. Councilmember Pepler will be soliciting contributions for her campaign while continuing to perform her duties as a council member. In addition to her duties on the city council, she also serves on a city subcommittee, the Advisory Committee on Fences. This committee determines whether a person may be granted a "minor exception" to the city's development standards for fencing, retaining walls, solar collectors, and swimming pools.

Members of the Redlands City Council are directly elected by the voters. Members of the Advisory Committee on Fences are Councilmember Pepler, the city planning director, building director, and a planning commissioner. The city planning director, building director, and planning commissioner are appointed positions, not directly elected by the voters.

Ms. Pepler would like written advice on whether she may have any actual or potential conflicts of interest if she receives contributions for her campaign for State Assembly while serving as a city council member, as well as serving on the Advisory Committee on Fences, and the contributor comes before the city council or the committee while she is sitting as a city council/committee member, for a decision within the council's or the committee's jurisdiction.

ANALYSIS

The Act's conflict-of-interest rules are set forth at section 87100 et seq. Section 87100 states:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

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 a standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision, which is applied here. (Regulation 18700(b)(1) - (8).)

Conflicts of Interest

1. Public official.

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) "Public official" is defined as every member, officer, employee or consultant of a state or local government agency. (Section 82048.) A "local government agency" means a county, city or district of any kind, including a school district, or any other local political subdivision, or any county board commission. (Section 82041.) As a member of the Redlands City Council or the Advisory Committee on Fences, Councilmember Pepler is a "public official" and is therefore subject to the conflict-of-interest rules.

2. Will Councilmember Pepler be participating in a governmental decision?

The Act's conflict-of-interest provisions come into play only when a public official makes, participates in making, or in some way attempts 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.) Commission regulations describe in detail what constitutes making, participating in making, or influencing a governmental decision. (Regulations 18702.1, 18702.2, and 18702.3, enclosed.) Councilmember Pepler clearly will be making, participating in making, or influencing a governmental decision if she votes or deliberates on decisions before the city council or the Advisory Committee on Fences.

3. What are the council member's economic interests?

The "economic interests" from which conflicts of interest may arise are described by section 87103 and Regulations 18703 - 18703.5. There are six kinds of economic interests recognized under the Act. The only economic interest you have disclosed to us is a possible economic interest in a source of income as described in section 87103(c).

Section 87103(c) provides that a public official has an economic interest in any person from whom he/she has received income aggregating \$500 within 12 months prior to the time when the relevant governmental decision is made. In general, "income" means:

"... a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of the spouse." (Section 82030.)

Please note that "income" does not include campaign contributions required to be reported under Chapter 4 of the Act. (Section 82030 (b)(1)). Therefore, contributions received by Councilmember Pepler will not meet the definition of income and will not trigger an economic interest for her.

Because your question pertains only to identification of Councilmember Pepler's economic interests, it is not necessary to proceed further with the Act's conflict-of-interest analysis after concluding that a campaign contribution does not make the contributor a source of income within the meaning of section 87103. However, we have included the Commission document entitled, "Can I Vote? Conflicts of Interests Overview" to provide Councilmember Pepler with additional guidance.

Section 84308

Your question also involves the application of section 84308 (enclosed). Section 84308 prohibits any officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency, and for three months following the date a final decision is rendered in the proceeding, if the officer knows or has reason to know that the participant has a financial interest in the proceeding.

"Agency" as used in this section does not include local governmental agencies whose members are directly elected by the voters. (Section 84308(a)(3).) As a result, provisions of section 84308 would not apply to proceedings before the Redlands City Council. However, Regulation 18438.1(a) further provides that officers of an agency exempted by subdivision (a)(3) of section 84308 are exempted only when:

- "(1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency. This applies to a city council or board of supervisors which designates itself as the redevelopment agency for the city or county; or
- (2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency."

Additionally, Regulation 18438.1(b) provides:

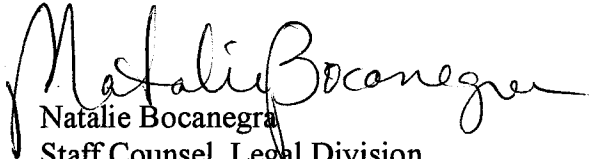
- "(b) The exemption for the officers of local governmental agencies who are directly elected by the voters applies only to agencies whose entire membership consists of officers directly elected by the voters to serve on that agency."

Neither Regulation 18438.1(a) nor 18438.1(b) above apply to the Advisory Committee on Fences. Your facts indicate that this committee is not composed solely of city council members or other members directly elected by the voters but also of members in positions which are appointed. Therefore, the prohibition of section 84308(a)(3) applies; this means that section 84308 will restrict Councilmember Pepler from accepting, soliciting, or directing contributions from persons who are parties or participants in a proceeding before the Advisory Committee on Fences.

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

Sincerely,

Luisa Menchaca
General Counsel

By: 
Natalie Bocanegra
Staff Counsel, Legal Division

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