



## FAIR POLITICAL PRACTICES COMMISSION

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March 22, 2002

Yvette Lane  
2525 Thomas Avenue  
Ceres, CA 95307

**Re: Your Request for Advice  
Our File No. A-02-069**

Dear Ms. Lane:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Does the Act prohibit you from serving on the board of the Ceres Unified School District when your spouse is employed by a business entity which serves as a contractor with the district?

### CONCLUSION

The Act would not preclude you from serving on the school board. The Act requires disqualification on a decision-by-decision basis; it does not establish a bar to holding office. However, in cases where a decision will have a foreseeable and material financial effect on your economic interests, disqualification relates to all forms of participation and not simply to voting. Thus, you may not act in any way to influence the staff or other board members in any of their decisions which will affect your source of income. However, so long as you do not participate in any decisions involving your economic interests, the fact that you have these interests will result in no other restrictions on your ability to serve as a public official.

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<sup>1</sup> Government Code §§ 81000 – 91014. Commission regulations appear at Title 2, §§ 18109-18997, of the California Code of Regulations.

Please note, while the Act requires that a public official abstain from participating in a decision in which he has a financial interest, Government Code section 1090 is more restrictive in that it prohibits a governmental agency from contracting with such entities under some circumstances. However, the Commission does not administer section 1090. You should contact the Office of the Attorney General for further assistance.

### FACTS

You are a board member for the Ceres Unified School District. Your husband just took a sales position with Mo-Cal Office Solutions ("Mo-Cal"). Mo-Cal has been selling office machinery to the district for over fifteen years. Your superintendent advised you that you would have to resign your board position or alternatively, your husband would not be able to work for Mo-Cal.

You feel the superintendent's conclusion is incorrect. If your husband makes a sale to the district or any of the nine school sites that are within your district, you believe you should recuse yourself or abstain from that particular purchase should it come before the board.

### ANALYSIS

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. 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. (§ 87103; Reg. 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. (Reg. 18700, subd's.(b)(1)-(8).)

#### **1. Public official.**

The Act's conflict-of-interest provisions apply only to "public officials." (§§ 87100, 87103; Reg. 18700, subd. (b)(1).) "Public official" is defined as "every member, officer, employee or consultant of a state or local government agency...." (§ 82048.) As a member of the Ceres Unified School Board you are a public official.

#### **2. Making, participating in making, or influencing 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. (§ 87100.)

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Reg. 18702.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises or makes recommendations to the decisionmaker regarding the governmental decision. (Reg. 18702.2.) A public official is attempting to use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Reg. 18702.3.)

You stated that you will abstain from decisions involving your spouse’s employer. If you will not make, participate in making, or influence any decisions affecting your economic interests you will fulfil your obligations under the Act. However, we will provide a general discussion of the remaining steps for future reference.

### **3. Economic interests.**

There are six kinds of economic interests recognized under the Act. The economic interests pertinent to your question are:

- A public official has an economic interest in his or her personal finances, including those of his or her immediate family--this is the “personal financial effects” rule (§ 87103; Reg. 18703.5).
- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (§ 87103(c); Reg. 18703.3).

With respect to income, 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. (§ 82030(a).) Thus, you have an economic interest in your spouse’s employer if your spouse receives \$1,000 or more in the 12 months prior to the decision.

### **4. Direct or indirect involvement?**

Regulation 18704.1(a) provides:

“(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person 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, the subject person.”

In all other cases, Mo-Cal will be indirectly affected by decisions.

**5. & 6. Determining which materiality standards apply in deciding if there will be a reasonably foreseeable material financial effect.**

The next step involves finding and applying the applicable materiality standard set forth in Commission regulations. (Regs. 18700(b)(5) and 18705, et seq.) After finding the applicable materiality standard, you must then decide in step six whether it is reasonably foreseeable that this standard will be met or exceeded. (Reg. 18700(b)(6).) An effect is considered “reasonably foreseeable” if the effect is “substantially likely.” (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made depends on the specific facts surrounding the 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. (*Id.*)

Addressing the “personal financial effects” rule, “[a] governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing.” (Reg. 18703.5). Assuming that your spouse’s salary is not impacted by the decisions of the school board, your personal finances would not be at issue.

With respect to your spouse’s employer, the applicable test will vary depending on whether the business is directly or indirectly involved in the decision. The Commission applies a strict “one penny rule” as its materiality standard when a person (including business entities) is a source of income and is directly involved in a governmental decision. Under this strict standard, if a governmental decision directly involves the official's source of income, and if the decision will have *any* financial effect at all on the source of income, that effect will be deemed material. (Reg. 18705.3.)

Where the source of income is a business entity and that business entity is indirectly involved in a governmental decision, the Commission analyzes this interest under Regulation 18705.1(c). The applicable standards vary based on the size of the entity. We do not know the financial size of Mo-Cal, however, assuming the business is not publicly traded and it is of a relatively small financial size, Regulation 18705.1(c)(4) provides that “the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

“(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year in the amount of \$20,000 or more; or

“(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,

“(C) The governmental decision will result in an increase or decrease in the value business entity’s assets or liabilities of \$20,000 or more.”

### 7. & 8. Exceptions

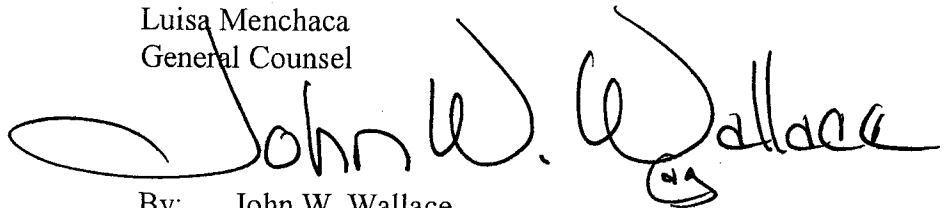
We have not gone on to discuss the latter two steps in the standard conflict-of-interest analysis. Step seven is an exception that applies where the reasonably foreseeable and material financial effect on the official’s economic interest is not distinguishable from the effect on the public generally, and step eight is an exception that applies when the official is legally required to participate in the decision. Your facts do not suggest that either exception applies.

Please note, as we stated above, while the Act requires a public official to abstain from participating in a decision in which he has a financial interest, section 1090 is more restrictive in that it prohibits a governmental agency from contracting with such entities under some circumstances. However, the Commission does not administer section 1090. You should contact the Office of the Attorney General for further assistance.

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

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink that reads "John W. Wallace". The signature is written in a cursive style with a large, sweeping initial "J". There is a small circular mark or scribble at the end of the signature.

By: John W. Wallace  
Assistant General Counsel  
Legal Division