



FAIR POLITICAL PRACTICES COMMISSION

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July 22, 2002

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

**Re: Your Request for Informal Assistance
Our File No. I-02-100**

Dear Mr. Murad:

This letter is in response to your request for advice on behalf of Councilmember Patricia Gilbreath regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your request asks for general guidance, we are treating it as one for informal assistance.² The Commission does not act as a finder of fact when providing assistance; this assistance is based on the facts you provide. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Govt. Code § 83114.)

QUESTION

Does Councilmember Patricia Gilbreath have a conflict of interest, based on her partnership in Eadie and Payne, a local accountancy firm, disqualifying her from making, participating in making, or influencing governmental decisions of the City of Redlands City Council ("City Council") concerning two clients of that firm, Bear Valley Mutual Water Company ("Bear Valley") and Riverside Highland Water Company ("Riverside Highland")?

CONCLUSION

So long as Eadie and Payne is not materially affected, Councilmember Gilbreath does not have a conflict of interest and may make, participate in making, and influence governmental decisions of the City Council concerning Bear Valley and Riverside Highland. Neither company is an economic interest to her.

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed.)

FACTS

Councilmember Gilbreath is a partner in the accounting firm Eadie and Payne. She has a 5 percent ownership interest in the firm and a 16 percent interest in the net income of the firm. Two of the firm's clients are Bear Valley and Riverside Highland. For the year 2001, Councilmember Gilbreath's allocated share of the firm's net income attributable to Bear Valley and Riverside Highland was \$286 and \$972, respectively.

Occasionally, decisions come before the Redlands City Council that involve Bear Valley and Riverside Highland. You provide as an example, the situation in which the City of Redlands, which is a shareholder in Bear Valley, may request permission from the City Council to purchase additional shares in Bear Valley.

ANALYSIS

Section 87100 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. The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest (Regulation 18700, subdivisions (b)(1) – (8)), which is discussed below. The general rule, however, is that a conflict of interest may occur whenever a public official makes a governmental decision which may reasonably be foreseen as materially affecting one or more of his or her financial interests.

1. & 2. Is Councilmember Gilbreath a public official who will make, participate in making, or influence a governmental decision?

The conflict-of-interest prohibition applies only to public officials. As an elected member of the City Council, Ms. Gilbreath is a public official. (Section 82048; regulation 18701(a).) Further, as a council member, unless disqualified under the conflict-of-interest provisions of the Act, Ms. Gilbreath will make, participate in making, and influence governmental decisions, including decisions concerning Bear Valley and Riverside Highland. (Section 87100; regulations 18702.1-18702.3.)

3. What are Councilmember Gilbreath's economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. Under the facts provided, Ms. Gilbreath's potential economic interests, which might give rise to a conflict-of-interest, are threefold. First, she has an economic interest in a business entity, Eadie and Payne, in which she has a direct

investment of \$2,000 or more.³ (Section 87103(a); regulation 18703.1(a).) Second, she is also a partner. (Regulation 18703.1(b).)⁴

Third, she has an economic interest in Eadie and Payne as a source of income to her that aggregates to \$500 or more over a 12 month period prior to the date that she will be called upon to make, participate in making, or influence a governmental decision. (Section 87103(c); regulation 18703.3.)⁵

4. Will the economic interests be directly or indirectly involved in the decision?

A business entity or source of income in which a public official has an economic interest is directly involved in a governmental decision if it initiates the proceeding 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. (Regulation 18704.1(a)(1)-(a)(2).) A business entity or source of income is the subject of a proceeding concerning the decision before the agency if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the business entity or source of income. (Subdivision 18704.1(a)(2).) If the business entity or source of income is not directly involved, then it is deemed to be indirectly involved in the governmental decision. (Regulation 18704.1(b).)

Presumably, Edie and Payne is not a named party in, or the initiator or subject of, the proceedings in which decisions involving Bear Valley and Riverside Highland will be made. If these are the facts, Edie and Payne is deemed to be indirectly involved in these decisions.

5. & 6. Will there be a reasonably foreseeable material financial effect on Councilmember Gilbreath's economic interests?

A conflict of interest may arise only when the reasonably foreseeable impact of a governmental decision on a public official's economic interests is material. (Regulation

³ In this regard, we assume for purposes of this letter that her 5 percent ownership interest in Eadie and Payne represents an investment on her part of \$2,000 or more.

⁴ In addition to the economic interests separately listed in section 87103, a public official always has an economic interest in his or her personal finances, and may have a conflict of interest in any decision foreseeably resulting in an increase or decrease in the personal expenses, income, assets or liabilities of the official or his or her immediate family, in the amount of \$250 or more over a 12-month period. (Regulation 18703.5.)

⁵ In this regard, you indicate that over calendar year 2001, she received a total of \$1,258 from Eadie and Payne attributable to payments from Bear Valley and Riverside Highland, alone. In some circumstances, a public official may also have an economic interest in sources of income to a business in which he or she has an ownership interest. (Section 82030(a).) The most common case is when the public official's ownership interest in the business entity is 10-percent or greater. (*Id.*) Since Ms. Gilbreath's ownership interest in Eadie and Payne (as opposed to her financial participation) is less than 10-percent, sources of income to Eadie and Payne, including Bear Valley and Riverside Highland, are not sources of income to her, for purposes of identifying her economic interests under the conflict-of-interest provisions of the Act.

18700(a).) An effect upon economic interests is considered reasonably foreseeable if there is a substantial likelihood that it will occur. (Regulation 18706.) A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

For indirectly involved business entities and indirectly involved sources of income such as Eadie and Payne, which are not publicly traded or eligible to be publicly traded, and are of a small financial size, the financial effect of a governmental decision is material if it is reasonably foreseeable that:

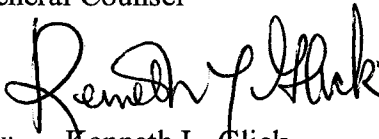
- “(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year in the amount of \$20,000 or more; or,
(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating 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 of the business entity’s assets or liabilities of \$20,000 or more.”
(Regulation 18705.1(c)(4)(A)-(C).)

Whether decisions in which Eadie and Payne is indirectly involved will meet these thresholds is a factual question for Ms. Gilbreath to determine. The Commission does not act as a finder of fact when providing advice. (Regulation 18329(b)(7).) Accordingly, as long as it is not reasonably foreseeable that these thresholds will be met, Ms. Gilbreath does not have a conflict of interest disqualifying her from governmental decisions in which Eadie and Payne is indirectly involved.⁶

The Commission's publication, "Can I Vote?" is enclosed. You may find this publication helpful to answer any future questions which might arise regarding the obligations of public officials under the Act's conflict-of-interest rules. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel


By: Kenneth L. Glick
Counsel, Legal Division

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⁶ We do not address the last two steps of our standard 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. Step eight is an exception that applies when the official is legally required to participate in the decision(s). You have not provided any facts suggesting that these narrow exceptions may apply.