



FAIR POLITICAL PRACTICES COMMISSION

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**Re: Your Request for Informal Assistance
Our File No. I-02-184**

Dear Ms. Grigg:

This letter is in response to your request for advice on behalf of a member of the Tahoe City Public Utility District regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your advice request does not name the specific public official, we are treating your request as one for informal assistance.² (Reg. 18329.)

QUESTION

May the member of the board of directors of the Tahoe City Public Utility District be allowed to vote on a new policy that would provide the same health insurance benefits to employees, directors included, involved in certain domestic partnerships, which are available to other employees with spouses?

¹ Government Code §§ 81000 – 91014. Commission regulations appear at Title 2, §§ 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. (§ 83114; Reg. 18329(c)(3), copy enclosed.)

CONCLUSION

Yes, the official will not have a conflict of interest in decisions concerning the new policy.

FACTS

Your firm represents the Tahoe City Public Utility District (the "district"), a California public agency formed pursuant to the Public Utility Code. The question has arisen as to whether the district's board of directors will consider a policy to provide the same health insurance benefits to employees, directors included, involved in domestic partnerships under the Public Employees Medical and Hospital Care Act (Government Code § 22867 et seq.), which are available to other employees with spouses.

A member of the district's board of directors is in a relationship formalized under domestic partner registration pursuant to California Family Code § 297. The district is concerned that its consideration of and vote on the proposed policy be valid, and seeks an opinion as to whether a director in a recognized domestic partnership has a conflict of interest requiring recusal because his or her domestic partner will receive an insurance benefit that is already being offered to the spouses of other directors.

The district participates in California Public Employees' Retirement System (CalPERS) for their health benefits. The director is the sole support for the domestic partner.

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

Steps One and Two: Is the individual a "public official" and, if so, will the public official be making, participating in making, or influencing a governmental decision?

The members of the district's board of directors are members of a local government agency and therefore, are "public officials" subject to the conflict-of-interest provisions of the Act. (§ 82048; Reg. 18701(a).) You have specifically asked about the members voting on a policy to provide the same health insurance benefits to employees, directors included, involved in domestic partnerships under the Public Employees Medical and Hospital Care Act, which are available to other employees with spouses.

Step Three: Does the public official have economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. Identifying which, if any, of these economic interests are held by a public official is the third step in analyzing a potential conflict of interest under the Act. (See Reg. 18700(b)(3).) Under § 87103 of the Act, there are six different types of economic interests that 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 (§ 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 (§ 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 (§ 87103(b); Reg. 18703.2);
- 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);
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$320 or more within 12 months prior to the decision (§ 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 (§ 87103; Reg. 18703.5).

Absent an "economic interest" as defined in the Act, an official will not have a conflict of interest. Please note that our advice issued in response to your request is limited to obligations arising under the Act.

You have not described any specific economic interest that may be affected by the decision. The decision does not affect business entities, thus § 87103(a) and (b) are not at issue. Similarly, there is no real property involved in the decision. (§ 87103(b).) A member of the board may have an economic interest in his or her domestic partner if the domestic partner is a source of income or gifts to the official. (§ 87103(c) and (e).)

“ ‘Income’ means, except as provided in subdivision (b), 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 a spouse.” (§ 82030(a).)

Under the domestic partnership provisions of the Family Code, no marital relationship is created between domestic partners who file the appropriate papers. Therefore, a domestic partner is not a spouse. Further, Family Code § 299.5(d) provides:

“The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal, owned by one partner in the other partner, including, but not limited to, rights similar to community property or quasi-community property.”

Therefore, since there is no spousal relationship between domestic partners, and a domestic partner has no community property interest in his or her domestic partner’s property, financial effects on a domestic partner caused by a governmental decision will generally not result in a conflict of interest for the official making the decision. (*Moen Advice Letter*, No. A-01-078.)

With respect to gifts, a public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$320 or more within 12 months prior to the decision. (§ 87103(e); Reg. 18703.4.) However, gifts in a bona fide dating relationship are disregarded. (§ 82028(a)(3); *Albuquerque Advice Letter*, No. A-00-120.)

In addition, a public official has an economic interest in his or her personal finances (expenses, income, assets, or liabilities), as well as those of his or her “immediate family.” (§ 87103; Reg. 18703.5.) A domestic partner is not a part of an official’s “immediate family” as defined in the Act. Thus, financial effects on a domestic partner caused by a governmental decision will generally not result in a conflict of interest for the official.

The decision may have an impact on the personal finances of the official if the official was the person currently paying for the domestic partners health insurance, and would experience a savings of \$250 or more in a 12-month period resulting from the decision. However, regulation 18705.5(b) explicitly states that an official does not have to disqualify himself or herself from a governmental decision if the decision only affects the salary, per diem, or reimbursement for expenses the official receives from a state or local government agency. Salary includes payments that accrue to the benefit of an official. (§ 82030(b)(2); reg. 18232.) If a particular decision affects the official’s personal finances beyond salary and benefits, the official would need to disqualify himself or herself from those decisions. (*Merriam Advice Letter*, No. I-00-142.)

Under the facts presented, the policy decision will not affect the official's personal finances beyond salary and benefits the official receives from his or her governmental agency. Therefore, the official may participate in the decision.

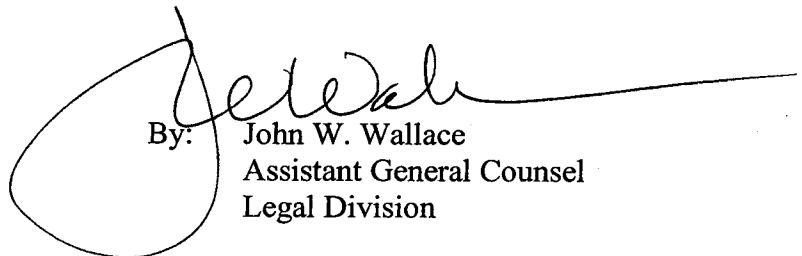
Finally, you also asked about the validity of the district's decision, in a case where a public official might have a conflict of interest and still participates in the decision. Please note that § 91003 provides in pertinent part that where a court determines a violation of the Act's conflict-of-interest provisions has occurred and the decision "might not otherwise have been taken or approved," the court may set the decision aside as void. (§ 91003(b).) Therefore, if a member does in fact, have a conflict of interest in making, participating in, or influencing a governmental decision, the decision is potentially voidable as set forth in § 91003.

We hope this advice is of assistance. We have not gone on to discuss the remaining steps because they are not implicated by your question. However, if this informal assistance does not provide sufficient guidance, you should contact the Fair Political Practices Commission for advice pertaining to a specific official.

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

Sincerely,

Luisa Menchaca
General Counsel


By: John W. Wallace
Assistant General Counsel
Legal Division

Enclosure
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