



## FAIR POLITICAL PRACTICES COMMISSION

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August 13, 2002

Lee Yarborough  
Transportation Agency of  
Monterey County  
55-B Plaza Circle  
Salinas, CA 93901-2902

**Re: Request for Informal Assistance  
Our File No. G-02-212**

Dear Mr. Yarborough:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> The Commission does not confirm telephone advice; therefore, pursuant to regulation 18329(c), copy enclosed, we render informal assistance.<sup>2</sup>

You have asked if your employment as executive director of the Transportation Agency for Monterey County ("TAMC"), and potential appointment as Pacific Grove's TAMC representative would prohibit you from running for election to the Pacific Grove City Council?

### ANALYSIS

#### *Incompatible Offices:*

The Commission's advice is limited to matters arising under the Act. (Regulation 18329(b)(8)(D).) Other laws do restrict the ability of public officials to hold two different offices simultaneously if the offices are determined to be "incompatible" offices. It would be advisable for you to contact the state Attorney General's office with respect to the doctrine of incompatible offices and other provisions of law that might be applicable to your facts.

#### *Conflict of Interest:*

Should you be appointed as Pacific Grove's TAMC representative, and if elected to the Pacific Grove City Council, you will be a "public official" within the meaning of

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

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

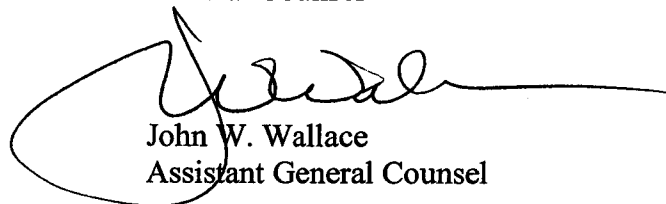
the Act. (Section 82048; regulation 18701(a)(1).) The Act's conflict-of-interest provisions disqualify a public official from making, participating in making or influencing governmental decisions that can reasonably be foreseen as having a material financial effect upon the public official's economic interests. (Section 87100; regulation 18700(a).) Public officials, therefore, do not have a conflict of interest on general principles; a conflict of interest arises, if at all, in the context of an official's involvement in governmental decisions which affect the official's *economic interests*. Holding positions with both the city council and as Pacific Grove's TAMC representative, does not, in itself, create a potential disqualifying conflict of interest under the Act.

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), that is discussed in the enclosed Commission pamphlet, "Can I Vote? Conflict of Interest Overview." This document will be instrumental in determining whether you have a disqualifying conflict of interest on a particular governmental decision. In the alternative, you may submit a request for written advice on the specific decision before you. However, please note that the Commission does not render advice on past conduct (regulation 18329(b)(8)(B)). Consequently, should you request written advice on a particular issue, that request must be made in advance of the matter coming up for vote with sufficient time for an analysis of your question and preparation of a response.

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

Sincerely,

Luisa Menchaca  
General Counsel



John W. Wallace  
Assistant General Counsel

Enclosures  
JWW/jg