



FAIR POLITICAL PRACTICES COMMISSION

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November 1, 2002

Steven Zent
427 No. Prospect Avenue
Redondo Beach, CA 90277

**Re: Your Request for Informal Assistance
Our File No. I-02-278**

Dear Mr. Zent:

This letter is in response to your request for informal assistance regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your questions are general in nature and do not reference any particular decision, we are treating your request as one for informal assistance.²

QUESTIONS

1. Can you hold two public positions simultaneously, one as a police officer and one as a member of the city council for the City of Redondo Beach?
2. Will holding both positions, one as a police officer and one as a member of the city council, create a conflict of interest under the Act?

CONCLUSION

The Act does not prohibit you from seeking or holding multiple public positions, and the Act does not prohibit you from seeking a position on the Redondo Beach City Council. However, if you are elected to the city council, you would need to disqualify yourself from making, participating in making, or influencing any governmental decisions that would have a reasonably foreseeable and material financial effect on your economic interests, as described below. In addition, there may be laws outside of our

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All references are to the Government Code unless otherwise indicated.

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

jurisdiction that may apply. You should consult the Attorney General's office or the city attorney to determine if there are any other laws that may be applicable to your facts.

FACTS

You are a police officer in the City of Redondo Beach, California. You are running for city council in March 2003. You have been told that there is a potential conflict of interest with any issues relating to the police department if elected to the city council.

As a police officer employed by the City of Redondo Beach, you pay dues as a member of the Redondo Beach Police Officer Association.

ANALYSIS

At the outset, it is important to note that the Act's conflict-of-interest rules apply on a decision-by-decision basis and depend heavily on the specific facts of each decision. Thus, we can provide general guidance in this letter, but whether you actually have a conflict of interest in a given decision must be answered as the decision arises.

The Act's conflict-of-interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, 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. (Section 87103; Regulation 18700(a).) The Commission has adopted a standard, eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).) The following advice applies that standard analysis.

Step 1. Are you a public official?

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; regulation 18700(b)(1).) A public official is broadly defined as every natural person who is a "member, officer, employee or consultant of a state or local government agency." (Section 82048; regulation 18701.) Under the Act, the definition of "local government agency" includes a city. (Section 82041.) As a police officer for the City of Redondo Beach, you are already a public official for purposes of the Act, and the conflict-of-interest laws apply to you. (*Rendon* Advice Letter, No. I-01-185; *Hons* Advice Letter, No. I-00-255.) If you are elected and become a member of the city

council, you will again be a public official for purposes of the Act and the conflict-of-interest laws would apply to you.

Step 2. Are you making, participating in making, or influencing a governmental decision?

The Act's conflict-of-interest provisions apply only where a public official "make[s], participate[s] in making, or in any way attempt[s] to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100; regulation 18700(b)(2).) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision, and which provide certain exceptions. (Regulations 18702-18702.4.)

Generally speaking, "making" a governmental decision means taking actions such as voting on a matter, appointing a person, obligating or committing an agency to a course of action, or entering into a contract on behalf of an agency. (Regulation 18702.1.) "Participating in making" a governmental decision includes deliberating as a member of the council on a matter before the council. (Regulation 18702.2.) By deliberating and voting on decisions about various matters before the city council, you would be making (Regulation 18702.1), and participating in making (Regulation 18702.2) governmental decisions. In addition to these more formal actions you might take, the conflict-of-interest rules also apply to attempts to "influence" a governmental decision. With regard to decisions and personnel, this rule covers all contact with city personnel when the contact is intended to influence the decision. (Regulation 18702.3(a).) With regard to decisions before governmental agencies other than the city council, the rule applies if you are purporting to act in your official capacity as you attempt to influence a decision. (Regulation 18702.3(b).)

Step 3. What are your economic interests -- the possible sources of a financial conflict of interest?

The Act's conflict-of-interest provisions apply only to conflicts arising from *economic interests*. The economic interests from which conflicts of interest may arise are defined in Regulations 18703-18703.5. 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 Regulation 18700(b)(3).) There are six kinds of such economic interests:

- A public official has an economic interest in a *business entity* in which he or she has a direct or indirect *investment*³ of \$2,000 or more. (Section 87103(a); regulation 18703.1(a).)

³ An "indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater." (Section 87103.)

- A public official has an economic interest in a *business entity* in which he or she holds any of the business relationships specified in regulation 18703.1(b) through (e). (Section 87103(d); regulation 18703.1.) The Act defines a “business entity” as “any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association.” (Section 82005.) A government agency is not a “business entity” for purposes of the Act. (*Martin Advice Letter*, No. I-01-176.)
- 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. (Section 87103(b); regulation 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. (Section 87103(c); regulation 18703.3.) However, salary, per diem, or reimbursement for expenses received from a state or local government agency is exempt from the Act's definition of “income.” (Section 82030(b)(2) and regulation 18232.)
- A public official has an economic interest in any *source of gifts* to him or her if the gifts aggregate to \$320⁴ or more within 12 months prior to the decision (Section 87103(e); regulation 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 effect” rule (Section 87103; regulation 18703.5).

Step 4. Are your economic interests directly or indirectly involved in the governmental decision?

Once a public official identifies an economic interest, the official must decide whether the economic interest is directly or indirectly involved in the decision. (Regulation 18700(b)(4); regulations 18704-18704.5.)

Step 5. What is the applicable materiality standard?

The next step is identifying the appropriate standard for evaluating the “materiality”—that is, the importance—of the effect of the decision on the economic interest(s). (See Regulation 18700(b)(5); regulations 18705-18705.5.) For example, when an economic interest in real property is directly involved in a decision, *any* reasonably foreseeable financial effect—even a penny’s worth—on the real property is deemed material. (Regulation 18705.2(a).)

⁴ The gift limit will be changed January 1, 2003. (Regulation 18940.2.)

On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.

Step 6. Is it reasonably foreseeable that the governmental decision will have a material financial effect on one or more of your economic interests?⁵

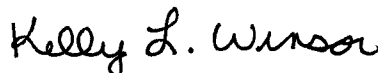
The sixth, and usually the most important step, in deciding whether a public official has a conflict of interest is using the applicable materiality standard (from Step 5, above) to decide if it is reasonably foreseeable that there will be a *material* financial effect on one or more of the official's economic interests. (Regulation 18700(b)(6); regulation 18706.)

As used here, "reasonably foreseeable" means "substantially likely." (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) As indicated above, whether the financial consequences of a governmental decision are substantially likely at the time the decision is made is highly situation-specific; making this evaluation is a "judgment call." A financial effect need not be a certainty to be considered reasonably foreseeable; a substantial likelihood that it will occur suffices to meet the standard. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*Ibid.*)

This analysis is also explained in the enclosed pamphlet, "Can I Vote? Conflicts of Interest Overview." I have also enclosed the fact sheet "Holding Two Positions" for your information. If you have any questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel



By: Kelly L. Winsor
Legal Analyst, Legal Division

LM:KLW:jg

Enclosures: Reg. 18329
Conflict of Interest Overview
Holding Two Positions Fact Sheet
Candidates: Important Things to Remember
Campaign Contributions Conflicts

⁵ The seventh and eighth steps, which pertain to the "public generally" exception and the legally required participation rule, respectively, are not relevant to this general request for information and are not mentioned further. However, if a decision comes before you where these exceptions may apply, please contact us for further analysis.