



FAIR POLITICAL PRACTICES COMMISSION

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September 26, 2003

Jennifer McGrath, City Attorney
City of Huntington Beach
Office of the City Attorney
Post Office Box 190
Huntington Beach, CA 92648

**Re: Your Request for Informal Assistance
Our File No. I-03-042**

Dear Ms. McGrath:

This letter is in response to your request for advice on behalf of Huntington Beach City Councilmember Gil Coerper regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your letter does not identify a specific governmental decision and seeks general guidance, we are treating your request as one for informal assistance.²

QUESTIONS

1. Does Mr. Coerper's former position as a volunteer member of the board of directors of the Huntington Beach Police Officers' Association ("HBPOA"), or the \$620 he received in May 2002 from HBPOA for travel expenses related to trips to Washington, D.C. and Sacramento on HBPOA business, present conflicts of interest regarding city council decisions related to HBPOA?

2. Do Mr. Coerper's former and current volunteer services with organizations such as the Boy Scouts of America and the California Police Officer's Memorial Fund present any conflict of interest issues?

3. Does Mr. Coerper's ownership of his personal residence and a rental property present any conflict of interest issues?

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.)

4. Do any of Mr. Coerper's various sources of income that you have identified present any conflict of interest issues?

CONCLUSION

1, 3 & 4. It is impossible to determine whether any conflicts of interest exist in the absence of a pending governmental decision. However, we have identified the economic interests that may give rise to a conflict, and set forth the eight-step conflict-of-interest analysis, so that when decisions involving these economic interests arise, you may make these determinations.

2. No. Conflicts of interests under the Act are based on financial effects. So long as Mr. Coerper does not make, participate in making, or influence a governmental decision in which he has an economic interest, under the eight-step analysis described above, he will not have a conflict of interest.

FACTS

Councilmember Gil Coerper was formerly a volunteer member of the board of directors of the Huntington Beach Police Officers' Association ("HBPOA"), a non-profit corporation that is the collective bargaining unit for police officers of the City of Huntington Beach. He resigned effective June 7, 2002. Although this was an unpaid position, Mr. Coerper received \$320 from HBPOA on or about May 28, 2002, for travel expenses related to a trip to Washington, D.C. on HBPOA business. He also received \$300 from HBPOA on or about May 3, 2002, for travel expenses related to a trip to Sacramento, California on HBPOA business.

Mr. Coerper has held, and continues to hold, many other volunteer positions in other organizations in the community. He was a volunteer member of the board of directors of the California Police Officers' Memorial Foundation, a 501(c)(3) nonprofit corporation; he resigned from this position effective June 7, 2002. He is a volunteer post commander and advisor for the Boy Scouts of America. He is the volunteer executive director of the local Explorer post, a group connected with the Boy Scouts and sponsored by the city's police department. He is the volunteer coordinator for Far West Area D of the West Point Military Academy. He occasionally performs mostly volunteer handyman and drywall work for his friends and neighbors.

Mr. Coerper owns two properties in Huntington Beach: his personal residence, and a rental property. The value of his interest in each of these properties exceeds \$2,000.

Until June 2002, Mr. Coerper was a full-time police officer for the City of Huntington Beach. He received salary in excess of \$500 from the city in the twelve-month period prior to June 2002. Since June 2002, he has received a pension from CalPERS. He receives monthly pension payments in excess of \$500 from CalPERS. For the rental of his property, he receives monthly rental payments in the amount of \$1,300

from tenant Walley Coerper. His spouse is employed by the Ocean View School District, a local public school district, and she receives salary in excess of \$500 per year. The California Police Officer's Memorial Foundation asked Mr. Coerper to be the event coordinator for their 2003 Memorial Day celebration, which was scheduled to be held in May 2003. He expected to receive approximately \$450 to \$500 in payment for these services.

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. 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 exist whenever a public official makes a governmental decision which has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

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

The conflict-of-interest prohibition only applies to public officials. As a member of the Huntington Beach City Council, Mr. Coerper is a public official. (Section 82048; regulation 18701(a).) As a member of the city council, unless disqualified under the conflict-of-interest provisions of the Act, he will make, participate in making, and influence governmental decisions.

Since he is a member of the city council, a position described in section 87200, if he has a conflict of interest in a decision noticed at a public meeting, then he must:

(1) Immediately prior to the discussion of the item, verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in regulation 18702.5(b)(1)(B), on the record of the meeting;

(2) Recuse himself; and

(3) Leave the room for the duration of the discussion and/or vote on the item.

For closed sessions, consent calendars, absences and speaking as a member of the public regarding personal interests, special rules found in regulation 18702.5, subdivisions (c) and (d) apply. (Section 87105.)

Step 3. What are Mr. Coerper's economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. These economic interests are described in regulations 18703.1 through 18703.5, inclusive.

Section 87103 provides that a public official has a "financial interest" in a governmental decision "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on any of the official's economic interests, described as follows:

- 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 (section 87103(a); regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (section 87103(d); regulation 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 (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);
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$340 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 finances, including those of his or her immediate family -- this is the "personal financial effects" rule (section 87103; regulation 18703.5).

An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official's immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) "Immediate family" is defined at section 82029 as an official's spouse and dependent children.

1. Mr. Coerper's former and current positions as a volunteer member of the board of directors of the Huntington Beach Police Officers' Association ("HBPOA"), the Boy Scouts of America and the California Police Officer's Memorial Fund.

Mr. Coerper has no income resulting from any of his identified volunteer endeavors. Further, employment with a nonprofit entity is not a business position as

contemplated by section 87103(d). Thus, an economic interest is not created by these volunteer activities.

2. The \$620 he received in May 2002 from HBPOA for travel expenses related to trips to Washington, D.C. and Sacramento on HBPOA business, present conflicts of interest regarding city council decisions related to HBPOA?

In a telephone conversation on September 15, 2003, your office clarified that the travel expenses were paid by way of reimbursement, which means the payments qualify as income. (Section 82030.) The specific economic interest identified by these facts is the HBPOA as a source of income to Mr. Coerper, based upon the payment of his travel expenses. (Section 87103; regulation 18703.3.) In any case, the income was received more than 12 months ago and does not constitute an economic interest.

3. You ask about several potential sources of income and their potential for causing conflicts of interest. As not all of the categories about which you ask qualify as sources of income, we will address them individually.
 - Mr. Coerper's salary received from the City of Huntington Beach for services as a police officer falls within the governmental salary exception to the Act's conflict-of-interest rules and, therefore, does not qualify as income. (Section 82030(b)(2).) Therefore, the city is not a source of income to Mr. Coerper based on past payment of salary.
 - Mr. Coerper's pension from CalPERS is, likewise, excluded from the definition of "income," (section 82030(b)(11)), thus CalPERS is not a source of income to him under the Act.
 - His spouse's salary from the Ocean View School District also falls within the governmental salary exception of section 82030(b)(2), and the school district is not a source of income to Mr. Coerper.
 - However, Wally Coerper, and the California Police Officer's Memorial Foundation, if the payment for his event coordination services for the 2003 Memorial Day celebration equaled or exceeded \$500, are both sources of income to Mr. Coerper. (Regulation 18703.3.)

4. Mr. Coerper's ownership of his personal residence and a rental property.

Mr. Coerper has economic interests in both his personal residence and his rental property, assuming his interest in the respective properties is \$2,000 or more. (Regulation 18703.2.)

Steps 4-8: Remaining Steps

Without a specific governmental decision pending, we are unable to provide specific advice regarding the remaining steps; however, we set forth the remaining steps generally for your information.

Step 4. For each of Mr. Coerper's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which Mr. Coerper will be making, participating in making, or using or attempting to use his official position to influence. (Regulation 18704.)

Step 5. Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to regulation 18704. (See regulation 18705.)

Step 6. Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in regulation 18705) on each economic interest identified pursuant to regulation 18703. (See regulation 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of Mr. Coerper's economic interests, he does not have a conflict of interest within the meaning of the Act.

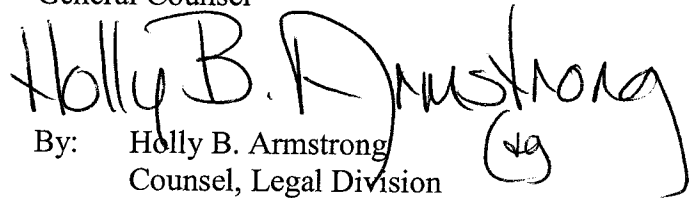
Step 7. Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the reasonably foreseeable material financial effect on Mr. Coerper's economic interest is indistinguishable from the effect on the public generally, he does not have a conflict of interest within the meaning of the Act. If the reasonably foreseeable material financial effect on Mr. Coerper's economic interest is distinguishable from the effect on the public generally, he has a conflict of interest within the meaning of the Act. (See regulation 18707.)

Step 8. Determine if Mr. Coerper's participation is legally required despite the conflict of interest. (See regulation 18708.)

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

Sincerely,

Luisa Menchaca
General Counsel


By: Holly B. Armstrong
Counsel, Legal Division

Enclosure
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