



FAIR POLITICAL PRACTICES COMMISSION

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August 20, 2003

Guy D. Petzold, Deputy City Attorney
City of Stockton
Office of the City Attorney
425 North El Dorado Street
Stockton, CA 95202-1997

**Re: Your Request for Advice
Our File No. A-03-184**

Dear Mr. Petzold:

This letter is in response to your request for advice on behalf of Mayor Gary Podesto regarding the campaign and conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts you present; the Fair Political Practices Commission ("Commission") does not act as a finder of fact when providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Government Code section 83114.)

QUESTION

Will Mayor Podesto's receipt of campaign contributions become the basis for a conflict of interest prohibiting his involvement in governmental decisions affecting contributors to his campaign?

CONCLUSION

No. A campaign contribution is not considered either a gift or income for purposes of a conflict of interest under section 87100 of the Act. Moreover, the

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

disqualification provisions of section 84308 of the Act do not apply to local government agency officials, such as city council members, who are directly elected by the voters.

FACTS

Mayor Gary Podesto is a candidate for state Senate and will be accepting campaign contributions for that office. He anticipates that some of the contributors to his Senate campaign will appear before the Stockton City Council. He has asked whether the contributions create any conflicts of interest for him.

ANALYSIS

The Act was adopted by the people of the State of California by initiative in 1974. The purpose of the conflict-of-interest provisions of the Act is to insure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who support them. (Section 81001(b).) In furtherance of this goal, 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. However, under the conflict-of-interest provisions of the Act, the receipt of campaign contributions is not a basis for disqualification by a public official. (Sections 87103, 82028(b)(4) and 82030(b)(1).)

In 1983, section 84308 was added to the Act to deal specifically with campaign contributions and governmental decisionmaking by certain officials. However, local governmental agencies whose members are directly elected by voters are exempt from the provisions of section 84308 along with the courts, the Legislature, state constitutional officers and the Board of Equalization. (Section 84308(a)(3).) Thus, when acting as a city council member, the mayor would not have an obligation to disqualify himself if a contributor appears before him.

Further, regulation 18438.1(a) provides that the exemption in section 84308(a)(3) also applies to directly elected members of local governmental agencies where:

“(1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency. This applies to a city council or board of supervisors which designates itself as the redevelopment agency for the city or county; or

(2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency.”

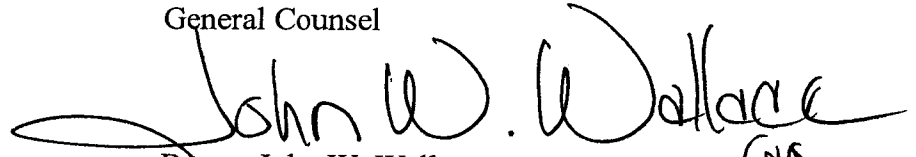
Thus, the exception would also apply where the city council acts as the

redevelopment agency for the city. (*Kinney* Advice Letter, No. A-87-274.) However, the exception would not apply where the mayor might be appointed to serve on any body that does not meet the criteria of regulation 18438.1(a). (*Wick* Advice Letter, No. I-87-116.)

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

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