



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

October 28, 2003

Arnold M. Alvarez-Glasman, City Attorney
City of Montebello
c/o Alvarez-Glasman & Colvin
100 North Barranca Avenue, Suite 1050
West Covina, CA 91791

**Re: Your Request for Informal Assistance
Our File No. I-03-214**

Dear Mr. Alvarez-Glasman:

This letter is in response to your request on behalf of Mayor Kathy Salazar for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because the facts you have presented are not sufficient to render formal advice regarding the governmental decision about which you seek advice, we are treating your request as one for informal assistance (regulation 18329(b)(2)(B)).² Our assistance is based on the facts presented in your request; the Fair Political Practices Commission ("Commission") does not act as a finder of fact when it provides informal assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Does Mayor Salazar's long-term friendship with a police officer who has filed a discrimination lawsuit against the city create a conflict of interest under the Act that precludes her from participating in closed session discussions and decisions regarding potential settlement of the lawsuit?

CONCLUSION

Unless the city's action on the lawsuit between the city and the police officer would have a material financial effect on Mayor Salazar's own economic interests,

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.)

Mayor Salazar does not have a disqualifying conflict of interest under the Act, which only regulates conflicts of interest arising from economic interests.

FACTS

Mayor Salazar is currently serving her third term as a member of the Montebello City Council. She was first elected in 1987, and is seeking re-election this November. During this period, as part of her work to provide youngsters with access to sport programs, Ms. Salazar founded and has actively participated on the Montebello Police Activities League. Through these activities, Ms. Salazar became and continues to be a good friend to a certain Montebello police officer ("Officer"), who is the president of the Montebello Police Officers' Association, and is also involved in the Montebello Police Activities League.

The same Officer has recently filed a discrimination lawsuit against the city, alleging among other things, a claim for not having been promoted within the police department. In addition, the Officer has filed complaints with the Federal Bureau of Investigation against the Montebello Chief of Police, which have been investigated and closed without action. One of the city council's duties is to evaluate proposed settlement offers of the Officer in closed session.

Mayor Salazar's relationship with the Officer is best characterized as a long-term friendship. In a telephone conversation with staff on October 23, 2003, you explained that this is not a dating or romantic relationship, but is merely a friendship. In addition to her work with the Officer, Ms. Salazar has also participated in the citizen's patrol, a volunteer group comprised of residents seeking to curb crime in the city, and in this capacity, has often worked with the Officer. Mayor Salazar has stated that she has no financial or economic interests in common with the Officer.

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 Mayor Salazar 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 mayor and a member of the City of Brentwood City Council, Mayor Salazar is a public official. (Section 82048; regulation 18701(a).) If she participates in closed-session discussions

and decisions regarding the lawsuit filed against the city by the Officer, Mayor Salazar will make, participate in making, and influence governmental decisions.

Since she is the mayor and a member of the city council, which positions are described in section 87200, if she has a conflict of interest in a decision to be considered in closed session noticed at a public meeting, then she must:

(1) Immediately prior to the city council going into closed session for discussion of the item, verbally state during the open session that she has a conflict of interest and is recusing herself under Government Code § 87100, as discussed in regulation 18702.5(c), on the record of the meeting;

(2) Recuse herself; and

(3) Not be present for the duration of the closed session discussion and/or vote on the item, and not knowingly obtain or review any non-public information regarding the decision.

The rules for recusing oneself in open sessions can be found in regulation 18702.5(b). For consent calendars, absences and speaking as a member of the public regarding personal interests, special rules found in regulation 18702.5, subdivision (d) apply. (Section 87105.)

Step 3. What are Mayor Salazar'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.

You have not given us any facts with which to identify Mayor Salazar's economic interests, but have merely stated that she "has stated she has no financial or economic interests in common with the Officer." Friendships do not constitute economic interests that should be affected by the city council's decisions about the litigation and therefore, absent some other economic interest, no conflict of interest will arise under the Act. (*Moser Advice Letter*, No. A-97-296.)

Given the longstanding friendship between Mayor Salazar and the Officer, however, it is possible that the Officer may be a source of gifts to the mayor. If any such gifts aggregate to \$340 or more within 12 months prior to the decision related to the Officer's lawsuit against the city, the mayor would have an economic interest in the Officer as a source of gifts, and she would be disqualified from making, participating in making or otherwise using her official position to influence the decision. (Section 87103(e); regulation 18703.4.)

There are some exceptions to the rules related to gifts. One exception that may apply to the mayor's situation is presents exchanged between friends on special occasions such as holidays birthdays or similar occasions, provided that the gifts are not disproportionate in value, as long as the official's friend is not a lobbyist. (Regulation 18942(a)(8).) Other exceptions to the gift rules that may apply can be found in regulation 18942.

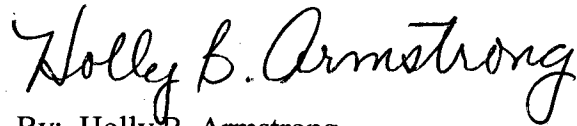
You asked specifically about appearance issues related to the mayor's participation in the closed session deliberations regarding the Officer's lawsuit, which falls under the category of common law conflicts of interest. The Act does not currently encompass common law conflicts of interest, but only regulates those dealing with financial interests.³

³ The Commission is currently investigating the possible merger of conflict of interest laws not currently in the Political Reform Act into the framework of the Act and is soliciting public participation in

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
Staff Counsel, Legal Division

Enclosure

HBA:jg

I:\AdviceLtrs\I-03-214