



FAIR POLITICAL PRACTICES COMMISSION

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October 15, 2003

Yolanda M. Summerhill
Jones & Mayer
3777 North Harbor Boulevard
Fullerton, CA 92835

**Re: Your Request for Advice
Our File No. A-03-234**

Dear Ms. Summerhill:

This letter is in response to your request on behalf of Councilmember Greg Nordbak for advice regarding the 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

Does Councilmember Nordbak have a conflict of interest prohibiting his involvement in decisions that may financially affect his adult son?

CONCLUSION

Based on the facts you provide, Councilmember Nordbak does not have a conflict of interest disqualifying him from making, participating in making, or influencing governmental decisions affecting his son. Although a public official cannot participate in a governmental decision that has a personal financial effect on the official or a member of his or her immediate family, the Act does not prohibit the councilmember from participating in a governmental decision merely because the decision will financially affect his adult children.

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

FACTS

Greg Nordbak is a council member with the City of Whittier first elected in 1994. The Whittier Police Department has hired his son, Tom Nordbak, as a police officer. Tom Nordbak is twenty-four years old and resides at home with his parents. Tom does not pay rent nor contribute to the household expenses and is not a source of income to his parents. The city council will begin negotiations with the police department. Such negotiations will include salary and benefits for the police department as a whole.

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 occur 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.

1. & 2. Is Councilmember Nordbak 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 Whittier City Council member, Councilmember Nordbak is a public official. (Section 82048; regulation 18701(a).) Unless disqualified under the conflict-of-interest provisions of the Act, Councilmember Nordbak will make, participate in making, and influence city council decisions.

3. What are Councilmember Nordbak'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 at 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 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 always 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).

Steps 4, 5 and 6. Are Councilmember Nordbak's economic interests directly or indirectly involved in the governmental decision, and will the effect on his economic interests be material and reasonably foreseeable?

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.) With respect to the personal financial effects, regulation 18704.5 provides that "[a] public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family."

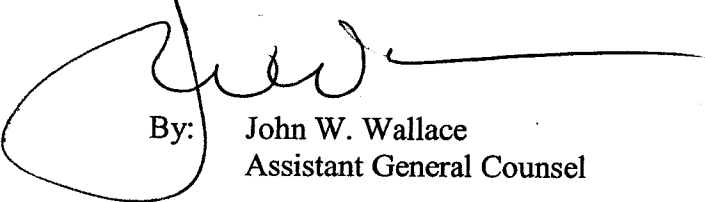
The next step in the analysis is identifying the appropriate standard for evaluating the "materiality" - that is, the importance - of the effect of the decision on the economic interest(s). (See regulation 18700(b)(5); regulations 18705-18705.5.) With respect to the personal financial effects, regulation 18705.5(a) provides that "[a] reasonably foreseeable^[2] financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period."

Therefore, provided that the public official's expenses, income, assets, or liabilities are not otherwise foreseeable and materially affected by the decisions, Councilmember Nordbak will not have a conflict of interest in the decision.

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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² As used here, "reasonably foreseeable" means "substantially likely." (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made is highly situation-specific. 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.