



FAIR POLITICAL PRACTICES COMMISSION

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December 31, 2004

Jean Cihigoyenette
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8038 Haven Avenue, Suite E
Rancho Cucamonga, CA 91730

**Re: Your Request for Advice
Our File No. I-04-261**

Dear Ms. Cihigoyenette:

This letter is in response to your request on behalf of Angel Santiago for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your question does not relate to a specific governmental decision, we consider your letter to be a request for informal assistance pursuant to regulation 18329(c).²

QUESTION

May Mr. Santiago simultaneously hold two public positions, that of Director for the Inland Empire Utilities Agency and council member for the City of Fontana, without incurring a conflict of interest?

CONCLUSION

Holding multiple governmental positions simultaneously does not inherently create a conflict of interest under the Political Reform Act. Moreover, salary and reimbursement for expenses or per diem received from a state, local, or federal government agency are expressly exempted from the definition of "income" for purposes of the Act. Consequently, if Mr. Santiago's personal finances are otherwise affected by a

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.)

governmental decision, his salary received as a public official (in either capacity) is not a disqualifying economic interest.

You may wish, however, to contact the Attorney General's office with respect to the doctrine of "incompatible offices" and other provisions of law which may forbid Mr. Santiago from holding the two offices simultaneously. We stress most strongly that this advice concerns only the Act.

FACTS

Your firm represents the Inland Empire Utilities Agency ("IEUA") as its general counsel. IEUA is a municipal water district created and existing pursuant to the Municipal Water District Law of 1911, found in California Water Code section 71000, et seq. Mr. Angel Santiago is an elected member of the IEUA Board of Directors.

IEUA provides waste management treatment services to several cities including the City of Fontana. In addition, IEUA is a regional metropolitan water district member. IEUA is in charge of allocating water, which is purchased through the Metropolitan Water District, to various cities.

The City of Fontana pays IEUA for its waste water treatment services and is a signatory to the Chino Basin Regional Sewage Service contract which delineates terms and conditions upon which waste water treatment is afforded to the city. Additionally, projects such as the construction of waste water treatment plants and pipelines are approved by a body known as the regional policy committee, comprised of appointees from various city councils who are signatory to the regional sewage service contract. Specifically, the City of Fontana appoints one of its council members to serve on the regional policy committee which reviews proposed waste water capital improvements.

Mr. Santiago is eligible to obtain an appointed position on the City of Fontana's City Council.

ANALYSIS

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).)

Step 1 - Public official.

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; regulation 18700(b)(1).) "Public official" is defined as "every member, officer, employee or consultant of a state or local government agency" (Section 82048.) A "local government agency" means a county, city or district of any kind, including a water district, or any other local political subdivision or any county board or commission. (Section 82041.) Whether as director for the IEUA or as council member for the City of Fontana, Mr. Santiago is a "public official" for purposes of the Act (see sections 82041, 82048), and the conflict-of-interest rules apply to him.

Step 2 - Making, participating in making, or using an official position to influence governmental decisions.

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.) Your letter contains no information involving a specific government decision, so we provide the following for your future reference.

A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official "participates in making a governmental decision" when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

Step 3 - Identifying the economic interests.

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests as 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 indirect³ investment of \$2,000 or more (section 87103(a); regulation 18703.1(a));

A public official has an economic interest in a business entity 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 \$340⁴ 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 effects" rule (section 87103; regulation 18703.5).

Of the six economic interests, only three appear to be potentially implicated by your facts. Those three categories are "source of income" (section 87103(c); regulation 18703.3), serving as a director or officer of a business entity (section 87103(d); regulation 18703.1(b)), and Mr. Santiago's personal expenses, income, assets, or liabilities or those of his immediate family.

With respect to source of income, both the city and the IEUA are local governmental agencies. (Section 82041.) Salary from a state, local or federal governmental agency is expressly exempted from the definition of "income" for purposes of the Act. (Section 82030(b)(2).) Thus, the salary that Mr. Santiago receives from either governmental entity would not be disqualifying "income" for purposes of section 87103(c). Similarly, because a governmental entity is not considered a business entity under the Act, we may also eliminate Mr. Santiago's position as director for IEUA from being an economic interest.

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.)

⁴ The gift limit amount is adjusted biennially and will be changed to \$360 as of January 1, 2005.

For purposes of analyzing the remaining potential economic interest, Mr. Santiago's interest in his personal finances, regulation 18705.5(b) states that

"The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position."

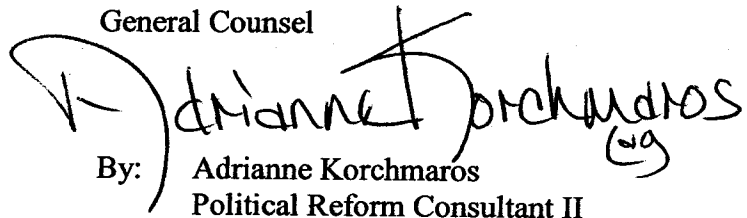
Therefore, any potential governmental decisions regarding Mr. Santiago's governmental salary from either the IEUA or the City of Fontana will generally not be a problem under this rule, but whether a governmental decision might have some other effect on Mr. Santiago's personal finances, not subject to this exception, is a question we cannot address without specific facts.

Thus, absent some other disqualifying financial interest in a decision as set forth in section 87103, or a direct financial effect on Mr. Santiago personally resulting from a governmental decision, as set forth in regulation 18703.5, Mr. Santiago may participate in governmental decisions regarding either the City of Fontana or the IEUA. We remind you, however, that our advice is limited to the Act.

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

Sincerely,

Luisa Menchaca
General Counsel


By: Adrienne Korchmaros
Political Reform Consultant II

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