



## FAIR POLITICAL PRACTICES COMMISSION

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February 15, 2005

Daniel J. McHugh, City Attorney  
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City of Redlands  
Post Office Box 3005  
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**Re: Your Request for Advice  
Our File No. A-04-276**

Dear Mr. McHugh:

This letter is in response to your request on behalf of Redlands City Manager John Davidson for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is limited solely to the provisions of the Act and should not be taken as advice or an opinion regarding any other area of the law potentially raised by your letter. For instance, Government Code section 1090, which bars public officials from entering into certain contractual relationships with governmental entities, may apply. You may wish to contact your agency's counsel or the Attorney General's office for advice on your obligations in this area of the law.

### QUESTION

Can Redlands City Manager John Davidson serve as the city council's designated negotiator for all city employee bargaining units, when Mr. Davidson's salary is automatically set 6% above the city's highest paid department head?

### CONCLUSION

Since John Davidson is the only Redlands city manager, a governmental decision by the city manager, as described below, does not set a salary for the city manager which

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

is different from salaries paid to other employees of the government agency in the same job classification or position. Therefore, the city manager's role as the city council's designated negotiator for city council bargaining units is not a disqualifying conflict of interest.

### **FACTS**

The city manager's salary is set by contract at an amount six percent (6%) above the city's highest paid department head. Thus, if the highest paid department head receives a salary increase pursuant to his contract, the city manager's salary will automatically increase to maintain the six percent separation without any action by the city council. The two highest paid department heads in the city are the fire chief and the chief of police.

The city manager is the city council's designated negotiator for all city employee bargaining units. He receives his instructions/direction from the city council and negotiates with employee groups regarding their salaries and benefits. The city manager then recommends to the city council a memorandum of understanding ("MOU") which embodies the results of those negotiations. The city council makes the determination of whether to approve or disapprove the MOU.

When the city's safety management units (which include the fire chief and the chief of police) commence negotiations with the city council, the city manager's salary will indirectly be at issue because, if the highest paid department head's salary increases as a result of his or her bargaining unit's negotiations with the city manager, the city manager's salary will also increase. Further, under the current MOU's for subordinate safety employees, if one safety group obtains an increase in salary, the safety management unit will automatically get an increase, which will then trigger the an increase in salary for the city manager.

### **ANALYSIS**

Section 87100 prohibits a public official from making, participating in making, or attempting to use his or her official position to influence a governmental decision in which he or she has a financial interest. Section 87103 states that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the official, a member of his or her immediate family, or on any of his or her economic interests. To identify disqualifying conflicts of interest, the Commission has developed an eight-step analysis, set out in regulation 18700(b). We apply this analysis to your circumstances.

#### **Step 1: Is The Individual A Public Official?**

A public official is any "member, officer, employee or consultant of a state or local government agency," including, but not limited to, paid or unpaid members of

boards or commissions with decision-making authority. (Section 82048, regulation 18701.) As a city manager, Mr. Davidson is a public official.

### **Step 2: Is the Official Making, Participating in Making, or Influencing a Governmental Decision?**

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 [or her] official position to influence a governmental decision in which he [or she] knows or has reason to know he [the official] 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 also provide certain exceptions. (Regulations 18702-18702.4.)

A public official "participates in 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.)

As the designated negotiator for all city employee bargaining units, Mr. Davidson is participating in a governmental decision.

A public official is attempting to use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

As the city's designated negotiator, Mr. Davidson submits recommendations to the city council based on his negotiations with employee groups. He would therefore be attempting to use his official position to influence a governmental decision.

### **Step 3: What are the Applicable Economic Interests?**

If the governmental decision at issue will have a reasonably foreseeable material financial effect on the official's economic interests, the official may have a conflict of interest. The official must therefore identify his or her economic interests. There are six kinds of economic interests from which conflicts may arise. They are defined in section 87103 and regulations 18703-18703.5 to include any source of income to the public official which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), regulation 18703.3.)

An employer is a source of income in the form of salary and benefits. However, where the employer is a local governmental agency, there is typically no economic interest in the official's income because of the "government salary exception." The Act's definition of income expressly excludes "[s]alary and reimbursement for expenses or per diem received from a . . . local . . . government agency . . ." (Section 82030(b)(2).) Therefore, the official's source of income will no longer be discussed in this advice letter.

However, notwithstanding the "government salary exception," a public official always has an economic interest in his or her personal finances, and may have a conflict of interest in any decision resulting in an increase or decrease in the personal expenses, income, assets or liabilities of the official or his or her immediate family. (Regulation 18703.5.)

**4. Is the public official's economic interest in his personal finances directly or indirectly involved in the decision?**

"A public official or his or her immediate family is 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." (Regulation 18704.5.) According to this regulation, Mr. Davidson's economic interest in his personal finances is directly involved in the decisions he would make as the city council's designated negotiator.

**5. Is there a material financial effect on the public official's economic interest in his personal finances?**

Once a public official identifies his or her relevant economic interests, the official must evaluate whether the decision will have a material financial effect on any of those economic interests. The official must find the applicable materiality standard in Commission regulations. (Regulation 18700(b)(5), regulation 18705, et seq.)

Pursuant to regulation 18705.5, "[t]he 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.*" [Emphasis added.]

You have indicated that there is only one city manager working for the City of Redlands. Therefore, the city manager cannot influence a decision which would set a salary for himself which differs from salaries paid to other employees in the same job classification or position. The financial effects of a decision are not considered material unless the decision "set[s] a salary for the official...which is different from salaries paid to other employees of the government agency in the same job classification or position." (Regulation 18705.5.) Since Mr. Davidson is the only city manager, governmental decisions involved in negotiation with city employee bargaining units will not have a material financial effect on his economic interest in his personal finances, and he may participate in those decisions.

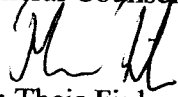
Since you have not advised us of any other economic interests potentially affected by Mr. Davidson's decisions during negotiations with city employee bargaining units, he may participate in those decisions.

The question addressed in this advice letter raises questions of policy regarding regulation 18705.5 that the Commission may consider in future Commission meetings. The Commission's deliberations may change the advice in this letter. We invite you to follow the progress on this and other regulations associated with conflicts of interest, by visiting our website, [www.fppc.ca.gov](http://www.fppc.ca.gov).

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

Sincerely,

Luisa Menchaca  
General Counsel



By: Theis Finlev  
Executive Fellow

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