



## FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

July 24, 2007

Ms. Georgeanne White  
Chief of Staff to the Mayor  
City of Fresno  
2600 Fresno Street  
Fresno, California 93721

**RE: Your Request for Informal Assistance  
Our File No. I-07-106**

Dear Ms. White:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you do not seek advice regarding a specific governmental decision, we are providing you with informal assistance.<sup>2</sup> This advice is based on the facts as provided in your letter and telephone conversation with FPPC staff.

### QUESTION

Would you have a disqualifying conflict of interest under the Act in governmental decisions that come before the Mayor's Office or the Office of the City Manager concerning the Trump/Running Horse project, if your husband, who is a partner in a law firm, provides legal services to the Trump Organization, which is interested in purchasing the Running Horse project out of bankruptcy and developing it into a Trump National Golf Course and housing development?

### CONCLUSION

You may participate in governmental decisions that may come before the Mayor's Office or the Office of the City Manager about the Trump/Running Horse project if there are no reasonably foreseeable material financial effects on the law firm of Baker, Manock and Jensen, which is an economic interest of yours. Specifically, you must examine each decision about the project that you might participate in or influence to make sure it would

---

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

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

not result in an increase in gross revenues of \$500,000 or more in a fiscal year to Baker, Manock and Jensen.

### FACTS

Developer Donald Trump's organization is considering purchasing a bankrupt golf course in Fresno and building 800 homes around the golf course. Baker, Manock and Jensen is a Professional Corporation and represents The Trump Organization on issues relating to the purchase of Running Horse, LLC out of bankruptcy, and other post-bankruptcy issues. Your husband, William White, is a 6.66% shareholder of Baker, Manock and Jensen, PC. Mr. White receives a distribution of 5.6367% of net revenue of the firm, and no salary. On a monthly and year-end basis, after employees are paid, bills and other expenses are accounted for, he will get 5.6367% of what is left. Baker, Manock and Jensen will be paid on an hourly basis for its services. You state that Baker, Manock and Jensen had earnings before taxes of no less than \$2.5 million for its most recent fiscal year.

If the Trump Organization's purchase of Running Horse is approved by the Bankruptcy Court, the law firm will represent the Trump organization on issues involving the City of Fresno and the Mayor's Office and City Manager's Office, such as the purchase of land parcels necessary to complete the project, land entitlement issues (including zoning, CEQA reviews, traffic studies, infrastructure improvements, etc.), and possible financial partnership with the City. There will also be discussions about the use of eminent domain, expansion of Redevelopment Areas into the subject project area, etc.

As Chief of Staff to the Mayor, you perform highly responsible administrative support to the duties for the Mayor. These include planning, organizing, and overseeing the day to day activities of the Mayor's Office; acting as a liaison between the Mayor, City Management staff, boards and commissions and the public; working with consultants and management to implement projects and special events and activities and interpreting City policies, rules and regulations. You report directly to the Mayor and serve at the will of the City Manager. Fresno has a "strong Mayor" form of government. The Mayor has the executive powers of the City, and has the sole authority to appoint and remove the City Manager. The Mayor has no land use authority. The City Manager is the Chief Administrative Officer of the City and exercises control over all City departments, agencies and offices.

### ANALYSIS

Section 87100 of the Act 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 analysis for determining whether an official has a disqualifying conflict of interest. (Regulation 18700(b).)

**Steps 1 & 2: Is a public official making, participating in making, or influencing a governmental decision?**

Under the Act, a public official means “every member, officer, employee or consultant of a state or local government agency.” (Section 82048.) As Chief of Staff to the Mayor of the City of Fresno, you are an employee of the City and a public official under the Act.

The Act’s conflict-of-interest provisions apply where a public official “make[s], participate[s] in making, or in any way attempts 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).) A public official “makes a governmental decision” when the official, acting within the authority of his or her position, votes on a matter, appoints a person, 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. (Section 87100; Regulation 18702.1.)

In your capacity as Chief of Staff to the Mayor of Fresno, it appears that you will be participating in or influencing governmental decisions about the Trump/Running Horse project, rather than voting on a matter or obligating the City of Fresno to a course of action. A public official “participates in making a governmental decision,” when acting within the authority of his or her position, the official advises or makes recommendations to the decision maker or negotiates with a governmental entity or private person about a governmental decision without significant substantive review. (Regulation 18702.2.) A public official “influences a governmental decision” within his or her own agency if the official contacts or appears before any member, officer, employee or consultant of the agency, for the purpose of influencing the decision. An official “influences a governmental decision” pending before another agency if, for the purpose of influencing the decision, the official acts as the representative of his or her own agency to any member, officer, employee or consultant of the second agency. (Regulation 18702.3.) Thus, you may be participating in a decision that the Mayor makes concerning the Running Horse project, or influencing decisions on the project as a representative of the Mayor’s Office before another city agency.

**Step 3: Does the official have a potentially disqualifying economic interest?**

A public official has a financial interest in a decision within the meaning of Section 87103 “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 business entity in which he or she has a direct or indirect investment<sup>3</sup> 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));
- 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 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 source of gifts to him or her if the gifts aggregate to \$390 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);
- 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).

Your husband, William White, is a 6.66% shareholder of the law firm Baker, Manock & Jensen, PC, and receives a distribution of 5.6367% of net revenue of the firm. Section 87103 provides that a public official's investment interest in a business entity includes any investment interest owned by the official's spouse. Here we assume that Mr. White's 6.66% interest in the firm represents an investment of \$2,000 or more. Under the Act, the income of an individual includes the community property interest in the income of their spouse. (Section 82030(a).) Therefore, you are considered to have an economic interest in Baker, Manock and Jensen because of your indirect investment interest in the firm and the fact that the firm is a source of income to you.

In addition, Section 82030(a) of the Act treats income to a firm as income to an owner if the owner has a ten percent or greater ownership interest in the firm. Because your husband has less than a ten percent ownership interest in the law firm, the clients of Baker, Manock and Jensen are not considered sources of income to you.

Finally, a public official always has an economic interest in his or her own personal finances.

---

<sup>3</sup> 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.)

**Step 4: Are the official's economic interests directly or indirectly involved in the governmental decision?**

Next we turn to the degree of involvement of your economic interest, Baker Manock and Jensen, in the decision. With respect to an economic interest in a business entity or a source of income, such as your husband's law firm, Regulation 18704.1(a) states:

“(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.”

If a business entity is not *directly involved* in a governmental decision, materiality standards for an *indirectly involved* business entity apply. (Regulation 18704.1(b).)

In this case, the facts do not indicate that Baker, Manock and Jensen is initiating the proceeding, or is a named party in or the subject of the purchase and development of the Running Horse project. The Trump Organization is the potential developer. The law firm provides legal counsel to the Trump Organization on issues related to the purchase of Running Horse, LLC out of bankruptcy, and land use issues necessary to complete the development project. The law firm is therefore *indirectly involved* in decisions concerning the Running Horse project that may come before the Mayor's Office and the City Manager's Office.

With respect to personal financial effects, Regulation 18704.5 states 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.”

**Step 5: Determining which materiality standards apply in deciding if there will be a reasonably foreseeable material financial effect.**

Regulation 18705.1 sets forth different materiality standards depending on the size of the business entity involved, ranging from Fortune 500 corporations to small businesses. You state in your letter that Baker, Manock and Jensen had earnings before taxes of no less than \$2.5 million for its most recent fiscal year. The materiality standard for this size of business states:

“(2) If the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than \$2.5 million . . . the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

“(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year in the amount of \$500,000 or more; or,

“(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$200,000 or more; or,

“(C) The governmental decision will result in an increase or decrease in the value of the business entity’s assets or liabilities of \$500,000 or more.” (Regulation 18705.1(c)(2).)

The question to examine is whether it is reasonably foreseeable that a governmental decision that you participate in or influence concerning the Running Horse project will result in Baker, Manock and Jensen’s (a) increasing or decreasing gross revenues for a fiscal year of \$500,000 or more, (b) incurring or eliminating expenses of \$200,000 or more or for a fiscal year, or (c) increasing or decreasing assets or liabilities of \$500,000 or more.

In addition, Regulation 18705.5(a) sets the materiality standard for personal financial effects:

“(a) A reasonably foreseeable financial effect on a public official’s or his or her immediate family’s personal finances is material if it is at least \$250 in any 12-month period. When determining whether a governmental decision has a material financial effect on a public official’s economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered.”

**Step 6: Is it reasonably foreseeable that the applicable materiality standards will be met?**

Regulation 18706 provides that “[a] material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards [citation omitted] applicable to that economic interest will be met as a result of the governmental decision.” A financial effect need not be a certainty to be considered reasonably

foreseeable. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

You informed us that the Trump Organization has New York Counsel and that your husband's law firm would act as local counsel for the organization. You have spoken with lawyers at Baker, Manock and Jensen and they concluded that it is not substantially likely that governmental decisions concerning the Running Horse project will result in an increase or decrease to Baker Manock and Jensen's gross revenues for a fiscal year in the amount of \$500,000 or above. You further state that it is not reasonably foreseeable that governmental decisions about the Running Horse project will result in a change in Baker, Manock and Jensen's expenses of \$200,000 or more, or result in a change in the value of the firm's assets or liabilities of \$500,000 or more. You must examine each decision related to the project you participate in or influence, and assuming it would not have the financial effects on Baker, Manock and Jensen set forth above, you may participate in the decision.

With respect to personal financial effects, the facts provided do not indicate that decisions about the Trump/Running Horse project would have a personal financial effect on you apart from any possible effects on the law firm of Baker, Manock and Jensen. Under Regulation 18705.5 quoted above, if the only personal financial effects are those resulting from financial effects on your business interest, you do not need to independently analyze these same effects under the lower, \$250 threshold of Regulation 18705.5. (*Haubert* Advice Letter, No. A-06-039; and *Lundie* Advice Letter, No. A-01-037.)

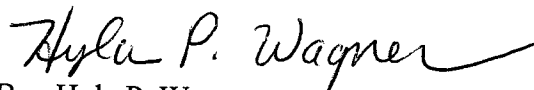
**Steps 7 and 8: "Public Generally" and "Legally Required Participation" Exceptions.**

The final two steps of the conflict of interest analysis are narrow exceptions that apply when the reasonably foreseeable and materially financial effect on an official's economic interest is not distinguishable from the effect on the public generally (step 7), and when the official's participation in a governmental decision is legally required (step 8). The facts presented here do not suggest that either of these exceptions apply.

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

Sincerely,

Scott Hallabrin  
General Counsel



By: Hyla P. Wagner  
Senior Counsel, Legal Division

HW:jgl