



## FAIR POLITICAL PRACTICES COMMISSION

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July 18, 2007

Eileen Roush  
5720 River Oak Way  
Carmichael, California 95608-5560

**Re: Your Request for Advice  
Our File No. I-07-110**

Dear Ms. Roush:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your request seeks general guidance, we are treating your request as one for informal assistance.<sup>2</sup> Also, please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest, Government Code Section 1090, or Government Code Section 8920.

### QUESTION

Do you have a conflict of interest that would preclude you from participating in legislative hearings and bill analyses regarding your future husband's industry: credit unions' financing?

### CONCLUSION

You will not have a conflict of interest unless the legislative decision in which you participate will have a reasonably foreseeable material financial effect, as outlined herein, on your future husband's employer.

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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.

<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)(3), copy enclosed.)

## FACTS

You are a principal consultant to the Senate Banking, Finance & Insurance Committee (the "Committee"). You write bill analyses, plan informational hearings, staff legislation for the Committee Chair, and respond to questions from staffers, members, and the public about subjects over which the Commission has jurisdiction. The Committee's jurisdiction, specifically the banking and finance portion, centers on measures that amend the Financial Code, and occasionally includes potential measures to amend the Business and Professions Code, the Government Code, and the Civil Code.

Several types of financial service providers are within the Committee's jurisdiction, including banks, credits unions, industrial loan companies, and finance lenders, among others.

You plan to marry John Newhall who is a quality assurance analyst with Credit Union Direct Lending (CUDL). CUDL is a for-profit credit union service organization that credit unions own. CUDL helps facilitate automobile financing between credit unions and buyers. Mr. Newhall tests software that CUDL uses to provide its services to automobile dealers.

You stated that you are concerned that your future-husband's position will conflict with your responsibilities to the Committee.

## ANALYSIS

Your question implicates the Act's conflict-of-interest provisions, which ensure that public officials "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 to decide whether an official has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

### **Step One: Are you a public official?**

As an employee of a State Senate Committee, you are a public official under the Act. (Section 82048.) Consequently, you may not make, participate in making, or otherwise use your official position to influence any decisions that will have a reasonably foreseeable material financial effect on any of your economic interests. (Regulations 18702.1-18702.4.)

**Step Two: Will you be making, participating in making, or using or attempting to use your official position to influence a governmental decision?**

You have stated that your position with the Committee requires you to analyze bills, organize informational hearings, staff legislation for the Committee Chair, and respond to questions from the public and staffers. In this role as committee consultant, you have the capacity to participate in and use your position to influence governmental decisions.

**Step Three: Do you have a financial interest in the decisions at issue?**

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 one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.) The applicable economic interests include:

1. An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).) An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
2. An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)
3. Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.) "Income" is defined to include any community property interest in the income of a spouse. (Section 82030(a).)
4. Any source of gifts to the public official if the gifts aggregate to \$390 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
5. A public official also 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 also known as the "personal financial effects" rule. (Section 87103, Regulation 18703.5.)

A public official has an economic interest in any person from whom he or she has received income aggregating \$500 or more with the 12 months prior to making the relevant decision. (Section 87103(c); Regulation 18703.2(a)(1).) While you did not provide specific figures, we presume that your community property share of your future

husband's income will likely be \$500 or more within the twelve months prior to any governmental decision before you. (See Section 87103(c), Regulation 18703.3; see also *Olsen* Advice Letter I-06-99.) Based on the facts you provided, you will have an economic interest in CUDL as your future husband receives income from CUDL.

You also have an interest in your personal finances and those of your immediate family. (Regulation 18703.5.) A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing.<sup>3</sup>

You have not provided any facts regarding any other applicable economic interests.

**Step Four: Is the economic interest directly involved in the governmental decision?**

Regulation 18704.1 states that a person, including business entities and sources of income, is directly involved in a governmental decision when that person or a representative initiates the proceeding. (Regulation 18704.1(a).) Otherwise, the person or business entity is indirectly involved. If CUDL initiates any proceeding in which a decision will be made, or is a party to or subject of the proceeding (see Regulation 18704.1(a)(2)), your source of income economic interest would be directly involved. You do not state in your facts that CUDL initiates or requests that the Committee consider certain bills or other issues; based on this fact, we assume CUDL would be indirectly involved in any decision.

A public official or his or her immediate family is deemed to be directly involved in a governmental decision that has any financial effect on the personal finances of the public official or his or her immediate family. (Regulation 187094.5.)

**Step Five: What is the applicable materiality standard?**

A conflict of interest may arise only when the reasonably foreseeable impact of a governmental decision on a public official's economic interests is material. (Regulation 18700(a).) For a source of income that is indirectly involved with the governmental decision, and which is a business entity, the materiality standard depends on the size of the business. (See Regulation 18705.3(b)(1); 18705.1(c).) Because we do not have information regarding the size or stature of CUDL, we advise you to review Regulation 18705.1(c) (copy enclosed) to determine the standard that applies to your future husband's employer.

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. (Regulation 18705.5(a).) We assume that your future husband is paid a salary

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<sup>3</sup> For example, if your future spouse were compensated on a commission basis, a change in the rules regarding credit unions and automobile financing could affect you and your spouse's personal finances. Conversely, if your spouse were salaried, personal financial effects of your decisions would not be foreseeable. Since we do not have facts regarding how your future spouse is compensated, we do not provide further analysis of this economic interest.

that will not be affected by any governmental decisions. Thus, the \$250 threshold would not be met.

**Step Six: Is the material financial effect reasonably foreseeable?**

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. As used here, "reasonably foreseeable" means "substantially likely." (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) Thus, 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. (*Ibid.*) Please note that the Commission does not act as a finder of fact when providing advice (*In re Oglesby, supra*), therefore, the foreseeability of a particular financial effect is a determination that must be left, in most cases, to the informed judgment of the public official.

You have asked, generally whether decisions you could influence, should they arise, will create a conflict of interest such that you should recuse yourself from the process. As each decision arises that could affect CUDL, you must analyze the steps above, including the materiality standard as discussed in Regulation 18705.1(c), depending on the size of the business entity. You have stated that the decisions would not affect your future husband's salary, but do not provide further information on his compensation structure. You are in the best position to determine whether it is substantially likely that a particular decision will materially affect your source of income economic interest.<sup>4</sup>

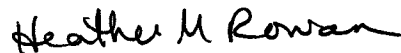
**Steps Seven and Eight: Public Generally and Legally Required Participation Exceptions.**

Because you have not provided facts that would support either of these exceptions, we do not address them here.

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

Sincerely,

Scott Hallabrin  
General Counsel



By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl

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<sup>4</sup> Please review the Commission's brochure entitled "Can I Vote?" (copy enclosed) to aid your decision-making.