



## FAIR POLITICAL PRACTICES COMMISSION

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September 25, 2007

Jean B. Savaree  
Aaronson, Dickerson, Cohn & Lanzone  
939 Laurel Street, Suite D  
San Carlos, CA 94070

Re: Your Request for Advice  
**Our File No. A-07-149**

Dear Ms. Savaree:

This letter is in response to your request for advice on behalf of Half Moon Bay Fire Protection District (FPD) Directors David Eufusia and Lane Lees, regarding their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</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 or Government Code Section 1090.

### QUESTION

May Directors Eufusia and Lees vote on a new policy that would provide health insurance benefits to retirees in the newly created merged district, the Coastside FPD?

### CONCLUSION

The directors may participate in the decision so long as the decision will affect all employees of Coastside FPD in the officials' job classification in the same manner.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS

Effective October 1, 2007, the Half Moon Bay FPD will merge with the Point Montara FPD and will become the Coastside FPD. Half Moon Bay FPD Director Eufusia is a former employee of Point Montara FPD and continues to receive a portion of his medical insurance paid by Point Montara FPD. Half Moon Bay FPD Director Lees is a retiree of Half Moon Bay FPD and as such, received lifetime medical insurance payments from Half Moon Bay FPD.

Directors Eufusia and Lees will be asked to consider the new merged district's continued payment of retiree medical insurance.

## ANALYSIS

Section 87100 of the Act prohibits a 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. In order to determine whether the prohibition in Section 87100 applies to a given decision, Regulation 18700 provides the following eight-step analysis.

### **Steps One and Two: Are the individuals "public officials" and, if so, will they be making, participating in making, or influencing a governmental decision?**

The members of the Half Moon Bay FPD's board of directors are members of a local government agency and therefore, are "public officials" subject to the conflict-of-interest provisions of the Act. (Section 82048; Regulation 18701(a).) You have specifically asked about the directors voting on a policy to provide continuing medical insurance benefits to retirees. This would be considered making and participating in making a governmental decision.

### **Step Three: Do the public officials have economic interests?**

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. 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).) Under Section 87103 of the Act, there are six different types of economic interests that may result in a conflict of interest for a public official.

- A public official has an economic interest in a business entity in which he or she has a direct or indirect 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 \$390 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).

Absent an “economic interest” as defined in the Act, an official will not have a conflict of interest.

You have asked about payment of medical benefits to retirees. Pursuant to Section 82030(b)(2), neither of the FPD’s, which are paying medical benefits to the respective directors, are considered to be a “source of income” under the Act as contemplated by section 87103(c). This is because Section 82030(b)(2) exempts from the Act’s definition of “income” “[s]alary . . . or other similar benefit payments received from a state, local, or federal government agency . . .” The Commission has held that pension benefits and other fringe benefits as well, such as health benefits, deferred compensation, tax sheltered annuities, life insurance, leaves, etc., are part of salary in that the employee agrees to receive a smaller payment in exchange for receiving the remaining portion of his compensation by way of these fringe benefits. (Regulation 18232; *In re Moore* (1977) 3 FPPC Ops. 33; *James* Advice Letter, No. A-88-469.) Since the income the directors receive as retirees from the respective FPDs is governmental salary, the directors will not have an economic interest in the FPDs as sources of income.

However, the directors in question do have an economic interest in their personal finances (expenses, income, assets, or liabilities), as well as those of his or her “immediate family.” (Section 87103; Regulation 18703.5.)

**Step Four: Are the board member's economic interests directly or indirectly involved in the decision?**

The next three steps, when considered together, identify whether there will be a reasonably foreseeable material financial effect on your economic interest. This is the statutory test for disqualification. The first step is determining whether the economic interest is directly or indirectly involved in a decision.

“With respect to personal financial effects, 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.”  
(Regulation 18704.5.)

A decision of the board to continue or discontinue medical coverage would have a financial effect on the director's personal finances. Therefore, both directors' economic interests would be directly involved in the decision.

**Steps Five and Six: Will the financial effect of the decision on the board member's economic interest be material and reasonably foreseeable?**

Once a public official identifies his or her relevant economic interests, the official must evaluate whether it is reasonably foreseeable that the decision will have a material financial effect on any of those economic interests. A material financial effect on an economic interest is “reasonably foreseeable” if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) An effect need not be certain to be considered “reasonably foreseeable,” but it must be more than a mere possibility. (*In re Thorne* (1975) 1 FPPC Ops. 198.)

Regulations 18705.5(a) provides that a reasonably foreseeable financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period. In this case, it would appear that a decision of the board to continue or discontinue medical coverage would have a financial effect on the official's personal finances of \$250. For example, we have advised in the past that decisions to set a salary or benefit level for the official or a member of his or her immediate family, which is different from those paid to other employees of the governmental agency in the same job classification or position, would not fall within the exemption. (See also, *Carton* Advice Letter, No. I-90-166, and *Rice* Advice Letter, No. A-88-053.)

However, Regulation 18705.5(b) provides:

“(b) 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." [Emphasis added.]

Thus, if the decision concerns the payment of medical benefits for all retirees, and not just the directors, this exception may apply.

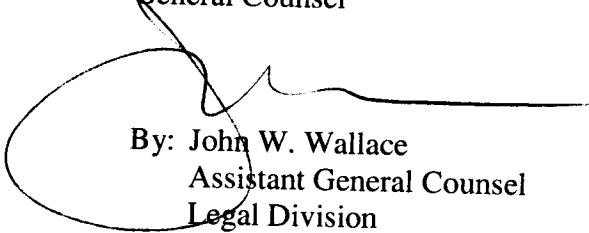
**Steps Seven and Eight: Exceptions**

We have not gone on to analyze the latter two steps. Step seven is an exception that applies where the reasonably foreseeable and material financial effect on the official's economic interest is not distinguishable from the effect on the public generally, and step eight is an exception that applies when the official is legally required to participate in the decision. You have not provided any facts to suggest that these exceptions may apply.

We hope this advice is of assistance. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin  
General Counsel



By: John W. Wallace  
Assistant General Counsel  
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