



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

February 10, 2009

Nathan Magsig, Councilmember
City of Clovis
2424 Sample Avenue
Clovis, CA 93611

Re: Your Request for Advice
Our File No. A-09-011

Dear Mr. Magsig:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Please note that our advice is based solely on the provisions of the Act. We offer no opinion on the application, if any, of other bodies of law such as common law conflicts of interest, or Government Code Section 1090.

QUESTION

Will your receipt of campaign contributions from Dave Paynter ("Paynter"), disqualify you from voting on his land use application, which is before the Clovis City Council?

CONCLUSION

No. A campaign contribution is considered neither a gift nor income for purposes of the Act's conflict-of-interest rules under Section 87100. In addition, the disqualification provisions of Section 84308 do not apply to a local government agency official, such as a city council member, who is directly elected by the voters and is acting as a member of that agency.

¹ 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

You are a city council member in the city of Clovis. You have been a councilmember for 8 years and have received several campaign contributions from Mr. Paynter, who is processing a land use application in the city. You have disclosed all of Mr. Paynter's contributions on your Form 460. The city of Clovis does not have campaign contribution limits.

You wish to know if the donations preclude you from voting on Mr. Paynter's project, and if there are limitations that should be observed when voting on a project that would impact a campaign contributor.

ANALYSIS

Conflict of Interest – Financial Interests

The Act requires 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).) As a public official, you are prohibited from making a governmental decision in which you have a financial interest. (Section 87100; Regulation 18700(a).)

You have a “financial interest” in a governmental decision under the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of your economic interests. (Section 87103; Regulation 18700(a).)

If the material financial effect is reasonably foreseeable and no exception applies, you will have a disqualifying conflict of interest and must recuse yourself from discussing and voting on the matter, or otherwise acting in violation of Section 87100. (Section 87105; Regulation 18702.)

The Commission has adopted an eight-step analysis for determining whether an official has a disqualifying conflict of interest. (Section 87100; Regulation 18700(b)(1)-(b)(8).)

Step One: Are you a Public Official?

As an elected member of the Clovis City Council, you are a “member, officer, employee or consultant of a state or local government agency” and therefore, you are a public official subject to the conflict-of-interest provisions of the Act. (Section 82048; Regulation 18701.)

Step Two: Will you be making a Governmental Decision?

You will be “making” a governmental decision when, acting within the authority of your office or position, you vote on a matter, appoint a person, obligate or commit your agency to any course of action, or enter into any contractual agreement on behalf of your agency. (Section 87100; Regulation 18702.1.) Accordingly, you will make a governmental decision if you vote on Mr. Paynter’s land use application.

Step Three: What Are your Economic Interests?

A public official has an economic interest 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 enumerated economic interests, including:

- 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)); 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));
- An economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more in fair market value (Section 87103(b); Regulation 18703.2);
- An economic interest in any source of income to him or her, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- An economic interest in any source of gifts to him or her, if the gifts aggregate to \$420 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);
- An economic interest in his or her personal finances, including those of his or her immediate family (Section 87103; Regulation 18703.5.)

Campaign contributions are not among the enumerated economic interests above and are not considered either “income” or “gifts.” (Sections 82030(b)(1) and 82028(b)(4).) Therefore, the campaign contributions that you received from Mr. Paynter are not a potentially disqualifying economic interest and we may end our analysis of a potential conflict of interest here.

Section 84308

Section 84308, however, provides a special rule, applicable in certain situations that would prohibit certain public officials from participating in decisions involving persons from whom they have received campaign contributions.

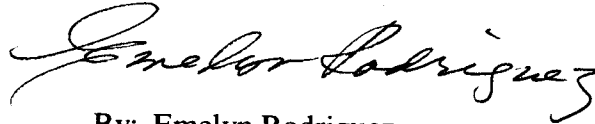
Under this rule, campaign contributions may only cause a conflict of interest for an elected official if the elected official has also been *appointed* to sit on a board or commission that makes decisions concerning licenses, permits, and other entitlements for use. (Section 84308.) For example, a city council member or a mayor may be appointed to sit on a planning commission, a cable commission, or a local area formation commission and, in this circumstance, may be disqualified from participating in a decision before that body if he or she has received a contribution of more than \$250 within the preceding 12 months from a party or participant to the proceeding.

Because you will be acting in your capacity as a member of the city council, an agency whose members are directly elected, Section 84308 does not apply to you.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script, appearing to read "Emelyn Rodriguez".

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl