



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 28, 2009

Mark Lilley
P.O. Box 572
Mount Hermon, CA 95041

Re: Your Request for Informal Assistance
Our File No. I-09-095

Dear Mr. Lilley:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ 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 letter seeks general information, we are providing you informal assistance.²

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

As an elected Director of the Felton Fire Protection District, will you have reporting obligations and a potential conflict of interest in decisions affect the Felton Volunteer Firefighters Association, if your son receives a college scholarship from the Association?

CONCLUSION

No, your son is not considered a member of your "immediate family" for purposes of the Act, therefore you will not have received as gift and you will not have a disqualifying conflict of interest in decisions affecting the Felton Volunteer Firefighters Association.

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.

² Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You are an elected official currently serving on the Board of Directors of the Felton Fire Protection District (the "District"). You are a former volunteer firefighter of the District and during that time you were also a member of the Felton Volunteer Fire Fighters Association (the "Association"), a non-profit organization that is a fund-raising club for various causes and activities. You stated that the Association is not technically affiliated with the Fire District.

The Association funds a college scholarship for students from the local high school. The scholarship funds are derived from private fundraising activities such as pancake breakfasts and other events. Your son will be graduating from high school this year and plans on applying for this scholarship. You indicated during a telephone conversation on April 20, 2009, that your son is currently 18 years old. You also stated that the board of directors of the fire district has no direct authority over the Felton Volunteer Fire Fighters Association and is not involved in the scholarship decisions.

ANALYSIS

Under the Act, a public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests unless the facts indicate that certain exceptions may apply. (Section 87100; Regulation 18700.)

Step One and Two: Are you a public official who will be making, participating in making, or influencing a governmental decision?

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) A "public official" is defined as "every member, officer, employee or consultant of a state or local government agency." (Section 82048.) You are currently a member of the Board of Directors of the Felton Fire Protection District serving as an elected official, therefore qualifying as public official for purposes of the Act. A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, appoints a person, obligates or commits his agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) As a member of the Board of Directors, you participate in decisions relating to the District. Therefore, you will be participating in making a governmental decision as specified in the Act.

Step Three: Will the Felton Volunteer Firefighters Association be considered an economic interest?

The relevant issue in your question is whether your son is considered a member of your "immediate family" for purposes of being considered an economic interest under the Act. A public official has a financial interest 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:

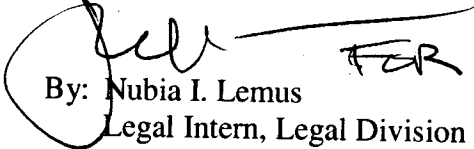
1. An economic interest in any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a); Regulation 18703.1(a)); or in any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
2. 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.)
3. An economic interest in any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 18703(c); Regulation 18703.3.) "Income" includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Section 82030(a).)
4. 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.)
5. An economic interest in his or her personal finances, including those of his or her immediate family. (Section 87103; Regulation 18703.5.)

An official's "immediate family" includes the official's spouse and dependent children. (Section 82029.) A child is considered "dependent" for purposes of the Act if the child is under 18 years old, *and* can be claimed as a dependent for federal income tax purposes. (*Bogíe Advice Letter*, No. A-03-105.) You have indicated your son is 18 years old. For purposes of the conflict-of-interest provisions of the Act your son will be not considered a member of your immediate family.³ Therefore, if your son receives the scholarship from the Association, it will not be considered a payment to you and therefore would not be an economic interest for purposes of the Act.

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

Sincerely,

Scott Hallabrin
General Counsel


By: Nubia I. Lemus

Legal Intern, Legal Division

³ However, please note that a decision that impacts your son may still affect your personal finances under some circumstances. However, the facts you have provided do not suggest that any such decision will occur. If you are confronted with a decision in that may affect your personal finances, you should contact us for specific advice.