



FAIR POLITICAL PRACTICES COMMISSION

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June 16, 2009

Phaedra A. Norton
Turlock City Attorney
156 S. Broadway, Suite 240
Turlock, CA 95380-5454

**RE: Your Request for Advice
Our File No. A-09-135**

Dear Ms. Norton:

This letter is in response to your request on behalf of the City of Turlock's Vice Mayor Ted Howze for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Given his position on the board of directors for the Turlock Youth Football League, does Vice Mayor Howze have a disqualifying conflict-of-interest if he participates in a Redevelopment Agency decision on how to allocate funds for local redevelopment projects, including a decision on a potential renovation of the Turlock High School Debely Stadium in which one of the two Turlock Youth Football League teams plays?
2. If the answer to Question one is "yes," does Mr. Howze have to follow the procedures for disqualification incumbent upon vice mayors (as 87200 filers) or those procedures applicable to non-87200 filers?

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.

CONCLUSIONS

1. No. Vice Mayor Howze does not have a disqualifying conflict of interest in the described governmental decision. Under the Act, Mr. Howze does not have an economic interest in the Turlock Youth Football League because he is an unpaid volunteer.
2. Since the answer to Question 1 is “no,” the answer to your question about disqualification is unnecessary.

FACTS

City of Turlock Councilmember and Vice Mayor Ted Howze is an unpaid parent volunteer and a member of the board of directors for the Turlock Youth Football League (the “League”). The Turlock Youth Football League is a non-profit organization. In our telephone conversation of June 9, 2009, you confirmed that Mr. Howze’s position on the board of directors is also unpaid.

The Turlock Redevelopment Agency will be deciding whether to allocate funds to the renovation of the Turlock’s High School Debely Stadium. Mr. Howze, as councilmember, would normally participate in this Redevelopment Agency decision. One of the two Turlock Youth Football League teams pays a rental fee to the Turlock Unified School District to use this stadium. However, you state that Mr. Howze’s team plays in another stadium located outside the City of Turlock. You also verbally confirmed that this possible renovation will have no financial impact on the Turlock Youth Football League player’s fees.

ANALYSIS

The Act’s conflict-of-interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interest of persons who have supported them.” (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence governmental decisions in which the official has a financial interest. The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision which has a reasonably foreseeable material financial effect on one or more of his or her economic interests.

Step 1: Is Vice Mayor Howze a “public official?”

The Act’s conflict-of-interest provisions apply only to “public officials.” (Section 87100, 87103; Regulation 18700(b)(1).) “Public official” is “every member, officer,

employee or consultant of a state or government agency . . .” (Section 82048.) As vice mayor of the City of Turlock, Mr. Howze is a public official within the meaning of the Act.

Step 2: Is Mr. Howze making, participating in making, or influencing a governmental decision?

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, 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. (Regulation 18702.1.) A public official “participates in governmental decision” when, acting within the authority of his or her position and without significant intervening substantive review, the official negotiates, advises, or makes recommendations to the decision maker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision if, for the purposes of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

Vice Mayor Howze will be making a governmental decision when he participates in determining how to allocate funds for local redevelopment projects.

Step 3: Does the Public 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 any of the following:

- An economic interest in a business entity in which the public official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)), or in any 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)).
- 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).
- An economic interest in any source of income, including promised income, which aggregated 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).

- A public official has an economic interest in his or her personal finances, including those of his or her immediate family. (Section 87103.5; Regulation 18703.5). This is called the “personal financial effects” rule.

Because the Turlock Football League is a non-profit organization, it is not a “business entity.” A “business entity” under the Act is defined as “any organization or enterprise operated for profit . . .” (Section 82005.) Therefore, Mr. Howze cannot have an economic interest in the Turlock Football League as a business entity due to his business position on the Board of Directors. (Section 87103(d).)

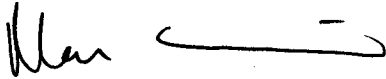
Further, you state that Mr. Howze is an unpaid volunteer for the League. Thus, the League is not a source of income to him. Mr. Howze’s team plays in another Stadium located outside the City of Turlock. Moreover, the potential renovation will have no impact on the Turlock Youth Football League player’s fees. Consequently, a decision to renovate the Turlock High School Debely stadium will not appear to have a personal financial effect on Mr. Howze. Therefore, Mr. Howze does not have an economic interest in the decision before the Turlock Redevelopment Agency.

It is not necessary to complete the latter five steps in the conflict-of-interest analysis because we have concluded that Mr. Howze does not have an economic interest in the decision.

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

Sincerely,

Scott Hallabrin
General Counsel

By: 
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MAE: jgl