



FAIR POLITICAL PRACTICES COMMISSION

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August 5, 2009

Steven Weaver
3714 Copper Penny Lane
Auburn, California 95602

Re: Your Request for Advice
Our File No. A-09-188

Dear Mr. Weaver:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Also, please note that our advice is does not extend to past conduct and 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

Are you required to disclose your reasons for recusal from a school board vote when you do not have a recognized economic interest under the Act?

CONCLUSION

No, a public official is not required to disclose his or her reasons for recusal when that official does not have an economic interest recognized under the Act.

FACTS

You are a board member for the Auburn Union School District. Your daughter attends a school that is in the Auburn Union School District. Your daughter has Cerebral Palsy and a weakened immune system that requires her to be on a home/hospital plan as required by her doctors. As a school board member, you have never used your position

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.

to influence the Individual Education Plan for your daughter at any meetings, including meetings that were not school board meetings where the plan was discussed. In the past, there was an agenda item that you were advised to abstain from voting on because it pertained to your daughter. The subject of the item was approval of three consultant teachers to be paid a certain sum of money to provide teaching services and occupational therapy for special education students. Two of the teachers were being approved to work with your daughter, and the third was for another student.

During our phone conversation on August 5, 2009, you explained that providing these home/hospital teaching services is a requirement by law for schools with special education children. You chose to abstain from participating in the vote and declined to explain why you abstained from the decision. You have been contacted by the superintendent and asked to explain why you abstained from the issue. You believe if you officially state your reasons they will be included in the meeting minutes that will be up for approval at the next meeting on August 11, 2009. However, you do not believe your abstention was due to a conflict of interest under the Act, and thus you believe you are not required under the Act to explain why you chose to abstain from the decision. You would prefer not to explain the reasons you abstained in order to protect the privacy of your daughter. You would like to make sure that the minutes do not reflect that you abstained from participating due to a conflict of interest under the Act.

ANALYSIS

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).)

You have inquired specifically about Section 87105, which requires a public official who holds an office specified in Section 87200 to publicly identify the financial interest that gave rise to the conflict of interest or potential conflict of interest, recuse himself from discussing the issue or voting on the matter and leave the room until after the discussion. Section 87105 applies only when a public official has a conflict of interest under the Act. The Commission has adopted an eight-step analysis for determining whether an official has a disqualifying conflict of interest under the Act. (Section 87100; Regulation 18700(b)(1)-(b)(8).)

Step One: Are You a Public Official?

As an Auburn Union School District board member 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.)²

Step Two: Will You Be Making a Governmental Decision?

You had a governmental decision before you and chose to recuse yourself from participating in the decision without disclosing the reason at the last school board meeting. You will have another meeting on August 11, 2009, where you will be asked to approve the meeting minutes from the last meeting and you may be asked to include your reasons for recusal. Therefore, you will have a governmental decision before you. (Section 87100; Regulation 18702.1.)

Step Three: What Are Your Economic Interests?

A public official has an economic interest that may give rise to a conflict of interest as defined by the Act 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);

² As mentioned, Section 87105 applies only to public officials who hold an office specified in Section 87200. School board members are not specifically mentioned in Section 87200 and it would appear that section may not apply to you in any case. However, since Section 87200 also includes “public officials who manage public investments” and it is possible your board members fall into that category (See Regulation 18701(b)), we continue our analysis.

- 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).

It does not appear that you have any of the above economic interests. You have not provided any facts indicating that approval or disapproval of the teachers for your daughter and another special education student would affect your personal finances or the personal finances of anyone in your immediate family. Therefore, you do not have a conflict of interest under the Act and are not required to disclose your reasons for recusal from participating in the decisions and our analysis concludes with this step.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Sukhi K. Brar
Counsel, Legal Division

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