



FAIR POLITICAL PRACTICES COMMISSION

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October 21, 2010

Jeanne Schechter
Chief Deputy City Attorney
City of Merced
678 West 18th Street
Merced, California 95340

**Re: Your Request for Informal Assistance
Our File No. I-10-139**

Dear Ms. Schechter:

This letter responds to your request for advice regarding the post governmental employment provisions of the Political Reform Act (the "Act").¹ Our advice is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Nothing in this letter should be construed to evaluate any conduct that has already taken place. Finally, our advice is limited to the provisions of the Act. We therefore offer no opinion on the application, if any, of other laws that could apply such as Public Contract Code Section 10411. Because you are seeking general information, we are providing informal assistance.²

QUESTION

1. At any point in time while in the process of negotiating terms with a prospective employer or, should you accept an offer, after that offer is accepted, are you required to publicly identify that you have a conflict of interest under Regulation 18702.5 or any other applicable regulation because of your employment negotiation?

2. Are you required to publicly disclose that you have a potential conflict of interest in negotiating a contract renewal between your current employer and your prospective employer? You have already disqualified yourself from any involvement.

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 requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

CONCLUSION

1. & 2. No. The provisions of Regulation 18702.5 only apply to public officials who hold an office identified in Section 87200 (statutory filers) and only when the public official has a conflict of interest. As a Chief Deputy City Attorney, you are a designated employee required to file a Statement of Economic Interest under your agency's conflict-of-interest code ("code filer") and not pursuant to Section 87200. Furthermore, the requirements of Regulation 18702.5 do not apply to influencing prospective employment under Section 87407.

FACTS

This request is made as a follow up to your previous request for advice (*Schechter* Advice Letter, I-10-124), which provide the following facts. You are the Chief Deputy City Attorney for the City of Merced. Your job duties include recommending firms for contracts with the city, preparing contracts for city council approval and subsequently overseeing the implementation of those contracts, such as directing counsel on work to perform, reviewing billings, bringing their recommendations before the city council, etc.

Recently, you have been approached by a law firm regarding prospective employment, an opportunity that you wish to explore. The city already has an existing contract with this law firm, which was entered into around March 2009. Presently, there is no need to amend or terminate this contract. You are in contact with this firm regarding their work, providing general direction, reviewing billings, keeping the city council advised of their work, and bringing their recommendations to the city council. You are in the early stages of discussion with regard to the possibility of joining this law firm, as you have expressed concern to them as to any potential conflicts you may have.

In the prior letter we advised you that once you are engaged in negotiating employment with the prospective employer, you may not participate in any decision that directly relates to the employer. You now wish to receive clarification as to what requirements the Act imposes on you with respect to public notification regarding your prospective employment negotiation and the fact that the prospective employer has an existing contract with your current employer and is in the process of entering a new contract.

ANALYSIS

Regulation 18702.5 states:

(a) Government Code section 87105 and this regulation apply when a public official who holds an office specified in Government Code section 87200 has a financial interest in a decision within the meaning of Government Code section 87100, and the governmental decision relates to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.).

(b) Content & Timing of Identification: The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:

(1) The public official shall publicly identify:

(A) Each type of economic interest held by the public official which is involved in the decision and gives rise to the conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and

(B) The following details identifying the economic interest(s):

(i) if an investment, the name of the business entity in which each investment is held;

(ii) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;

(iii) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;

(iv) if income or gifts, then identification of the source; and

(v) if personal financial effect, then identification of the expense, liability, asset or income affected.

(2) Form of Identification: If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.

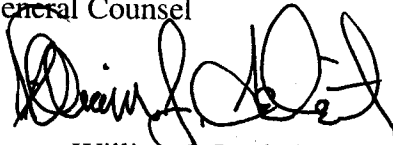
(3) Recusal/Leaving the Room: The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and (b)(2) of this regulation is made. He or she shall not be counted toward achieving a quorum while the item is discussed. (c) Special Rules for Closed Session

Only public officials whose offices are identified in Section 87200 are required to follow the above provisions and only after identifying a potential conflict of interest in a matter in which they would be participating. The provisions do not apply to the influencing prospective employment provisions under Section 87207.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink, appearing to read "William J. Lenkeit", written over the printed name below.

By: William J. Lenkeit
Senior Counsel, Legal Division

WJL:jgl

Enclosure