



FAIR POLITICAL PRACTICES COMMISSION

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April 19, 2011

Loren A. Stephen-Porter, Board Secretary
North County Fire Protection District
330 S. Main Avenue
Fallbrook, CA 92028

Re: Your Request for Advice
Our File No. A-11-038

Dear Ms. Stephen-Porter:

This letter responds to your request for advice on behalf of the North County Fire Protection District ("NCFPD") Board Member Ruth Harris regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Please note we base our advice solely on the provisions of the Act and do not address the applicability, if any, of other conflict-of-interest laws such as common law conflict-of-interest, Government Code Sections 1090 and 1099, or your agency's incompatible activities policy.

QUESTION

May Ms. Harris participate in deliberations and actions related to salary and benefit negotiations for the district's labor groups when the negotiations likely have an impact on the salary and benefits of her son-in-law, who is employed by NCFPD as a firefighter/paramedic.

CONCLUSION

Yes. Under the facts you provided, the director does not have an economic interest in decisions involving the labor groups' salary and benefits negotiations. Absent an economic interest in a decision, a conflict of interest does not exist.

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 request advice on behalf of the NCFPD Board Member Harris regarding a potential conflict of interest. Director Harris has a son-in-law (“employee”) who is employed by NCFPD as a firefighter/paramedic. The employee is married to the director’s daughter and they have a son.

NCFPD has begun negotiations with three labor groups regarding the Memorandum of Understanding (“MOU”) for the next agreement period. The employee belongs to one of the three labor groups. The negotiations will involve matters such as possible salary increases, reductions, or other significant change in responsibilities for retirement benefits, health care, and other related compensation.

Due to the difficult financial times and the heightened public scrutiny, the Board is concerned about a conflict-of-interest in Board Member Harris’ participation in future deliberations and decisions involving these negotiations. Previous to NCFPD seeking this advice, both the board member and the district were informed in separate phone calls to the FPPC that there is no conflict of interest because the employee is not a member of the director’s “immediate family.”² Therefore, the board member’s participation is permitted at the same level as any other director on the board.

Ms. Harris has relayed that there is no financial reliance or relationship between herself and her spouse and the employee and his family. Each is financially independent from the other and neither is a source of income to the other. The parties do not own any business or real property together. The only gifts exchanged among the parties are small personal gifts typical among family members.³

You wish to receive written advice regarding whether Board Member Harris would be permitted or prohibited from involvement in the deliberations and actions related to salary and benefit negotiations for the district labor group’s MOUs.

ANALYSIS

Step 1. Is Board Member Harris a “public official”?

Section 82048 defines a public official as “every member, officer, employee or consultant of a state or local government agency.” Because Board Member Harris is a member of NCFPD, a local government agency, she is a public official.

² “Immediate family” is defined at Section 82029 to mean the official’s “spouse and dependent children.”

³ Gifts from certain family members do not constitute gifts and are not reportable under the Act. (See Regulation 18942.)

Step 2. Will Board Member Harris be 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 a governmental decision” when, acting within the authority of his or her position and without significant substantive intervening review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.)

A public official is attempting to use his or her official position to influence a governmental decision if, for the purpose of influencing the decision, the official contacts or appears before or otherwise attempts to influence, any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3(a).) With regard to governmental decisions that are within or before an agency other than the official’s agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. (Regulation 18702.3(b).)

If Board Member Harris votes in decisions involving the district labor groups’ salary and benefits negotiations, she will be making governmental decisions.

Step 3. What are Board Member Harris’ economic interests?

The Act’s conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests. These economic interests are described in Section 87103 and Regulations 18703-18703.5, inclusive:

- A public official has 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).)
- A public official has an economic interest in a 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).)
- A public official has 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 official has an economic interest in any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- A public official has an economic interest in any source of gifts to him or her if the gifts total \$420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- Lastly, a public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is commonly referred to as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

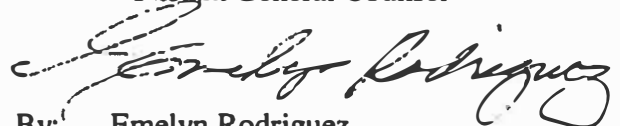
You state that Board Member Harris’ son-in-law may be affected financially by the MOU negotiations as he is a firefighter who works for the district and that his benefits and compensation would likely be impacted by a new contract. However, Board Member Harris’ son-in-law is not a member of her “immediate family” as defined under Section 82029, which applies the term only to an official’s “spouse and dependent children.” Furthermore, you state that “there is no financial reliance or relationship between the director and his/her spouse and the employee and his family,” and that each is financially independent from the other and neither is a source of income to the other. In addition, the parties do not own any business or real property together.

Based on these facts, we conclude that Board Member Harris does not have an economic interest in the government decisions involving the labor groups’ salary and benefits negotiations. Absent an economic interest in the decision, a conflict of interest does not exist. Therefore, the director does not have a conflict-of-interest in participating in district decisions involving the district labor groups’ MOU negotiations.⁴

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

⁴ We also wish to point out that even if her son-in-law was considered a member of her immediate family that the financial effects of the decision that affects only the salary, per diem, or reimbursement for expenses received by a family member from a federal, state, or local agency would not be considered material under some circumstances. (See Regulation 18705.5(b).)