



FAIR POLITICAL PRACTICES COMMISSION

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May 13, 2010

Timothy Ford
Office of Legal Services
Department of Public Health
P.O. Box 997377, MS 0506
Sacramento, CA 95899-7377

**RE: Your Request for Advice
Our File No. A-11-070**

Dear Mr. Ford:

This letter responds to your request for advice on behalf of Patricia Rodriguez 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 a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Additionally, our advice is limited to obligations arising under the Act. We do not address the applicability, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

QUESTION

Does Patricia Rodriguez have a conflict of interest in serving as house counsel for the agency's WIC Program when her husband owns a business that supplies Hispanic food items to stores that may be selected as vendors under the WIC Program?

CONCLUSION

No. A public official does not have a conflict of interest merely by holding public employment or in serving as house counsel for the program. Rather, an official has a conflict of interest if the official will be making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial

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.

interest. Under the facts presented, because Ms. Rodriguez decisionmaking is not involved in the selection of vendors participating in the program, she is not making, participating in, or using her official position to influence a governmental decision that could affect the stores in question.

FACTS

The Supplemental Nutrition Program for Women ("WIC") is a 100 percent federally funded program administered by the Department of Public Health that provides healthy foods and education to pregnant and post-partum women and their children under the age of five. Participants must show nutritional risk and meet income requirements.

The California WIC Program is managed by a program Division Chief and four Assistant Chiefs. There are nine branches under the program. Patricia Rodriguez is an attorney with your agency and has served as house counsel for the WIC program since January 1996. In those years, she has provided general house counsel advice to all nine branches. She provides advice on contract issues (such as the infant formula rebate, infant cereal rebate, local agency contract, and various other contracts involving the WIC Program), general vendor legal issues (federal requirements, vendor contract language, confidentiality issues), participant confidentiality issues, participant eligibility issues, budget issues, issues with federal laws and regulations, public records requests, regulations, legislative proposals, bill analysis, etc.

Ms. Rodriguez's husband, Robert, is the owner of Mercado Latino, Inc., ("ML") a small, family run business that specializes in Hispanic products. The bulk of the WIC program food items provided are: milk, cheese, eggs, breads (including tortillas), cereal, infant cereal, infant formula, baby food, juices, and fresh fruits and vegetables. ML does not sell any of these products. Ms. Rodriguez is not involved in the operation of the business and is not aware of who the customers are. ML does not know what customers are authorized under the WIC Program and they have no business reason to know.

As the WIC Program house counsel, Ms. Rodriguez is not involved in the authorization, disqualification, or appeal process of particular vendors. The WIC program staff conducts the investigations, determines the disqualifications, and testifies at the hearing. The WIC house counsel is not involved in the individual store investigations or disqualifications. The agency litigation attorneys, a separate unit in the legal division, represent the agency at any hearings. Ms. Rodriguez takes no part in decisions regarding the authorization, disqualification, or appeal of any particular vendor.

In a recent conversation, Ms. Rodriguez further indicated that she cannot think of any items that ML supplies that come under the WIC Program.

ANALYSIS POTENTIAL CONFLICT OF INTEREST

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 interests or the financial interests 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 a governmental decision 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 that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

STEP 1: IS MS. RODRIGUEZ A PUBLIC OFFICIAL MAKING, PARTICIPATING IN MAKING, OR INFLUENCING A GOVERNMENTAL DECISION?

As an employee of the Department of Public Health, Ms. Rodriguez is a public official under the Act. (Section 82048.) Consequently, she may not make, participate in making, or otherwise use her official position to influence any decision that will have a reasonably foreseeable material financial effect on any of her economic interests.

STEP 2: WILL MS. RODRIGUEZ BE MAKING, PARTICIPATING IN MAKING, OR INFLUENCING A GOVERNMENTAL DECISION?

Ms. Rodriguez will be making, participate in making, or otherwise using her official position to influence governmental decisions.

STEP 3: DOES MS. RODRIGUEZ 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 the official, a member of his or her immediate family, or on any one of five 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 any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)

Ms. Rodriguez has an interest in her spouse's business. She also has an interest in any source of income to the business, where her community property share is worth \$500 or more.²

STEP 4: IS THE ECONOMIC INTEREST DIRECTLY INVOLVED IN THE GOVERNMENTAL DECISION ?

"In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision." (Regulation 18704(a).)

According to your facts, Ms. Rodriguez's job duties do not involved making, participating in, or using her official position to influence a governmental decision regarding the selection of WIC Program participants or vendors. Thus, the only possible conflict of interest under your facts would be due to decisions that indirectly affect the store or sources of income.

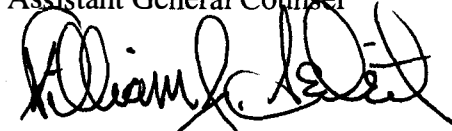
STEP 5: WHAT IS THE MATERIALITY STANDARD

The applicable materiality standards for governmental decisions for business entities indirectly involved in a governmental decision are set forth in Regulation 18705.1(c). For relatively small businesses (those with annual net income of \$750,000 or less) the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that the governmental decision will increase/decrease the business entity's annual gross revenues by \$20,000 or more, result in the business entity incurring/avoiding additional expenses or reducing/eliminating existing expenses by \$5,000 or more in a fiscal year or increasing/decreasing the value of the business entity's assets by \$20,000 or more. (Regulation 18705.1(c)(4).)

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: William L. Tenkeit
Senior Counsel, Legal Division

WJL:jgl

² An official also has an interest in his or her personal finances. You have not described any effects on your personal finances, therefore we so not further analyze this economic interest.