



## FAIR POLITICAL PRACTICES COMMISSION

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May 31, 2011

Jennifer A. Mizrahi  
Deputy City Attorney  
City of Victorville  
Green, de Bortnowsky & Quintanilla, LLP  
28301 Calabasas Rd., Suite 1015  
Calabasas, CA 91302

Re: Your Request for Advice  
**Our File No. A-11-079**

Dear Ms. Mizrahi:

This letter responds to your request for advice on behalf of Victorville City Councilmember Angela Valles regarding conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please bear in mind that our advice is based solely on the provisions of 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

May Councilmember Valles participate in city council decisions and closed session discussions regarding the Victor Valley Wastewater Reclamation Authority (the "VWRA")?

### CONCLUSION

Based on the facts presented in your request, Councilmember Valles does not have an economic interest that will be affected by city council decisions involving VWRA. Therefore, participating in decisions about the VWRA would not give rise to a conflict of interest for her under the Act.

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<sup>1</sup> 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 are Deputy City Attorney for the City of Victorville (the "City"). The City is a charter city with five elected councilmembers. Victorville is one of four member agencies that are parties to a Joint Exercise of Powers Agreement (the "JPA") which created the VVWRA in December 1977. The VVWRA is a Joint Powers Authority formed pursuant to the Joint Exercise of Powers Act (Gov. Code Section 6500 et seq.) and is considered a public agency.

The VVWRA includes in addition to Victorville, the Town of Apple Valley, the City of Hesperia and two San Bernardino County Service Areas, and operates the regional wastewater plant that serves the four member agencies.

The JPA Agreement provides that the governing body of each member agency appoint one commissioner to serve on the VVWRA Board of Commissioners (the "Board"). The Board is the governing body of the VVWRA.

Recently elected Victorville Councilmember Valles is employed by the VVWRA as its Director of Finance and reports to the VVWRA's General Manager ("GM"). Ms. Valles also serves as a Treasurer for the VVWRA. However, Ms. Valles has informed your office that: (1) it is the VVWRA GM who implements the policies dictated by the Board; (2) Ms. Valles makes no managerial decisions for the VVWRA, but merely follows the GM's instructions; and (3) if the GM is absent, the VVWRA Director of Operations is in charge, not Ms. Valles.

As a member agency of the VVWRA, the Victorville City Council often has business relating to the VVWRA on its agendas. Agenda items include both open and closed session items addressing VVWRA related issues including the delay of the governing bodies of the member agencies to approve an amendment to the JPA Agreement, which in turn is delaying the VVWRA's consideration and approval of certain needed contracts between Victorville and the VVWRA for sludge management and other sewer-related issues.

Your office sought e-mail and telephone advice from the Commission at the request of Ms. Valles, and Ms. Valles has not participated in any discussions or items relating to the VVWRA agenda. She has also refrained from participating in various closed session items regarding threatened litigation with the VVWRA and two of its member agencies arising from the difficulties described above.

You wish to know whether Ms. Valles is prohibited from participating in city council decisions and closed session discussions regarding the VVWRA.

## ANALYSIS

*Economic Interests.* The Political Reform Act prohibits a public official<sup>2</sup> 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. (Section 87100.) Section 87103 of the Act provides that an official has a financial interest in a decision within the meaning of Section 87100 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 any of the official's economic interests listed in Section 87103. You have only asked about potential income received from VVWRA, thus we limit our discussion to this economic interest.

Section 82030 of the Act provides that the definition of "income" does not include an official's "[s]alary and reimbursement for expenses or per diem received from a state, local, or federal government agency. . . ." A joint powers authority is considered a local government agency. (Section 82041; *Moser* Advice Letter, A-97-296.) Therefore, the salary and reimbursement for expenses that Councilmember Valles receives from the VVWRA as its Director of Finance do not constitute a source of income to her under Section 87103(c). (See *Hanna* Advice Letter, No. A-96-291.) Further, the joint powers authority is not a business entity so her position at VVWRA does not constitute an economic interest of hers under Section 87103(d). (*Hanna* Advice Letter, *supra*.)


Because you have not described any economic interests of Councilmember Valles that would give rise to a conflict under the Act, our analysis ends here and we do not discuss whether it is foreseeable that a decision about VVWRA would have a material financial effect on that interest.

Based on the facts presented in your request, Councilmember Valles' salary from VVWRA does not constitute an economic interest that will be affected by city council decisions involving VVWRA. Therefore, her participation in decisions about the VVWRA will not give rise to a conflict of interest for her under the Act.

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

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<sup>2</sup> A "public official" is defined as a member, officer, employee, or consultant of a state or local government agency. (Section 82048; Regulation 18700.) As a Victorville city councilmember and as VVWRA's Director of Finance, Ms. Valles is a "public official" under the Act.