



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 26, 2011

Ana Maria Quintana
Councilmember City of Bell
4300 Walnut St. Apt. F
Bell, CA 90201

**Re: Your Request for Informal Assistance
Our File No. I-11-135**

Dear Councilmember Quintana:

This letter is in response to your request for advice regarding your duties as a city councilmember of the City of Bell under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Some of your questions deal with the duties of another councilmember in Bell. The Commission will not give advice to third parties about another person's duties under the Act. However, we are able to provide you with general information in this regard. Because our responses are general in nature, we are treating your request as one for informal assistance.²

Please note further that the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A.)) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. Moreover, please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other ethics laws such as common law conflict of interest rules.

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).

QUESTIONS

1. What are the consequences on city council members who participated in a city vote if one of the members of the city council had a conflict of interest at the time?
2. What are the consequences on the city's vote if one of the members of the city council had a conflict of interest at the time?

CONCLUSIONS AND DISCUSSION

1. Liability for Other Councilmembers

We have previously advised the following:

“Disqualification is personal as to the official and does not prohibit the agency from acting without the official’s input and participation. This scheme obviously envisions that the disqualified official may be supplanted in the decision-making process where delegation or transfer of the decision is appropriate. [Citations omitted] This is the case so long as the disqualified official does not make, participate in making, or use his/her official position to influence the making of the decision by the person to whom the decision is delegated.” (*Benjamin Advice Letter*, No. A-86-148.)

Section 87100 prohibits any public official from making, participating in making, or attempting to influence a governmental decision, in which the official has a financial interest. This provision prohibits you from participating in a decision of the city council in which you have a financial interest. However, this provision does not prevent you from making or participating in making a decision in which another councilmember has a conflict of interest. Thus, you would not have a conflict of interest nor would you otherwise be prohibited from voting on a decision in which another councilmember who has a conflict of interest also participates.

In addition, in the *Leahy Advice Letter*, No. A-95-038, we discussed that mere participation in the decision would not constitute aiding and abetting the member with the conflict of interest under the Act. (*Leahy Advice Letter*, No. A-95-038; *Kloeker Advice Letter*, No. A-95-018.)

Accordingly, the Act’s conflict-of-interest provisions do not preclude the city council from deliberating and voting on the matter.

2. Liability for the City

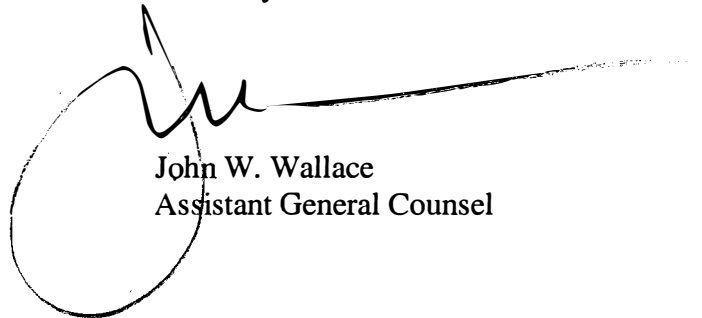
However, should a disqualified councilmember take part in the decision, any action taken by the city council may be void or voidable under Section 91003(b), which states in pertinent part:

“Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Section 87100), Article 4 (commencing with Section 87400), or Article 4.5 (commencing with Section 87450) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include, but are not limited to orders, permits, resolutions and contracts”

The city would not be liable *administratively* for a conflict of interest of one of its city council members, but under certain circumstances the city's vote could be set aside by a court.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

A handwritten signature in black ink, appearing to read 'John W. Wallace', with a long horizontal flourish extending to the right.

John W. Wallace
Assistant General Counsel

JWW:jgl

Enclosure