



FAIR POLITICAL PRACTICES COMMISSION

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April 10, 2012

Julia M. Lew, Lindsay City Attorney
McCORMICK, KABOT, JENNER & LEW
1220 West Main Street
Visalia, CA 93291

Re: Your Request for Advice
Our file No. A-12-041

Dear Ms. Lew:

This letter responds to your request for advice on behalf of Lindsay City Councilmember Esteban Velasquez¹ regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").² In addition, our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest.

QUESTION

Does City Councilmember Velasquez have a conflict of interest that would prevent him from participating in decisions regarding an agreement between the city and the Lindsay Local Hospital District that pertains to the joint planning and funding of the Wellness Center facility when his wife sits on the hospital board?

CONCLUSION

No. Mr. Velasquez does not have a cognizable economic interest under the Act.

¹ The Commission cannot provide third party advice. While you have provided information about Mrs. Velasquez, we limit our advice to your client, Mr. Velasquez.

² 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 the City Attorney for the City of Lindsay, and you make this request for advice on Council Member Esteban Velasquez's behalf. Mr. Velasquez's wife serves as an elected official of the Lindsay Local Hospital District Board, a Hospital District formed in accordance with California Health and Safety Code Section 32000 et seq. In 2005/2006, the City and the District entered into a Memorandum of Understanding, and in 2007, the entities entered into a Joint Funding Agreement (the "Agreements"). Both Agreements pertain to the joint planning and funding of the Wellness Center facility project in the City. Neither Mr. Velasquez nor his wife stand to be financially benefitted or affected by the project or the Agreements. The only financial compensation that he or his wife receives is the per-meeting compensation that they receive in service to their respective boards. Mr. Velasquez receives \$50 per City Council meeting, and his wife receives no more than \$100 per hospital board meeting, with a maximum of 5 meetings allowed per month.

There is a potential dispute brewing between the agencies concerning the scope and other provisions of the Agreements and Mr. and Mrs. Velasquez could participate in decisions on behalf of their respective boards.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in any given governmental decision.

Steps One and Two: Is Mr. Velasquez a Public Official Making, Participating in Making, or Influencing Governmental Decisions?

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) A "public official" is "every member, officer, employee or consultant of a state or local government agency . . ." (Section 82048.) As a member of the Lindsay City Council, Mr. Velasquez is a public official under the Act.

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 intervening substantive review, the official negotiates, advises, or makes recommendations to the decision-maker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to

use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.) Mr. Velasquez will be called upon to make governmental decisions about the Agreements between Lindsay and the Lindsay Local Hospital District.

Step Three: What are Mr. Velasquez's Economic Interests?

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. (Section 87103; Regulations 18703-18703.5.)

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).)
- An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)
- Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
- A public official also 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 also known as the "personal financial effects" rule. (Section 87103, Regulation 18703.5.)

The only economic interest in which we have information is Mr. Velasquez's interest in the per-meeting payment he receives for attending City Council meetings and his economic interest in his wife's stipend of \$100 per hospital board meeting. The Act excludes from the definition of income: "Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency . . ." Section 82030(b)(2). Consequently, the payments you described are not income and are not an "economic interest" under the Act.³

³ Regulation 18705.5, involving a public official's personal finances, states that where the decision does not involve appointing, hiring, firing, promoting, demoting, suspending without pay or otherwise taking disciplinary action with financial sanction against the official or a member of his or her immediate family or setting a salary for the official or his or her immediate family, there is no presumption of materiality. Because these decisions are not implicated, this regulation does not apply.

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl