



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

April 12, 2016

Christine Dietrick, City Attorney  
City Attorney's Office  
990 Palm Street  
San Luis Obispo, CA 93401

Re: Your Request for Advice  
Our File No. A-16-041

Dear Ms. Dietrick:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

### QUESTION

Does Councilmember John Ashbaugh have a conflict of interest in decisions related to a development project in downtown San Luis Obispo that is just over 500 feet from his spouse's law firm?

### CONCLUSION

Yes. As explained below, it is reasonably foreseeable that the decisions regarding the project could have a material financial effect on a new multi-year lease that the law firm intends to execute.

### FACTS

John Ashbaugh is a councilmember for the City of San Luis Obispo ("City") and is therefore a public official under the Act. His spouse is a licensed attorney and is a principal partner in the firm Maguire & Ashbaugh (the "Firm"). Councilmember Ashbaugh has a community property interest in his spouse's 50% share of the Firm, which almost exclusively provides criminal defense services under a contract with the County of San Luis Obispo to serve as its primary public defender's office. The Firm has one office located at 991 Osos Street, Suite C in San Luis Obispo, which is located in the City's downtown and is immediately across the street from the County courthouse. The County facilities occupy an entire block between 991 Osos Street and the subject

---

<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.

site at 1101 Monterey Street. This part of the Downtown, south of Santa Rosa Street, on both sides of Monterey Street, is fully developed. The firm has historically leased the space per a multi-year lease. The Firm has been at this location since December 1, 1980 under a multi-year lease and anticipates entering into a new multi-year lease within the next few months.<sup>2</sup> Due to the nature of the criminal defense practice, virtually no business for the Firm is generated by the location of the office, including its proximity to downtown retail, commercial, tourist or other public amenities.

The City has received an application for a mixed use development located at 1101 Monterey Street, which is located slightly more than 500 feet from the Firm's office. The proposed development project, which is in the City's conceptual review stage of processing, currently consists of the following: a 75-foot tall building that includes an 80-room hotel, 26,000 square feet of residential units, 20,000 square feet of retail/restaurant space, 33,000 square feet of office space and a 45-foot tall parking garage and transit center with approximately 400 parking spaces. The project also proposes a public plaza area. The project is located within the northernmost section the City's downtown area and is considered to be a significant development which could bring substantial new activity to the northern downtown area and the City's upper Monterey Street area. At this time, the specific impacts of the project within this area of the City are unknown. Preliminary analysis, however, indicates that the project would not substantially increase traffic on Osos Street at Monterey where the Firm is situated.

## ANALYSIS

Section 87100 prohibits public officials from participating in governmental decisions in which they have a financial interest. Section 87103 provides that a public official has a financial interest in a decision 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 one or more of the official's economic interests. The financial interests are:

1. Any business entity in which the public official has a direct or indirect<sup>3</sup> investment worth two thousand dollars (\$2,000) or more.
2. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
3. Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by,

---

<sup>2</sup> On March 29, 2016, you forwarded an email from Councilmember Ashbaugh's spouse containing the following supplemental information: the Firm's most recent lease was effective for a three-year period beginning July 1, 2011 and ending July 1, 2014. It subsequently converted to a month-to-month tenancy, but Mrs. Ashbaugh anticipates executing a new multi-year lease sometime around the end of June 2016. In addition, the expired lease had a clause permitting the Firm to sublease the property with permission from the landlord.

<sup>3</sup> "For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater." (Section 87103.)

the public official within 12 months prior to the time when the decision is made.

4. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
5. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$460]<sup>4</sup> or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.
6. Personal finances, meaning the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family.

#### *The Firm*

Councilmember Ashbaugh's spouse is a partner at the Firm with an investment of \$2,000 or more in the business. Because Councilmember Ashbaugh has an indirect investment in his spouse's investment, he has an economic interest in the Firm as a business entity. (Section 87103 (a) and (d).) Councilmember Ashbaugh's community property interest in his spouse's income from the Firm will also equal or exceed \$500 in the 12 months prior to a decision. Therefore, Councilmember Ashbaugh also has an economic interest in the Firm as a source of income. (Section 87102(c).)

#### *Clients of the Firm*

Because Councilmember Ashbaugh's spouse has a 10-percent or greater interest in the Firm, Councilmember Ashbaugh may also have economic interests in its clients. To the extent that Councilmember Ashbaugh's community property interest in his spouse's pro rata share of income from any client of the Firm equals or exceeds \$500 in the 12 months prior to a decision, Councilmember Ashbaugh has an economic interest in the client as a source of income.

#### *The Firm's Property Lease*

Because Councilmember Ashbaugh's spouse has a 10-percent or greater interest in the Firm, Councilmember Ashbaugh has an economic interest in the pro rata share of any real property interest held by the law firm. This includes any interest in a lease, other than an interest of a tenant in a periodic tenancy of one month or less. (Section 82033.) From the facts provided, the most recent multi-year lease expired and converted into a month-to-month lease, which would not result in an economic interest for Councilmember Ashbaugh. However, his spouse anticipates entering a new multi-year lease at the end of June 2016 so we continue our analysis under the assumption that Councilmember Ashbaugh's pro rata share of the interest in that new lease will presumably be

---

<sup>4</sup> The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to Section 89503(f). The quoted provision above has been modified with the current figure.

\$2,000 or more, and that he will therefore have an economic interest in the Firm's real property lease.

### *Personal Finances*

A public official always has an economic interest in his or her personal finances. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. (Section 87103; Regulation 18703.5.)

### **Foreseeability and Materiality**

Regulation 18701 provides two different standards for determining foreseeability, depending on whether an official's interest is explicitly involved in the decision. In this case, Councilmember Ashbaugh's financial interests, based on his spouse's law firm interest, are not named parties in the decisions, nor would the decisions involve contracts between the Firm and the City. His interests are therefore not explicitly involved in the decisions. (Regulation 18701(a).) Where an official's interest is not explicitly involved in a governmental decision, we have found that the effect of the decision "[. . .] need not be likely to be considered reasonably foreseeable," but rather, the project's effect on the official's finances must be "[. . .] a realistic possibility and more than hypothetical or theoretical [. . .]." (Regulation 18701(b).) You describe a project that is slightly more than 500 feet from the Firm's leased property, but that will significantly change the character of the area.

Under Regulation 18702(b), a financial effect on leased property is material when the decision would:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Increase or decrease the rental value of the property, and the official has a right to sublease the property;
- (4) Change the official's actual or legally allowable use of the real property;
- (5) Impact the official's use and enjoyment of the real property.

As mentioned, the Firm's most current lease expired and converted to a month-to-month tenancy, but it anticipates signing a new multi-year lease in within the next few months.<sup>5</sup> Currently, we do not have information regarding the terms of the new lease and what impact the downtown project will have on the lease amount or the "use and enjoyment" of the property. But given the expansive scope of the project, it is reasonable to assume there would be some effect either on the new lease (including the rental value of any sublease the Firm might enter) or the "use and enjoyment of the property.

---

<sup>5</sup> Again, although the Firm's lease is currently a month-to-month tenancy, which does not create a real property interest for Councilmember Ashbaugh, we are proceeding with our analysis on the assumption that governmental decisions concerning the proposed project will be made when the Firm has a new multi-year lease.

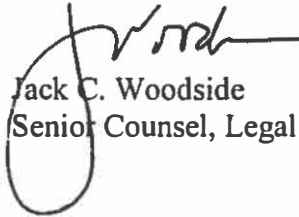
Councilmember Ashbaugh's other financial interests relate to his spouse's law firm as a business as well as its clients. You stated that the clients to the law firm are referrals from the County and that the law firm acts as the County's public defender. This is not a business model that would be impacted by a development project nearby and it is therefore not reasonably foreseeable that the business will experience a material financial effect. Because we do not have information on the clients to the Firm who are a source of income to Councilmember Ashbaugh, we cannot comment on the decision's effect on the clients.

You have not provided any information to suggest that any exception would apply.

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

Sincerely,

Hyla P. Wagner  
General Counsel

By:  Jack C. Woodside  
Senior Counsel, Legal Division

JW:jgl