



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 5, 2016

Phil Hillman, CPA
Chief Business Official
Ontario-Montclair School District
950 West D Street
Ontario, CA 91762

Re: Your Request for Informal Assistance
Our File No. I-16-072

Dear Mr. Hillman:

This letter responds to your request for advice regarding conflict of interest provisions of the Political Reform Act (the "Act").¹ 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 1090.² Because your request seeks general guidance, we are treating your request as one for informal assistance.³

QUESTION

Does an official who serves on the board of directors of a credit union, without compensation, have a conflict of interest in governmental decisions affecting the credit union?

CONCLUSION

No. The official would not have a financial interest in the decisions and is therefore not prohibited from participating in the decisions.

FACTS

You are the Chief Business Official for the Ontario-Montclair School District ("school district"). An accounting manager for the school district was recently asked to serve on the board

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 Although your request references Section 1090, we do not provide informal assistance concerning those provisions. We recommend that you review the California Attorney General's conflict of interest manual at <https://oag.ca.gov/> for a substantive overview of Section 1090 conflicts of interest.

³ Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

for the Ontario-Montclair School Employees Federal Credit Union⁴ (“credit union”), with whom the school district has multiple banking accounts. His position as director on the board would be uncompensated. One function of the accounting manager is to review the work of other school district employees who reconcile the credit union accounts to make certain that the credit union has processed the school district’s accounts correctly. The accounting manager does not participate in investment decisions.

You are concerned that potential conflicts of interest could arise if the school district decides, for example, to open or close an account with the credit union or to open a new account with a competing bank or credit union. In either situation, you proffer that any information, opinion or recommendation that he would provide would have a significant intervening substantive review by you.

ANALYSIS

Conflict of Interest

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 investment worth two thousand dollars (\$2,000) or more. (Section 87103(a).)
2. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)
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, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
4. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)

⁴ Although your email was silent on the issue, we presume for purposes of this advice that this credit union, similar to other federal credit unions, is a not-for-profit entity. (See, e.g., https://en.wikipedia.org/wiki/Credit_union.)

5. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$460] 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. (Section 87103(e).)
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.

You have asked whether the accounting manager is prohibited from participating in decisions affecting a credit union if the official serves, without compensation, on the credit union's board of directors.

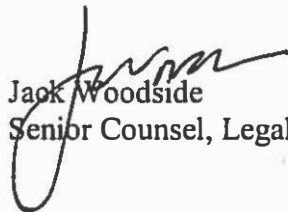
Section 87103(d) identifies that a business entity in which a public official holds a position as a director could be a potentially disqualifying economic interest. Section 82005 of the Act defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. Thus, a not-for-profit entity, such as the credit union, is not a potentially disqualifying interest pursuant to Section 87103(d). The only other interest implicated by the facts of your request for advice is source of income under Section 87103(e). You have indicated, however, that the accounting manager will not receive any compensation for his work. Therefore, the credit union is not a source of income for the accounting manager.

Accordingly, the credit union is not a "financial interest" under the Act for the accounting manager who will serve on its board and he will not have a conflict of interest under the Act if he engages in school district decisions financially affecting the credit union. However, as stated above, our advice is limited to the Act.⁵

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

Sincerely,

Hyla P. Wagner
General Counsel

By: 
Jack Woodside
Senior Counsel, Legal Division

JW:jgl

⁵ Agencies are required to have a "statement of incompatible activities" which also may be implicated. In light of the facts you present, we encourage you to review your agency's statement of incompatible activities.