



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 26, 2020

Peter J. Nolan
Assistant City Attorney
SBEMP
1800 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Re: Your Request for Informal Assistance
Our File No. I- 20-098

Dear Mr. Nolan:

This letter responds to your request for advice on behalf of the Mayor of Needles, Jeff Williams, regarding the 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. Because your inquiry is general in nature, we are treating your request as one for informal assistance.²

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

To what extent may Mayor Williams, in his private capacity, accept a role with Medical Investment Holdings (“MIH”), a cannabis business, before rising to the level of conflict of interest and/or requiring that he recuse himself from cannabis-related decisions?

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).)

CONCLUSION

The Act does not prohibit Mayor Williams from accepting a private position while also serving as the Mayor of Needles. However, Mayor Williams' potential employment with a private employer may ultimately implicate the Act and disqualify him from governmental decision-making. As explained below, under the Act's conflict-of-interest provisions, Mayor Williams may not make, participate in making, or use his position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect on any economic interest he may have, including any interest in a private employer. Further, under Section 87407, he may not make, participate in making, or use his position to influence a governmental decision directly related to a prospective employer prior to accepting employment.

FACTS AS PRESENTED BY REQUESTER

Jeff Williams is currently the Mayor of Needles and is up for re-election in November. As a Charter City, the Charter provides that the mayor only votes to break a tie.

Mayor Williams is currently considering accepting a position with Medical Investment Holdings ("MIH"), a cannabis business, as the legislative affairs director. If he accepts the position, he has indicated that he will recuse himself on any and all matters involving cannabis issues or decisions. He will also refrain from communicating with any City staff or consultants in regard to cannabis issues. And should he accept the position, he intends to submit a letter to the City Manager stating that he is recusing himself on all cannabis-related issues.

ANALYSIS

Section 87100 prohibits any public official 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. 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, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) The financial interests relevant to Mr. Williams are:

- *Source of Income:* MIH will presumably be paying Mayor Williams a salary of more than \$500 in a 12-month period. (Section 87103(c).)
- *Business Entity:* Mayor Williams will be an employee of MIH. (Section 87103(d).)

Additionally, Regulation 18704 defines "making," "participating in making," and "influencing" a governmental decision:

- *Making a Governmental Decision:* A public official "makes a governmental decision" when the official "authorizes or directs any action, votes, appoints a person, 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."

- *Participating in Making a Governmental Decision:* A public official “participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.”
- *Influencing a Governmental Decision:* A public official “ ‘uses his or her official position to influence a governmental decision’ if he or she ‘contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision.’ A public official also ‘uses his or her official position to influence a governmental decision’ if he or she contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.”

For Mayor Williams’ general assistance, nothing in the Act prohibits him from accepting employment with a private entity while also serving as Mayor of Needles. However, he will be prohibited from making, participating in making, or using his position to influence any decision with a foreseeable and material effect on a financial interest. In this instance, his financial interests may include any entity which has paid him \$500 or more in the 12-month period prior to the decision, or a business entity in which he is an employee.

We caution, however, that Mayor Williams will likely be prohibited from contacting or appearing before City of Needles staff or officials on behalf of MIH. Additionally, he is potentially disqualified and may need to recuse himself from any City Council decisions implicating MIH. Should Mayor Williams need assistance regarding any particular decision before the City of Needles, he should seek additional advice describing the specific decision at issue.

Section 87407:

In addition to the conflict-of-interest provisions, Section 87407 prohibits public officials from taking part in certain decisions affecting a potential employer if the official is negotiating or has an arrangement regarding prospective employment. While an official may negotiate and accept an offer of future employment while employed by a governmental agency, Section 87407 requires that the official does not use his or her governmental position to make decisions that unduly benefit the organization hiring the official. More specifically, Section 87407 states:

No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

A public official is “negotiating” employment “when he or she interviews or discusses an offer of employment with an employer or his or her agent.” (Regulation 18747(c)(1).) A public official has an “arrangement” concerning prospective employment when he or she accepts an offer of employment. (Regulation 18747(c)(2).)

You have stated that Mayor Williams is currently considering accepting a position with MIH. Unless he rejects this offer, he is currently “negotiating” prospective employment and is prohibited under Section 87407 from making, participating in making, or using his official position to influence any governmental decisions “directly relating” to MIH. A decision “directly relates” to a prospective employer if the public official knows or has reason to know that the employer, or the employer’s agent, has either (1) initiated the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request; or (2) is a named party in, or subject of, the proceeding. (Regulations 18701.1 and 18747(b).) A decision also “directly relates” to a prospective employer if the public official knows or has reason to know that it is reasonably foreseeable that the financial effect of the decision on a prospective employer is material. The financial effect of a decision on a prospective employer that is a business entity is material if the effect meets the materiality thresholds established under Regulation 18702.1.

Because Mayor Williams is negotiating employment, prior to taking part in a governmental decision, he must separately determine whether MIH is directly involved in the decision or whether the decision may have a reasonably foreseeable material financial effect on MIH.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd", is positioned above the typed name of the signatory.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja