STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Silver and Commissioners Brandt, Ortiz, and Wilson

From: Dave Bainbridge, General Counsel
Kevin Cornwall, Senior Commission Counsel

Subject: **Opinion Requested Regarding Affiliations Between Non-Profits for the Purpose of Determining Conflicts of Interest Under the Act**

Date: June 19, 2025

Executive Summary

In *Vanni* Advice Letter, No. I-24-102, FPPC Legal Division staff advised the Palo Alto City Attorney, on behalf of Palo Alto City Manager Edward Shikada, that City Manager Shikada had an economic interest in Stanford University as a source of income based on Stanford University's control of Stanford Health Care ("SHC"), his spouse's employer, despite Stanford University and SHC being legally distinct nonprofit organizations. The City Attorney now requests that the Commission determine that City Manager Shikada does not have an economic interest in Stanford University, in contrast to the conclusion reached in the *Vanni* Advice Letter, as well as previous advice letters examining the relationship between Stanford University and SHC (formerly "Stanford Hospital"). The City Attorney also requests a Commission Opinion clarifying when a public official with an economic interest in one nonprofit organization also has an economic interest in a related nonprofit organization for purposes of the Act's conflict of interest provisions.

Legal Division staff has researched and analyzed these issues and has summarized different approaches and conclusions the Commission might reach. If the Commission decides to adopt a Commission Opinion, staff will draft the Opinion, incorporating the direction provided by the Commission, for the Commission's consideration and potential adoption at a subsequent Commission meeting.

Background

Opinion Requests

Under Regulation 18320, Opinion requests may be submitted to the Commission by any person whose duties under the Act are in question or by that person's representative. (Regulation 18320(a).) Generally, in contrast to typical advice letters, Commission Opinions answer substantial questions of interpretation, including questions not covered by Commission regulations. (See Regulation 18320(f)(1)-(2).) However, Commission Opinion requests may be denied where they involve overbroad questions regarding interpretation of the Act in general terms. (Regulation 18320(f)(5).) An agency rule intended to apply generally—as opposed to a specific case—and that implements, interprets, or makes specific the law administered by the Commission or that governs Commission procedure must be adopted via the regulatory process in accordance with the Administrative Procedure Act ("APA"). (See Former Government Code Section 11371 *et. seq.* (the 1974 APA[1] provides the applicable standards for Commission regulations) and *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 555 (citing *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571).)

The Executive Director determines whether to grant or deny Opinion requests and then notifies the requester of that decision. (Regulation 18320(d)-(e).) The Commission subsequently holds a hearing on the Opinion request and Commission staff prepares a memorandum discussing the issues as well as any recommendations staff may have. (Regulation 18322(b).) Interested persons are permitted to submit related materials no later than five days prior to the scheduled hearing, and the requester (and interested persons, if permitted) may present oral testimony at the hearing. (Regulation 18322(c)-(d).) Thereafter, the Commission adopts a Commission Opinion at a public meeting. (Regulation 18322(e).) The adoption of a Commission Opinion requires the concurring votes of at least three Commissioners. (Regulation 18327(a).)

Jorgenson Advice Letter, No. A-82-214

In *Jorgenson* Advice Letter, No A-82-214, we provided advice on whether a Menlo Park City Council Member had a disqualifying financial interest in governmental decisions related to a Stanford University housing development project, given that the Council Member's spouse was employed at Stanford University Hospital. The request for advice stated, "[the spouse] is employed as a material assistant by Stanford University Hospital, a non-profit corporation governed by a board of Trustees of Leland Stanford Junior University. *For these purposes, the Stanford Hospital should be considered as one and the same with Stanford University*." (Emphasis added.) The advice letter proceeded with analysis based on that assumption and concluded the Council Member was disqualified from taking part in the project-related governmental decisions.

[1] *Fair Political Practices Commission v. Office of Administrative Law,* 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL)

Lee Advice Letter, No. A-83-257

In *Lee* Advice Letter, No. A-83-257, we received a similar request for advice involving a Palo Alto City Council Member's potential financial interest in a governmental decision involving Stanford University, based on his spouse's employment at Stanford University Hospital (the "Hospital"). The request for advice acknowledged that the *Jorgenson* Advice Letter, No. A-82-214, had instructed the FPPC to assume the Hospital and Stanford were "one and the same." In this instance, however, the requester asked that the FPPC not make that assumption but rather analyze whether the Council Member with a source of income interest in the Hospital also had a source of income interest in Stanford University.

In the advice letter, we noted that the Hospital was a nonprofit corporation legally separate from Stanford University, and the Hospital functioned independently from Stanford University with respect to personnel matters, including hiring and salary decisions. However, after analyzing the Hospital's bylaws, we concluded that they established that "Stanford University and the Hospital are really one and the same." We explained:

> The same group of persons holds ultimate voting control over both entities. That group is The Board of Trustees of The Leland Stanford Junior University. The Hospital's President is a Stanford University Vice President, who has ultimate authority to hire and fire all Hospital staff. The purpose of the Hospital is to serve the needs of Stanford University's educational mission.
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> If the two entities were business entities, rather than nonprofits, we would clearly hold that the Hospital is a wholly-owned subsidiary of Stanford-University. We see no reason within the purposes of the Act for achieving a different result here.

Consequently, we analogized the scenario to "piercing the corporate veil" and cited prior Commission opinions for the position that "a parent corporation will be deemed to have control of its subsidiary and the Commission will 'pierce through' the corporate veil whenever the purposes of the Act are best served by doing so." (Citing *Kahn* Opinion, No. O-75-185; *Nord* Opinion, No. O-83-004.)[2]

After having concluded that the Hospital and Stanford University were "one and the same," we consequently concluded that if the council member's spouse was employed by the Hospital, both the Hospital and Stanford University would be considered sources of income to the council member for purposes of the Act. Therefore, we advised, the council member "would be required to disqualify himself as to any decision which would reasonably and foreseeably have a material financial effect on either the Hospital or Stanford University where the effect on

[2] Examined in context, it is apparent the "piercing the corporate veil" terminology was used to refer generally to the concept of disregarding strict organizational structures. (See *Nord*, *supra*, fn. 11 [noting, in reference to the Opinion's use of the phrase "pierced through the corporate veil," that "[t]he Supreme Court has held that 'the corporate form may be disregarded in the interests of justice when it is used to defeat an overriding public policy"].) However, because "piercing the corporate veil" is typically used as a more technical term of art in the specific context of corporate liability, staff recommends avoiding further use of the phrase in the context analyzed in this memorandum and related advice letters in order to avoid potential confusion of issues and relevant law.

either of these two entities would be distinguishable from the decision's effect on the public generally."

September 2024 Request for Advice

In September 2024, we received a request for advice from the Palo Alto City Attorney's Office as to whether the *Jorgenson* and *Lee* Advice Letters remained applicable to SHC and Stanford University. The request stated that the conclusion in *Lee* "was not based on any specific law defining a parent-subsidiary relationship between non-profit organizations but applied prior Commission advice that a parent corporation is presumed to control its subsidiary, allowing the Commission to pierce the corporate veil when necessary to serve the purposes of the Political Reform Act." The request also noted developments in the law, as well as SHC's bylaws, since *Jorgenson* and *Lee* were written, which the City Attorney argued support the conclusion that SHC and Stanford University are separate sources of income for conflict of interest purposes under the Act. In explaining the updates to SHC's bylaws, the City Attorney wrote:

> According to SHC's bylaws, the Stanford University Board has the authority to appoint and remove members of the SHC Board. SHC board members are neither required nor prohibited from being members of the University Board. As of this writing, the SHC Board consists of 26 members, of which one is also a member of the University Board. The SHC Board appoints the President of the Hospital after consultation with and upon nomination from the President of Stanford University. The SHC President may be removed by the SHC Board, either on its own initiative or based on a recommendation from the President of the University. Additionally, the Dean of the University School of Medicine and the University Liaison for Stanford Medicine serve as ex officio Directors with voting rights.
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> The SHC's Board is responsible for choosing all hospital employees, directing their work and establishing professional standards. The SHC Board approves SHC's operating and capital budgets as well as the strategic plan. SHC has the power to enter into contracts and manage its own facilities. While the University must approve any changes to SHC's bylaws, it has no responsibility for SHC's debt service, as SHC issues its own debt independently. Despite its independence, the University's role in appointing the members of SHC's Board means that SHC is consolidated with the University for the purpose of external financial audits.
>
> While SHC and the University are associated with each other and collaborate on medical matters, Stanford University no longer exercises the same level of control over SHC and its Board as it did when the *Lee* Advice Letter was written. The President of the Hospital is no longer required to be the Vice President for Medical Affairs at Stanford University, nor are the Directors of the Hospital required to be members of the Stanford University Board.

> SHC's independence from the University was recently affirmed by the Alameda Superior Court in *Young et al. v. The Leland Stanford Junior University et al.*, an employment discrimination case against Stanford University and SHC. After a bench trial on enterprise liability, the court ruled that Stanford University has no alter ego liability for the acts of SHC. The judge found that Stanford University and SHC are "separate entities, each with its own staff, employee and financial records, governance, policies, and operations." The court further noted that the "anecdotal evidence of imprecise language use by employees" was not persuasive when weighed against the "mountain of evidence reflecting separate corporate structures, finances, and decision-making."

The request additionally argued that parent-subsidiary analysis is not applicable to non-profit organizations under the Act, pointing out that current regulation 18007.2(b), which defines "parent," "subsidiary," and "otherwise related business entity" applies to business entities, but excludes non-profit organizations like Stanford University and SHC.

Vanni Advice Letter, No. I-24-102

Based on the facts provided by the requester, as described above and in addition to attachments provided by the requester, we provided advice in *Vanni Advice Letter, No. I-24-102*. There, we wrote:

> For conflict of interest purposes, the Commission has advised that in some instances the law "pierces" through entities, such as for profit and nonprofit corporations, based on the nature of the relationship between the entity and those who control the entity. Under these circumstances, multiple persons/entities may be treated as sources of income. (*Atigh* Advice Letter, No. I-93-383, *Hogin* Advice Letter, No. A-05-070.)
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> In addition, in certain circumstances when the relationship between the public official and his or her employer is controlled by persons (including nonprofit entities), who also effectively control decisions of the employer, we have advised that these persons are considered to be sources of income and economic interests to the official. (*Deadrick* Advice Letter, I-03-143; *Hentschke* Advice Letter, No. A-80-069.)

Thereafter, we discussed the *Lee* Advice Letter and cited two other letters that reached similar conclusions. (*Yang* Advice Letter, No. I-05-113; *Atigh* Advice Letter, No. I-93-383 [both discussed above].)

We continued our analysis by considering the changes made to SHC's bylaws since the *Lee* Advice Letter was published in 1983, writing:

> Here, you state that while SHC and Stanford University have an association with one another, including collaborating on medical matters, Stanford University no longer exercises the same level of control over SHC and its Board as it did when

> the *Lee* Advice Letter was issued in 1983. For example, you state the President of SHC is no longer required to be the Vice President for Medical Affairs at Stanford University, and SHC Board members are no longer required to be members of the Stanford University Board. However, we find it significant that the Stanford University Board has the authority to appoint and remove members (and fill vacancies) of the SHC Board, and that the SHC Board appoints the President of the Hospital only after "consultation with and upon nomination from the President of Stanford University," who also has the authority to recommend that the Hospital President be removed. Additionally, the Dean of the University School of Medicine and the University Liaison for Stanford Medicine serve as ex officio members of the SHC Board with voting rights. Lastly, a primary purpose of SHC is to "support, benefit, and further the charitable, scientific and educational purposes" of Stanford University. In our view, while SHC's bylaws have changed since the *Lee* letter was issued in 1983, Stanford University still controls the SHC Board – primarily through its power to appoint and remove SHC Board members – such that the two entities should continue to be treated as one and the same for purposes of the Act's conflict-of-interest provisions. Accordingly, Mr. Shikada will have a source of income interest in both SHC and Stanford University as a result of his future spouse's employment with SHC.

Based on the above considerations, we concluded that City Manager Shikada would be disqualified from any governmental decision that would have a reasonably foreseeable, material financial effect on either SHC or Stanford University, including where either entity is explicitly involved in the decision.

Request for Reconsideration

The requester disagrees with the advice provided in *Vanni* Advice Letter, No. I-24-102, and seeks a Commission Opinion on "the issue of when it is required that the FPPC 'pierce' through one nonprofit corporation to create a financial interest in another related nonprofit corporation." The requester asks the Commission to determine no such "piercing" is required with respect to SHC and Stanford University, and further requests that the Commission adopt a standard for the relationship between related nonprofits and when a financial interest "pierces" through one nonprofit to a related nonprofit.

Law

The Act and Commission Regulations

The Act specifies that it "should be liberally construed to accomplish its purposes." (Section 81003.) One of the Act's purposes is that "officials should be disqualified from acting in order that conflicts of interest may be avoided" where "income of public officials . . . may be materially affected by their official actions." (Section 81002(c).)

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 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 the official's immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests are "[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more" and "[a]ny source of income . . . 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(a), (c).)

Under Regulation 18700.2, "[a]n official with a financial interest in a business entity also has an interest in a parent or subsidiary of the business entity or an otherwise related business entity except when the business entity meets the criteria provided in subdivision (d)." (Regulation 18700.2(c).) A business entity is a "parent" if it is a corporation that controls more than 50 percent of the voting stock of another corporation. The parent corporation is also a parent to any subsidiaries of the corporation that it controls. (Regulation 18700.2(b)(1).) A business entity is a "subsidiary" if it is a corporation whose voting stock is more than 50 percent controlled by another corporation. The subsidiary corporation is also a subsidiary to any corporation that controls its parent corporation. (Regulation 18700.2(b)(2).) Business entities, other than a parent corporation, are otherwise related if:

(A) The same person or persons together direct or control each business entity; or

(B) The same person or persons together have a 50 percent or greater ownership interest in each business entity.

(Regulation 18700.2(b)(3).)

Regulation 18700.2(d) provides that an official with a financial interest in a business entity does not have an interest in a parent or subsidiary of that business entity or an otherwise related business entity if:

(1) The official's only interest is that of a shareholder and the official is a passive shareholder with less than 5 percent of the shares of the corporation; and

(2) The parent corporation is required to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and has not identified the subsidiary on those forms or its annual report.

A "business entity" means "any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association." (Section 82005.) Accordingly, by definition, a business entity is distinct from a non-profit organization.

Subsequent Advice Letters

In *Atigh* Advice Letter, No. I-93-383, a city councilmember sold shares of a company to CHISPA Investments, Inc., a nonprofit, wholly-owned subsidiary of Community Housing Improvement Systems and Planning Association Incorporated (the "Association"). We advised that based on the Association's control of CHISPA Investments, Inc., both entities constituted economic interests to the councilmember.

In *Lucas* Advice Letter, No. A-99-059, we advised:

> When a nonprofit corporation is a source of income to a public official, the Commission has consistently advised that neither the members of the nonprofit entity nor its directors are sources of income to the official simply by virtue of their relationship to the nonprofit corporation. (*Bracken* Advice Letter, No. A-98-301; *Chouteau* Advice Letter, No. A-96-030; *Fazio* Advice Letter, No. A-93- 442; *Herkert* Advice Letter, No. I-87-319; *Best* Advice Letter, No. A-81-032.) Therefore, as a volunteer director, president and member of the executive committee, Mr. Christopherson is not a source of income to Councilmember Wright by virtue of his positions.
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> However, we have also advised that where a president/majority shareholder of a closely-held corporation "controls the employment relationship" between the public official and the corporation, both the corporation and the majority shareholder are considered sources of income to the public official. (*Hentschke* Advice Letter, No. A-80-069.) By analogy, we have applied a similar analysis to controlling members of a nonprofit corporation. (*Whittlesey* Advice Letter, No. A-97-552; *Allen* Advice Letter, No. A-95-188; *Lucas* Advice Letter, No. A-96-248; *Rankin* Advice Letter, No. A-94-310; *Galliano* Advice Letter, No. I-94-088; *Kenny* Advice Letter, No. A-93-470; *Abt* Advice Letter, No. A-91-361; *Nawi* Advice Letter, No. 84-013.)

In *Deadrick* Advice Letter, No. I-03-143, a school board member was employed as the executive director of a nonprofit, "CCFS." One of the CCFS board members—who participated in the vote to hire the school board member as executive director of CCFS—was also the owner of Pacifica Services, Inc., a corporation potentially affected by the school board's decisions relating to school construction. We advised:

> [M]embers of a nonprofit organization are not considered to be sources of income to an official unless one, or a few, of the nonprofit organization's members financially affected by the governmental decision actually control the organization's decisions. Under the facts you provide, the decisions of CCSF, including decisions regarding your employment and compensation, are made on a majority vote of its entire 13-member board of directors. Thus, at least 7 members of its board of directors are required in order to control effectively your employment relationship with this organization. Based on these facts, it is not appropriate to

pierce through CCFS's nonprofit corporate structure to any single member of its board.

In *Hogin* Advice Letter, No. A-05-070, a city councilmember sought advice on whether she could take part in a development agreement between the city and Wave Property, Inc. ("Wave"), a wholly-owned supporting nonprofit of Pepperdine University, the councilmember's employer. We advised:

> Wave is . . . wholly-owned and controlled by Pepperdine. There is shared management and control between the entities. There are shared offices, resources, boardmembers and employees as well as the pursuit of joint goals and common interests. In fact, Wave's mission as reflected in its IRS Form 990 application states that it is "a supporting organization of Pepperdine University and as such manages assets, earns income and pays expenses solely for the benefit of its parent 501(c)(3) corporation." In other words, Wave exists solely to benefit and serve the interests of its parent, Pepperdine. As such, Wave, in essence, functions as an alter ego for its parent non-profit, Pepperdine.
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> Thus, consistent with the rationale set forth in the *Atigh* Advice Letter *supra*, we would consider both of the entities as sources of income to [the councilmember], and thus both would be economic interests of hers.

In *Yang* Advice Letter, No. I-05-113, we advised that a city councilmember had a source of income interest in his spouse's nonprofit employer (the "Foundation") and its affiliated organization (the "Healthgroup"), which were separate legal entities. The Foundation served as the fundraising arm of the Healthgroup. We advised:

> Based on your facts, it appears that the relationship between Councilmember Ramirez's wife and her employer, the Foundation, is substantially controlled by the Healthgroup, as it sets the amount of salary paid to her, as well as any additional compensation under the incentive program. Thus, consistent with the rationale set forth in previous advice letters cited above, we would also consider the Healthgroup as a source of income to the council member's wife, and both would be economic interests of hers. Further, the Healthgroup is also a source of income to the councilmember through his community property interest in his wife's salary and benefits, if his share of his spouse's income is at least $500. (Sections 82030 and Section 87103(c); regulation 18703.3(a)(1).).

In past advice letters, we have also stated that where two local unions are affiliates under a broader union umbrella organization, so long as the two local unions are distinct non-profit entities (e.g., no crossover in funding or decisionmaking, no financial interest in one another, no jurisdiction over one another), a public official does not have an interest in a governmental decision regarding the affiliated union. (See *Guina* Advice Letter, No. A-17-137.)

Discussion

The request for a Commission Opinion poses its questions in various ways. The City Attorney's primary question is whether City Manager Shikada has an economic interest in Stanford University, a nonprofit organization, based on Stanford University's relationship with affiliated nonprofit SHC, City Manager Shikada's spouse's employer. A secondary request also asks the Commission to adopt a standard for determining when a public official with an economic interest in one nonprofit is also considered to have an economic interest in an affiliated nonprofit for purposes of the Act's conflict of interest provisions. As discussed above, however, to adopt a rule of general application, the Commission would have to go through the formal regulatory process governed by the APA. Consequently, while staff requests feedback from the Commission on whether it would like to pursue a formal regulation, a general rule of application cannot be adopted by the Commission via an Opinion.

Staff has researched and analyzed the City Attorney's questions and will discuss potential approaches to answering them. If the Commission decides to adopt a Commission Opinion, staff will draft a Commission Opinion, incorporating the direction provided by the Commission, for consideration and potential adoption at a subsequent Commission meeting.

Question 1: Does City Manager Shikada Have an Economic Interest in Stanford University Based On Its Relationship With SHC, His Spouse's Employer?

The City Attorney argues that City Manager Shikada's source of income interest in SHC should not extend to Stanford University, "since they are separate nonprofit entities and SHC is not subject to the direction and control of the board." The *Vanni* Advice Letter, No. I-24-102, reached the opposite conclusion. The City Attorney's statement that the SHC is not subject to the direction and control of the Stanford University Board is arguable, and the Commission must therefore determine whether it agrees with the City Attorney that Stanford University does not wield sufficient control over the SHC to consider the two entities the same for purposes of the Act's conflict of interest provisions.

As discussed above, the *Vanni* Advice Letter was consistent with the case-by-case approach taken in *Lee* Advice Letter, No. A-83-257, which also dealt with Stanford University and its hospital nonprofit organization. In *Lee*, the structure of the organizations involved the same group of persons with voting control over both entities, as well as a shared executive with ultimate authority to hire and fire all Hospital staff, and the purpose of the Hospital was to serve the needs of Stanford University's education mission. The *Vanni* Advice Letter noted various changes to the SHC bylaws and structure of the organizations. Most notably, the SHC Board members were no longer required to be Stanford University Board members, and the SHC President with the power to hire and fire SHC staff was no longer required to be the Vice President for Medical Affairs at Stanford University, as was the case in the *Lee* Advice Letter. We concluded, however:

> [i]n our view, while SHC's bylaws have changed since the Lee letter was issued in 1983, Stanford University still controls the SHC Board - primarily through its power to appoint and remove SHC Board members - such that the two entities

> should continue to be treated as one and the same for purposes of the Act's conflict-of-interest provisions.

The crux of the argument is whether Stanford University's relationship with SHC, including the Stanford University Board's power to appoint and remove SHC Board members, sufficiently amounts to Stanford University "controlling" SHC.

In the Commission Opinion request, the City Attorney argues that Stanford University does not control SHC and, in fact, the *Vanni* Advice Letter's analysis and conclusion is inconsistent with the Commission's treatment of related business entities under Regulation 18700.2. The City Attorney writes:

> When determining whether entities are related for conflict-of-interest purposes, Regulation 18700.2 does not solely consider the powers that individual shareholders or owners may exercise over a corporation's board of directors. Instead, the Regulation applies an objective standard of (1) majority stock ownership, or (2) *actual* control of both entities by the same individuals.

(Emphasis added.) In fact, the regulation defines an "otherwise related business entity" based, in relevant part, on whether "[t]he same person or persons together direct or control each business entity." (Regulation 18700.2(b)(3)(A).) Thus, even under Regulation 18700.2, the Commission's determination comes down to whether it believes Stanford University controls SHC.

To reiterate, when the *Lee* Advice Letter was written in 1983, it relied on the particular facts of the request for advice, general principles relating to parent-subsidiary relationships between business entities, and the general purposes of the Act in determining that Stanford University and the Hospital should be treated as one and the same for purposes of the Act's conflict provisions. Last year's *Vanni* Advice Letter was consistent with that approach, as there is still no regulation directly addressing the topic of affiliated nonprofit organizations. It concluded that Stanford University still controls SHC, primarily via the Stanford University Board's authority to appoint and remove SHC Board members. *Vanni* did not analyze Regulation 18700.2, presumably because its definitions of "parent" and "subsidiary" are based on percentage of a business entity's voting stock share, which obviously would not be directly applicable or easily analogous in the context of nonprofits. Even if Regulation 18700.2 was applied in the present context without finding appropriate analogous definitions for "parent" and "subsidiary" nonprofit organization (that is, not reliant on voting stock shares), City Manager Shikada would still potentially have a source of income interest in Stanford University as an "otherwise related" nonprofit organization.

The City Attorney's request for a Commission Opinion also notes that in *Young et al. v. The Leland Stanford Junior University et al.* (Mar. 26, 2024) Case No. RG17877051 (*Young*), the Alameda County Superior Court found that Stanford University and SHC were distinct entities with separate governance, staff, finances, and policies, and the court specifically rejected an alter ego liability argument. In a follow-up letter regarding the requested Commission Opinion, the City Attorney more specifically asks that the Commission adopt the court's finding

"that Stanford University and SHC are not alter egos and not subject to 'pierce-through' civil liability and, thus, cannot be held to be affiliated entities under Section 87100."

Staff believes that comparison with or reliance upon a civil case dealing with "corporate veil piercing" or "alter ego doctrine" in the context of corporate liability is misplaced and irrelevant. The *Young* court wrote:

> Alter ego liability requires a two-part showing. Part one requires the plaintiff to prove that there is such a "unity of interest and ownership" between the corporation and its equitable owner that the separate personalities of the entities do not in reality exist. Part two requires the plaintiff to prove that there will be an "inequitable result" if the acts in question are treated as those of one entity alone. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538–539, citing *Automotriz etc. De California v. Resnick* (1957) 47 Cal.2d 792, 796.) "Alter ego is an extreme remedy, sparingly used." (*Sonora Diamond*, 83 Cal.App.4th at 539.) "It is the plaintiff's burden to overcome the presumption of the separate existence of the corporate entity." (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212–13.)
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> Plaintiff did not meet her burden on either prong.

(*Young*, *supra*, p. 1.)

In providing advice letters in contexts like the one at issue, the Legal Division staff that writes advice letters does not analyze whether the entities "do not in reality exist," nor does staff assess whether there will be an "inequitable result" if the entities are treated as one entity. Further, no burden is placed on staff to prove either of these prongs, as staff is not attempting to hold both entities civilly liable for anything. Rather, in providing advice letters, staff analyzes and advises on public officials' duties under the Act. The Act is to be liberally construed to accomplish its purposes, which provide that officials should be disqualified from acting in order that conflicts of interest may be avoided where income of public officials may be materially affected by their official actions. (Section 81002(c).) Consequently, whereas alter ego liability is "an extreme remedy, sparingly used," staff's advice on avoiding conflicts of interest under the Act is often more conservative based on liberal construction of the Act to accomplish its purposes. Because the analysis in *Young* is based on wholly different criteria than what is considered under the Act, the court's decision in *Young* is not relevant to the Commission's analysis.

Question 2: Does the Commission Want to Amend or Adopt a Regulation Addressing This Topic in the Future?

As the "Background" and "Law" sections above indicate, there is no statute or regulation under the Act that expressly addresses the topic of "parent," "subsidiary," or "otherwise related" nonprofit organizations in the same way that Regulation 18700.2 does for affiliated business entities. Rather, the rare advice letters addressing related nonprofit organizations, several of which are described above, have largely relied on the general purposes of the Act, along with

analogies to parent-subsidiary relationships between business entities, to advise on a case-by-case basis. The Commission may wish to continue advising on these questions on a case-by-case basis, as the Act is to be liberally construed to accomplish its purposes, and the case-by-case approach might arguably permit a more holistic, fact-specific analysis and result in more tailored advice, avoiding any potential outcomes inconsistent with the Act's purposes that might result from a bright line rule.

Alternatively, the Commission may wish to consider adopting a regulation governing related non-profit entities similar to how Regulation 18700.2 now governs related business entities. As the nature of the present request for a Commission Opinion demonstrates, the applicable standard may not be readily apparent to members of the regulated community. Even if a member of the regulated community is generally aware that a public official's interests in related nonprofit organizations will depend on the particular facts of the relationship, that might still be seen as too difficult or nebulous without expressly identifying general factors to be considered in making that determination.

With the above information and analysis in mind, staff seeks direction from the Commission on two issues:

(1) Based upon the facts presented by the requester, as well as the Act's general purposes and conflict of interest provisions, does the Commission conclude that City Manager Shikada does or does not have an economic interest in Stanford University, based on its relationship with his spouse's employer, SHC?
(2) Separate from the Commission Opinion to be adopted specifically addressing City Manager Shikada's economic interests, would the Commission like to adopt a rule on related nonprofit organizations via the formal regulatory process, beginning with pre-notice discussion of a proposed regulation at a subsequent Commission meeting?

Conclusion

The Commission must decide two questions: (1) whether City Manager Shikada has economic interests in both SHC and Stanford University; and (2) whether the Commission would like to pursue a regulation directly addressing the issue of related nonprofit organizations. Staff requests feedback from the Commission regarding these questions and, if so directed, will return at a subsequent Commission meeting with an Opinion drafted for the Commission's consideration and potential publication.