



FAIR POLITICAL PRACTICES COMMISSION

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July 6, 1999

Carol Dean
332 Decker Street
Santa Rosa, California 95401

**Re: Your Request for Advice
Our File No. I-99-152**

Dear Ms. Dean:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Because you are not seeking advice pertaining to a specific governmental decision, we are treating your request as one for informal assistance.²

QUESTIONS

1. If you are elected to the Santa Rosa City Council, what decisions would create conflicts of interest for you, due to your husband's employment as a firefighter with the City of Santa Rosa?

2. If you are elected to the Santa Rosa City Council, could you continue to serve as president of the West End Neighborhood Association/Preservation District?

CONCLUSIONS

1. You may not make, participate in making, or use your official position to influence decisions that will either: (1) result in your husband's hiring, firing, demotion, discipline, or the setting of his salary to a level different from the salaries paid to other employees in the same job classification or position, or (2) result in your husband's income, expenses, assets, or liabilities increasing by \$250 in a 12-month period.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Regulation 18329(c).)

2. If the neighborhood association is a source of income to you, you will be disqualified from participating in decisions if it is reasonably foreseeable that the decision will have a material financial effect on the association.

FACTS

You plan to run for the Santa Rosa City Council in the next election. You are currently employed as a legal attorney who does no business with the City of Santa Rosa (the "city"). Your husband has been employed by the city as a firefighter for 25 years.

You are also the president of the West End Neighborhood Association/Preservation District (the "association"), which is a neighborhood association that strives to revitalize and maintain your neighborhood's historical character. Occasionally, you have asked the city for help in dealing with drug houses, supporting neighborhood oriented policing, performing annual railroad clean ups, and are currently trying to save a historical round barn in your neighborhood. You were informed that if the association applies to become a nonprofit organization, you could remain as an officer.

ANALYSIS

A. Introduction.

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, 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. As a member of the Santa Rosa City Council, you are a public official under the Act. (Section 82048; Regulation 18701.)

The conflict of interest analysis under the Act consists of several tests, including:

- (1) A public official must be making, participating in making, or using his or her official position to influence a governmental decision,
- (2) and it must be reasonably foreseeable that,
- (3) the decision will have a material financial effect,
- (4) distinguishable from the effect on the public generally, on the official, a member of the official's immediate family, or on any one of six statutorily identified economic interests of the official.

You will have a conflict of interest in a decision if the decision will have a reasonably foreseeable³ material financial effect on your economic interests which is distinguishable from the effect on the public generally.

B. Making, participating in making, or using official position to influence governmental decisions.

The Act's conflict of interest provisions apply only where the public official "make[s], participate[s] in making, or in any way attempts to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.)

A public official "makes a governmental decision," when the official, among other things, votes on a matter. (Regulation 18702.1.) A public official "participates in making a governmental decision," when he or she, among others things, advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by conducting research or making any investigation that requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision, or by preparing or presenting any report, analysis, or opinion, orally, or in writing, that requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision. (Regulation 18702.2.) Using one's official position to influence a decision includes contacts, appearances before, or otherwise attempting to influence any member, officer, employee, or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer. (Regulation 18702.3(a).)

C. Economic interests.

1. Introduction.

The Act's conflict of interest provisions apply only to conflicts arising from *economic* interests. "Economic interests" are identified by referring to Section 87103. Section 87103 recognizes six kinds of economic interests from which conflicts of interest may arise:

³ Whether the financial consequences of a given governmental decision are *reasonably foreseeable* at the time the decision is made is highly situation-specific. A financial effect need not be a certainty to be considered reasonably foreseeable; a substantial likelihood that it will occur suffices to meet the standard. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

- A business entity in which the public official has a direct or indirect investment⁴ of \$1,000 or more;
- Real property in which the public official has a direct or indirect interest of \$1,000 or more;
- Any source of income which aggregates to \$250 or more within 12 months prior to the decision;
- A business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management;
- A donor of gifts to the public official if the gifts aggregate to \$300 or more within 12 months prior to the decision;
- Finally, the public official has an economic interest if the governmental decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250 in any 12-month period. (This is sometimes known as the “personal effects” rule.) (Section 87103; Regulation 18703.5.)

2. Government Salary.

A public official’s income, for purposes of the Act, includes his or her community property interest in the income of his or her spouse. (Section 82030(a).) Generally, a public official’s community property interest in his or her spouse’s income would be considered income to the public official, and the public official would have an economic interest in the *source* of that income. (*Ibid.*; Section 87103(c).) However, salary and reimbursement for expenses from a state, local, or federal government agency are expressly excluded from the Act’s definition of income. (Section 82030(b)(2).)

Accordingly, the income your husband receives as an employee of the City of Santa Rosa does not make the city a source of income to him because of the “government salary” exception. Thus, your community property interest in your husband’s income from the city does not, by itself, present a conflict of interest that would prohibit you from taking part in city council decisions that affect the city. In short, we have long advised that the mere fact that a public official’s spouse is employed by the same agency (or a related agency) does not *in and of itself*

⁴ An 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.)

present a conflict. (See, e.g., *Stewart* Advice Letter, No. I-98-310; *Rowe* Advice Letter, No. I-98-070; and *Griffin* Advice Letter, No. I-98-012.)

A conflict of interest may arise, however, where a particular decision of the Santa Rosa City Council will result in you or your husband's personal expenses, income, assets, or liabilities increasing or decreasing by \$250 or more in a 12-month period, *irrespective* of the *source* of income. (Section 87100; Regulation 18703.5 (the personal effects rule); *Underwood* Advice Letter, No. A-96-234; *Torrance* Advice Letter, No. I-89-142.)

Notwithstanding the personal effects rule, Regulation 18705(c)(1) provides that a public official need not disqualify himself or herself from *all* decisions affecting his or her spouse's income if:

“(1) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subdivision does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position.”

3. The Association.

A volunteer position for a nonprofit organization does not create an economic interest. The term “business entity” does not include nonprofit organizations. (Section 82005.) You have not indicated whether this position is a paid position. If you receive income from the nonprofit organization, then it will be considered a source of income to you.⁵ However, if you are a volunteer, then the organization will not be considered an economic interest of yours.

D. Summary of advice.

Based upon this law, we advise that in and of itself the fact that you are a city councilmember and your husband works for the city does not create a potentially disqualifying conflict of interest under the Act. However, you may not make, participate in making, or use your official position to influence decisions that will either: (1) result in your spouse's hiring, firing, demotion, discipline, or the setting of his salary to a level different from the salaries paid to other employees in the same job classification or position, or (2) result in your spouse's expenses, assets, or liabilities increasing by \$250 in a 12-month period. A determination is based on specific facts. Attached is a conflict of interest fact sheet for additional guidance.

⁵ If you are a paid employee of the neighborhood association, you should seek further assistance because further analysis would be required.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Lynda Doherty/de". The signature is written in black ink and is positioned below the typed name of the signatory.

By: Lynda Doherty
Political Reform Consultant, Legal Division

SGC:LD:tls

Enclosure