



## FAIR POLITICAL PRACTICES COMMISSION

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July 9, 2004

Michael D. Milich, City Attorney  
City of Modesto  
Post Office Box 642  
Modesto, CA 95353

**Re: Your Request for Advice**  
**Our File No. A-04-127**

Dear Mr. Milich:

This letter is in response to your request on behalf Mayor Jim Ridenour for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

May the mayor participate in land use entitlement decisions concerning Kaiser's proposal for the phased development of an approximately 1,425,000 gross square foot medical campus in Modesto despite having an employment relationship with American Medical Response, Inc., a business which contracts with Kaiser?

### CONCLUSION

So long as the decision will not have a foreseeable and material financial effect on either American Medical Response, Inc., or its parent corporation, Laidlaw International, Inc., the mayor may participate in the decision.

### FACTS

Your question concerns a potential conflict of interest arising from decisions yet to be made on various land use entitlements relating to a proposal by Kaiser Foundation Hospitals, a California nonprofit public benefit corporation ("Kaiser"), for a new medical campus in Modesto. Kaiser proposes the phased development of an approximately 1,425,000 gross square foot medical campus consisting of medical service buildings, a

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

hospital facility, together with parking and support structures on a 49 acre site. The site is located in the unincorporated area of Stanislaus County, immediately adjacent to the northwest border of the City of Modesto. Ultimately, the Modesto City Council will consider an amendment to the Modesto's sphere of influence, annexation of the site, a pre-zone designation on the project site, and a development agreement between Kaiser and Modesto.

The potential conflict of interest for Mayor Ridenour arises from the following circumstances. Mayor Ridenour was elected in December 2003. Prior to running for that office, Mayor Ridenour was employed as an executive within American Medical Response, Inc. (AMR). He retired in June 2003. Immediately after his retirement, Mayor Ridenour entered into a consulting agreement with AMR which took effect on July 1, 2003. The agreement expires on June 30, 2004. Under the consulting agreement, Mayor Ridenour has received consulting fees in excess of \$100,000.00.

AMR has an exclusive agreement with Kaiser to transport medical patients in Stanislaus County and elsewhere. According to the Lou Meyer, AMR CEO for this region, AMR received \$2,762,372 in income from Kaiser for the transportation of Kaiser patients within Stanislaus County in 2003. Kaiser apparently contracts with non-Kaiser owned hospital facilities for the care of Kaiser members in Stanislaus County. A relatively minor portion of the income received from Kaiser in Stanislaus County by AMR is for the transportation of Kaiser members to Kaiser owned facilities outside Stanislaus County ("repatriation business"). The total amount of repatriation fees in 2003 for Stanislaus County was approximately \$178,000.00. Mr. Meyer believes that in the event a Kaiser facility is built in Modesto, most of that repatriation business would be lost. However, Mr. Meyer further states that the loss of the repatriation business would be somewhat mitigated by repatriation transportation into the new Modesto facility from Damron Hospital in Stockton which provides hospitalization services to Kaiser members on a contract basis. Even discounting the mitigating effect of the repatriation transportation business into Stanislaus County, it appears that the maximum financial effect of the location of a Kaiser facility in Stanislaus County on AMR would be approximately \$178,000.00. AMR is a wholly owned subsidiary of Laidlaw International, Inc., which is listed in the Fortune 500 list of companies for the calendar year 2003.

You anticipate that the land use entitlement decisions concerning Kaiser's proposal will be before the council in September or October of this year. Since AMR is obviously a source of income to Mayor Ridenour, and AMR has a business relationship with Kaiser, you seek assistance as to whether or not the mayor will be eligible to participate in the decisions regarding Kaiser's proposed project.

## ANALYSIS

Section 87100 of the Act prohibits a 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. Section 87103 specifies that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family, or on certain specified economic interests.

In order to determine whether the prohibition in section 87100 applies to a given decision, regulation 18700 provides an eight-step analysis. Once an official identifies his economic interests, the eight-step analysis must be applied to each interest. Mayor Ridenour is a public official (step one) and your question concerns his future participation in a governmental decision (step two).

### ***Step 3 - Identifying Economic Interests***

A public official is required to identify any economic interests which may be impacted by a governmental decision. Under regulation 18703.3, subdivision (a)(1), Mayor Ridenour has an economic interest in AMR as a source of income. Regulation 18703.1, subdivision (c), also states that an official has an economic interest in any business entity which is a "parent or subsidiary of, or is otherwise related to, a business entity in which the official" has an economic interest.<sup>2</sup> Thus, Mayor Ridenour has an economic interest not only in AMR, but also in its parent company, Laidlaw International, Inc.

### ***Step 4 - Whether the Interest is Directly or Indirectly Involved***

The next step is to determine whether the economic interests will be involved directly or indirectly in the decision. (Regulation 18700(b)(4).) A person, including a business entity or source of income, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

"(1) Initiates 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 is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other

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<sup>2</sup> An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has an economic interest. "A parent subsidiary relationship exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." (Regulation 18703.1(c) and (d).)

entitlement to, or contract with, the subject person.” (Regulation 18704.1(a).)

Under the Commission’s regulations, business entities and sources of income which are not directly involved under the rules stated above are considered indirectly involved for purposes of determining the appropriate materiality standard. (Regulation 18704.1(b).) Neither AMR nor Laidlaw International, Inc. is the applicant nor initiator of the proposed decision. In addition, neither is a named party nor the subject of the proceeding in question. Both of these economic interests are then considered indirectly involved in the proposed governmental decision.

***Steps 5 And 6 - Will There be a Material Financial Effect on the Official’s Economic Interest which will be Reasonably Foreseeable?***

Based upon the type of involvement, the official must then apply the appropriate materiality standard to ascertain whether the financial impact of the decision will be material. For business entities which are indirectly involved in a decision, the pertinent materiality standard is set forth in Regulation 18705.1(c). The materiality thresholds in the regulation vary depending upon the size of the business entity. You noted that Laidlaw International, Inc. is listed in the Fortune 500. Thus, regulation 18705.1(c)(1) applies. Regulation 18705.1(c)(1) provides that a financial effect is considered material if it meets any of the following:

“(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year of \$10,000,000 or more; or

“(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or

“(C) The governmental decision will result in an increase or decrease in the value of the business entity’s assets or liabilities of \$10,000,000 or more.”

You have not provided information concerning the financial size of AMR, your actual source of income. Therefore, we are unable to identify the materiality standard applicable to AMR. Please note that if the decision in question will have a material financial effect on any business in which the mayor has an interest (including a parent, subsidiary or any otherwise related business entity) under the applicable standard in regulation 18705.1, this step will be met. (*McMurtry Advice Letter, No. I-01-034.*)

After the official finds the pertinent materiality standard, he or she must decide whether it is reasonably foreseeable that the standard will be met (step six). A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards will be met as a result of the

governmental decision. (Regulation 18706(a).) An effect need not be certain to be considered "reasonably foreseeable," but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

It does not appear that the decision in question will have a material financial effect on Laidlaw, based on the high thresholds applicable to the Fortune 500 company. Again, we cannot further analyze foreseeable financial effects on AMR without knowing its financial size. Ultimately, the question of whether financial consequences on a business entity are reasonably foreseeable at the time a governmental decision is made must always depend on the facts of each particular case. (*In re Thorner* (1975) 1 FPPC Ops. 198.) Because the Commission does not act as a finder of fact in providing advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), the determination of whether it is reasonably foreseeable that an applicable materiality standard will be met for any of the mayor's economic interests is necessarily a factual question for the mayor to decide.

***Steps 7 and 8: Exceptions.***

An official who otherwise has a conflict of interest in a decision may still participate in that decision if the circumstances are such that the "public generally" exception may be invoked. This exception applies when the financial effect of a decision upon a public official's economic interests is not distinguishable from the effect of the decision on a significant segment of the public generally. (Section 87103; regulation 18707(a).) We do not have information suggesting that this exception would apply in this case, but mention it here in order to provide a complete overview of the analytical process.

Finally, an official who otherwise has a conflict of interest in a decision may still participate in that decision if the "legally required participation" exception is applicable. (Section 87101; regulation 18708.) This is an exception that typically applies when an agency is unable to assemble a quorum of its members without the participation of an official who has a conflict of interest. Here again, you have not provided any facts suggesting that this exception would apply to any of the decisions in question.

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

Sincerely,

Luisa Menchaca  
General Counsel

By:

John W. Wallace  
Counsel, Legal Division

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