



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 22, 2021

Hannah Shin-Heydorn
City Manager
City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90755

Re: Your Request for Advice
Our File No. A-20-157

Dear Ms. Shin-Heydorn:

This letter responds to your request for advice on behalf of Signal Hill City Councilmember Ed H. J. Wilson 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. Likewise, we offer no opinion regarding permissible uses of public funds. 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

Do the Act’s conflict of interest provisions prohibit Councilmember Wilson from taking part in governmental decisions regarding the potential use of City Council “development funds” to reimburse the Councilmember’s incurred personal tuition expenses?

CONCLUSION

Yes. The Act’s conflict of interest provisions prohibit the Councilmember from making, participating in making, or attempting to use his official position to influence any decision regarding the reimbursement of his incurred personal tuition expenses.

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.

FACTS AS PRESENTED BY REQUESTER

You are the City Manager of the City of Signal Hill and the authorized representative of Signal Hill City Councilmember Ed H. J. Wilson. The City has a tuition reimbursement policy for certain employees under its memorandums of understanding with the City's miscellaneous employees' bargaining unit and police officers' bargaining unit.

You state that: The City Council has "development funds" budgeted for Councilmembers' use to attend conferences, seminars, meetings, or other similar events; Councilmember Wilson would like to use the City Council's unspent development funds to reimburse tuition he has paid in his pursuit of an advanced degree at a local university; and the City's Municipal Code currently does not authorize the City Council to use development funds for a Councilmember's tuition reimbursement.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from making, participating in making, or attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) An official's interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103 and include all the following:

- An interest in any business in which the official has an investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- An interest in any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).)
- An interest in any source of a gift or gifts aggregating \$520² or more in the 12 months prior to the decision. (Section 87103(e).)
- An interest in the official's personal finances and those of immediate family members. (Section 87103.)

While the Act excludes governmental salary from the definition of income (Section 82030(b)(2)), an official may still be disqualified from governmental decisions where the decision affects the official's personal finances. In this case, a decision regarding the potential use of City

² Section 87103(e) requires the amount of the value of a gift or gifts set forth therein to equal the same amount as the gift limit specified in Regulation 18940.2. This gift limit was recently adjusted from \$500 to \$520, effective January 1, 2021, pursuant to Section 89503(f).

Council development funds to reimburse the Councilmember's personal education expenses would implicate his interest in his personal finances.

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest.

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Regulation 18702.5(a) provides that a decision's reasonably foreseeable financial effect on an official's interest in his or her personal finances "is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision." While regulation 18701(b)(1) excludes "salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency," the reimbursement exclusion is intended for expenses more closely associated with the performance of the official's duties as opposed to expenses of a personal nature.

Making, Participating in Making, and Using Official Position to Influence a Decision

An official "makes" a government decision if 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 agency." (Regulation 18704(a).) "Participating in" a government decision occurs when the official "provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Regulation 18704(b).) Lastly, a public official "uses his or her official position to influence a governmental decision" if the official:

(1) 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; or

(2) 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.

(Regulation 18704(c).)

Assuming the reimbursement will result in a benefit of \$500 or more in any 12-month period, any decision to reimburse Councilmember Wilson for personal tuition expenses will have a foreseeable and material financial effect on the Councilmember's personal finances. Therefore, Councilmember Wilson is prohibited from making or participating in any decision to use the funds for this purpose and may not contact or appear before the remaining city councilmembers or any city official to request that the funds be used for this purpose.³

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

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

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³ We note that we only address the question of whether Councilmember Wilson may take part in a decision regarding whether to use or seek to use the development funds to reimburse his tuition expenses. If the City Council seeks to establish a tuition reimbursement benefit applicable to all councilmembers, you may wish to seek additional advice. We also express no opinion regarding any laws governing the misuse of public funds. You may wish to consult the City Attorney regarding any other laws that may apply.