



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 7, 2023

Randy J. Risner
Chief Assistant City Attorney
City of Vallejo
555 Santa Clara St.
Vallejo, CA 94590

Re: Your Request for Informal Assistance
Our File No. I-23-081

Dear Mr. Risner:

This letter responds to your request for advice 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.

Given that your questions are general in nature and not limited to specific decisions, we are providing informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).) This letter should not be construed as assistance with any conduct that may have already taken place.

In addition, this letter is based on the facts presented. The Fair Political Practices Commission (“Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Govt. Code section 83114.)

QUESTION

1. As an employee of the Vallejo City Unified School District, does Vallejo City Councilmember Diosdado “JR” Matulac have a disqualifying financial interest prohibiting him from taking part in matters before the City Council or the City’s 2 X 2 Committee, involving the school district or education related matters, including an upcoming decision surrounding an ordinance prohibiting homeless encampments within an area surrounding public schools?

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 18104 through 18998 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. As a member of two local non-profit organizations, the Knights of Columbus and the Filipino Community of Solano County, Inc., does Councilmember Matulac have a disqualifying financial interest prohibiting him from taking part in City Council decisions regarding funding for these non-profit organizations?

3. As a member with the California School Employees Association, which is a member of the Solano County Labor Council, does Councilmember Matulac have a disqualifying financial interest prohibiting him from taking part in matters before the City Council related to a Project Labor Agreement with building trade unions affiliated with the Solano County Labor Council?

CONCLUSION

1. Councilmember Matulac does not have a disqualifying financial interest in his salary from the Vallejo City Unified School District because the school district is a local governmental agency and under the Act, salary from the school district would not be considered “income.” Barring any other economic interest in the decision, Councilmember Matulac would not be prohibited from taking part in a decision involving the school district.²

2. Councilmember Matulac’s membership with non-profit organizations would not result in a disqualifying financial interest as Councilmember Matulac does not receive income or gifts from the organizations, and there is no indication the decision would have a material effect on his or his immediate family’s personal finances. Barring any other economic interest in the decision, Councilmember Matulac would not be prohibited from taking part in a funding decision for the organizations.

3. Councilmember Matulac’s membership with the California School Employees Association would not result in a disqualifying financial interest as Councilmember Matulac does not receive income or gifts from the organization, and there is no indication the decision would have a material effect on his or his immediate family’s personal finances. Moreover, there is no indication that a City Council decision regarding a Project Labor Agreement with building trade unions affiliated with the Solano County Labor Council will affect the Councilmember’s personal finances merely because he is a member of a labor union also affiliated with the Solano County Labor Council. Barring any other economic interest in the decision, Councilmember Matulac would not be prohibited from taking part in a decision involving a Project Labor Agreement with a building trade union merely because it is affiliated with the Solano County Labor Council.

² We note that we are not providing advice regarding Section 1090, at this time, because you have not identified a potential contract between the City of Vallejo and the Vallejo City Unified School District. To the extent any decision involving the City and School District may involve a contractual agreement, Councilmember Matulac may wish to seek additional assistance regarding Section 1090. In regard to grant funding decisions for nonprofit organizations or the Project Labor Agreements, we can generally refer you to Government Code Section 1091.5(a)(7), which provides that a non-interest exists when a public official is an unsalaried member of a nonprofit corporation provided the official’s interest is disclosed to the board at the time the contract is first considered and noted in its’ official records. Councilmember Matulac may also seek additional advice if he has any questions regarding Government Code Section 1091.5(a)(7).

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Vallejo (“City”) and are seeking advice on behalf of City Councilmember Diosdado “JR” Matulac. Councilmember Matulac is employed by the Vallejo City Unified School District (“VCUSD”), a member of the California School Employees Association (“CSEA”) and is involved with two local non-profit organizations, the Knights of Columbus and the Filipino Community of Solano County. You are seeking advice as to whether any of the above interests present a conflict of interest that would disqualify Councilmember Matulac from participating in decisions facing the City Council.

Councilmember Matulac is employed by VCUSD as an Academic Support Provider for the Dan Mini Elementary School. The Councilmember describes his position as social work. He is not involved in management of the school or district. Councilmember Matulac is a member of CSEA, a labor bargaining unit representing employees of VCUSD. He is not currently involved in collective bargaining on behalf of CSEA and its local members but has been in the past. CSEA belongs to the Solano County Labor Council, along with many other employee bargaining groups including the Vallejo Police Officers Association, the International Brotherhood of Electrical Works, and the Vallejo Firefighters Association.

Councilmember Matulac is a member of two non-profit organizations: the Knights of Columbus and the Filipino Community of Solano County, Inc. He is not a board member or officer of either organization and receives no gifts or income from the organizations.

Councilmember Matulac began his term on the City Council in January 2023, his term will expire in January 2027. In addition to City Council, Councilmember Matulac was appointed as a member of the 2 X 2 Committee which considers and advises on a variety of issues affecting both the City and VCUSD. The Committee’s board consists of two City Councilmembers and two VCUSD school board members.

Occasionally, the City Council will take up matters relating to VCUSD. Soon, the City will consider an ordinance prohibiting homeless encampments within an area surrounding public schools. There may also be additional matters concerning the purchase of real property, as well as budgetary and financial matters related to VCUSD. The City will also be asked to consider a Project Labor Agreement with the building trades unions, nearly all of which belong to the Solano County Labor Council. At times, the City provides funding to local non-profit organizations, including the Knights of Columbus and the Filipino Community of Solano County, Inc.

ANALYSIS

As a public official, Councilmember Matulac is subject to the Act’s conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use the official’s position to influence a governmental decision in which he 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 on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including:

- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in a business entity in which the official has a direct or indirect investment of \$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 donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more provided to, received by, or promised to the public official within 12 months prior to the decision. (Section 87103(e).)
- An interest in the official's personal finances, including those of the official's immediate family, also known as the "personal financial effects" rule. (Section 87103.)

The standard for foreseeability varies depending on whether an interest is explicitly involved in the decision. An official's financial interest is explicitly involved in a decision, and is presumed to be reasonably foreseeable, if the interest is a named party in, or the subject of, a decision before the official or the official's agency. (Regulation 18701(a).) For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).) Regulation 18702(a) provides that the next step in the analysis is to determine if the decision's reasonably foreseeable financial effect on the official's financial interest is material; each type of financial interest has a materiality standard. Councilmember Matulac has identified potential interests resulting from his employment at VCUSD, membership in nonprofit organizations the Councilmember is involved in, and membership in the CSEA, which we examine in turn.

Employment with VCUSD

Under the Act, "income" does not include "[s]alary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency..." (Section 82030(b)(2).) VCUSD is a local government agency. Accordingly, Councilmember Matulac's salary is not considered "income" and Councilmember Matulac would not be disqualified from any decision involving the VCUSD due to the salary he has received from VCUSD.

Nonetheless, we caution that the conclusion that Councilmember Matulac is not disqualified from a decision due to his salary from VCUSD does not end the analysis under the Act. Councilmember Matulac is potentially disqualified if the decision affects any other economic interest he may have. Turning to Councilmember Matulac's economic interest in his personal finances, an official is generally disqualified from a decision if it is reasonably foreseeable the decision may result in the official or the official's immediate family receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).) However, there are no facts to indicate that a decision on an ordinance concerning homeless encampments within a certain area of public schools would impact the Councilmember's personal finances in any way.

For these reasons, Councilmember Matulac is not generally disqualified from decisions involving the VCUSD merely because he is an employee of the school district. Barring any other economic interest affected by the decision, Councilmember Matulac is not prohibited from taking part in a decision involving the VCUSD. However, you have not limited your question to a specific

Decision before the City Council or the 2 X 2 Committee. Accordingly, if there is an indication a decision could affect any other economic interest of Councilmember Matulac, including his personal finances, Councilmember Matulac should seek further advice identifying the specific decision and interest involved. Moreover, to the extent the decision involves any contractual agreement between the City and VCUSD, Section 1090 may apply and prohibit Councilmember Matulac from taking part in the decisions. Councilmember Matulac may wish to seek advice under Section 1090 prior to taking part in any discussion or decision involving a contract.

Involvement with Nonprofit Organizations

Nonprofit organizations such as the Knights of Columbus or the Filipino Society of Solano County, Inc. are not considered business entities for purposes of the Act. Moreover, you have indicated that Councilmember Matulac has not received any income or gifts from the organizations. Thus, Councilmember Matulac does not have economic interests in the organizations as business entities or as sources of income or gifts. Turning to a potential effect on the Councilmember's personal finances, there is no indication that grant funding provided to either nonprofit organization would have any effect on Councilmember Matulac's personal finances (or the personal finances of a family member). Accordingly, barring any other economic interest in the decisions, Councilmember Matulac is not prohibited from taking part in decisions to provide the organizations with grant funding.

CSEA/Solano County Labor Council Membership

Councilmember Matulac is merely a member of the CSEA, as an employee of the VCUSD. Moreover, while the CSEA is a member of the Solano County Labor Council, there is no indication that Councilmember Matulac has received income or gifts from the CSEA or the Labor Council. Accordingly, barring additional facts, Councilmember Matulac does not have a potentially disqualifying economic interest in either the CSEA or the Labor Union as a source of income or gifts. Turning to his economic interest in his personal finances, there is also no indication that any discussions or decisions surrounding the Project Labor Agreement would have any effect on the Councilmember's personal finances. In general, there are no facts suggesting that upcoming decisions regarding Project Labor Agreements with building trades unions that are also members of the Solano County Labor Council would have any effect on the personal finances of a member of the CSEA merely because the CSEA is also a member of the Labor Council. Accordingly, barring any other economic interest in the decisions, Councilmember Matulac is not generally prohibited from taking part in the Project Labor Agreement decisions.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division