



California Fair Political Practices Commission

February 9, 1993

Honorable Elizabeth H. Meyer
City Councilmember
City of Twentynine Palms
6136 Adobe Road
P.O. Box 995
Twentynine Palms, CA 92277

Re: Your Request for Advice
Our File No. A-93-051

Dear Councilmember Meyer:

This is in response to your letter requesting advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Will your salaried position as a teacher in the Morongo Unified School District create a conflict of interest with respect to your decisions as a Twentynine Palms City Councilmember?

CONCLUSION

Neither your salary from nor employment with the school district will create an economic interest in the district which could result in a conflict of interest. However, , the Commission has no jurisdiction over laws that might apply, such as the doctrine of incompatible offices.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000 *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

You have recently been elected to the City Council of Twentynine Palms. You are also a teacher in the Morongo Unified School District. The district pays you an annual salary which is greater than \$20,000 per year. You also serve as a department chairperson at your school and receive additional compensation from the district for this activity.

ANALYSIS

Conflicts of Interest

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.

Section 87103 specifies that a public official has a financial interest 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:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

For example, your employment with a private business in the jurisdiction would result in the business entity becoming an economic interest. However, Section 82005 limits the definition of "business entity" to organizations or enterprises operated for profit. Since a local government agency is not an organization or enterprise operated for profit, it is, therefore not a "business entity" as defined by the Act. Thus, your employment with the school district will not result in the district becoming an economic interest. (Section 87103(d); Section 82005; Darcy Advice Letter, No. I-87-296.)

Entities may also become economic interests if they are sources of income to the official. For example, if you received income from a person or business entity, the source of the income

would be an economic interest. (Section 87103(c).) However, salary and reimbursement for expenses or per diem received from a state, local or federal government agency is not regarded as "income" for purposes of the Act. (Section 82030(b)(2).) Thus, despite the fact that you are a salaried employee of the district, you would not have an economic interest in the district by virtue of the income.

Absent some other disqualifying financial interest as set forth in Section 87103, or some direct financial effect on you personally resulting from a governmental decision, you will not have a conflict of interest due to your position with the district. (Sampson Advice Letter, No. I-89-196.) However, this advice is limited to the Political Reform Act.

Incompatible Offices

Please note that other laws outside of the Commission's jurisdiction restrict the ability of public officials to hold two different public offices simultaneously if the offices are determined to be "incompatible offices." It would be advisable to contact the Attorney General's Office with respect to the doctrine of "incompatible offices" and other provisions of law that might apply to your facts.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.²

Sincerely,

Jeff Marschner
General Counsel

By: John W. Wallace
Counsel, Legal Division

² Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.