

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

November 8, 1996

Kathryn L. Koski  
517 Carroll Way  
Tehachapi, CA 93561

Re: Your Request for Assistance  
Our File No. I-96-289

Dear Ms. Koski:

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").<sup>1</sup> Since your advice request does not refer to a specific governmental decision, but instead seeks general guidance, we are treating your request as one for informal assistance.<sup>2</sup>

QUESTIONS

1. Can you continue your employment as a part-time secretary with the City of Tehachapi if you are elected to the Tehachapi City Council?
2. On what subject matters will you be prohibited from participating in?
3. During closed session is it necessary for you to recuse yourself from discussion when it involves your position as part-time secretary or are you required to physically leave?

CONCLUSIONS

1. Yes. Nothing in the Act prohibits you from serving as an elected official.

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<sup>1</sup> Government Code Sections 81000-91015. All references are to the Government Code unless otherwise indicated. All references to regulations are to Title 2 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. A conflict of interest may exist if a council decision will result in your personal expenses, income, assets, or liabilities increasing or decreasing by \$250 in a 12-month period.

3. You would be prohibited from making, participating in making, or otherwise attempting to influence a governmental decision in which you knew or had reason to know that you had a financial interest. If you determined that a conflict of interest existed, it would not be necessary for you to physically leave but you would have to recuse yourself from the discussion and state on the record your reason for recusal.

#### FACTS

You are currently employed by the City of Tehachapi as a part-time secretary working in the city hall for the city manager and the city clerk. You are also a candidate on the November 5, 1996, ballot for election to the city council.

#### DISCUSSION

The discussion below would be applicable if you are a successful candidate in the November 1996 election.

#### Conflicts of Interest

The Act does not prohibit a public official from holding multiple public positions, either within a single agency or different agencies. However, the conflict-of-interest provisions of the Act (Section 87100 et seq., discussed below) do prohibit a public official from participating in a decision that will have a financial effect on his or her economic interests. However, this prohibition is applied on a decision-by-decision basis.

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:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

\* \* \*

(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(a), (c) and (d).

For example, your employment with a business entity would result in the business entity becoming an economic interest of yours. However, Section 82005 defines "business entity" as an organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. 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 City of Tehachapi will not result in the City of Tehachapi becoming a disqualifying economic interest of yours for purposes of Sections 87103(a) or (d). (Darcy Advice Letter, No. I-87-296.)

However, entities also become economic interests of an official if they are sources of income to the official. (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).) The City of Tehachapi is a local governmental agency. (Section 82041.) Therefore, assuming you are a salaried employee of the City, you would not have to disqualify yourself from decisions affecting the City by virtue of that governmental income.

However, pursuant to Section 87103, an official also has a financial interest in a decision if the decision has a material financial effect on the official or a member of his or her immediate family. Pursuant to Regulation 18702.1(a)(4), a public official is prohibited from participating in any decision which

will foreseeably<sup>3</sup> increase or decrease the personal expenses, income, assets or liabilities of the official or his or her immediate family by at least \$250 in a 12-month period. Therefore, you may not participate in decisions which will increase or decrease your personal expenses, income, assets, or liabilities irrespective of the source of income. (Underwood Advice Letter, No. A-96-234.)<sup>4</sup> Therefore, for example, you could not participate in decisions to change your part-time status to full-time, but you could participate in decisions that only affect your current salary.

Please note that Regulation 18702.1(c)(1) also provides:

\* \* \*

(c) Notwithstanding subsection (a), an official does not have to disqualify himself or herself from a governmental decision 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....

\* \* \*

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 conflicts of interest due to your position with the city. (Regulation 18702.1(a)(4).) However, please note, as stated above, our advice is limited to the Political Reform Act.

#### Incompatible Offices

Please note that other laws do restrict the ability of public officials to hold two different public offices simultaneously if the offices are determined to be "incompatible offices." It would

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<sup>3</sup> The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. To be foreseeable, the effect of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817; In re Thorner (1975) 1 FPPC Ops. 198.)

<sup>4</sup> This provision contemplates even increases and decreases to income received from a local government agency as being potentially disqualifying. (Campbell Advice Letter, No. A-94-002.)

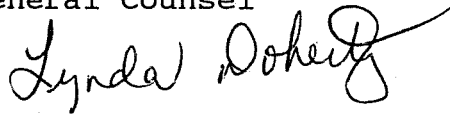
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be advisable to contact the Attorney General's Office with respect to the doctrine of "incompatible offices" and other provisions of law that might apply to your facts.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink, appearing to read "Lynda Doherty", with a stylized flourish extending from the end.

By: Lynda Doherty  
Political Reform Consultant  
Legal Division

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