



FAIR POLITICAL PRACTICES COMMISSION

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August 27, 2002

Claire M. Sylvia, Deputy City Attorney
Office of the City Attorney
City Hall – One Dr. Carlton B. Goodlett Place
Suite 234
San Francisco, CA 94102-0917

**Re: Your Request for Informal Assistance
Our File No. I-02-176**

Dear Ms. Sylvia:

This letter is in response to your request for advice on behalf of Eric Mar, a member of the San Francisco Board of Education, regarding provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature and does not refer to a particular decision, we provide you with informal assistance.²

QUESTION

Does regulation 18705.5(b), where it provides that financial effects are not material when they result from decisions on the salary, per diem, or reimbursement for expenses of a public official, apply only to those provisions of a collective bargaining agreement expressly referring to salary, per diem or reimbursement of the official?

CONCLUSION

Regulation 18705.5(b) is an exception to the general rule given in subdivision (a) of the same regulation, and as such is narrowly construed to apply *only* to the terms expressly stated in the regulation. But the terms “salary, per diem, or reimbursement for expenses” are defined broadly in regulation 18232, and the meaning of those words determines the scope of the exception, which is sufficiently broad to include all of the collective bargaining provisions you mention in your request for advice.

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

² Informal assistance does not provide the official with the immunity conferred by formal written assistance. (Regulation 18329(c)(3), copy enclosed.)

FACTS

Eric Mar is a member of the San Francisco Board of Education (the "Board"). The San Francisco Unified School District (the "District") employs Mr. Mar's spouse as a teacher. The Board votes on various matters involving the District's teachers, including collective bargaining agreements with the teachers' union. Mr. Mar anticipates that the Board will in the future vote on collective bargaining agreements affecting his spouse's bargaining unit, and that these agreements will establish not only the amount of her pay, but other matters such as the days or hours to be worked, professional development (continuing education) requirements, and restrictions on outside employment.

ANALYSIS

The Act's conflict of interest rules (§§ 87100 et seq.) prohibit a public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the official's economic interests.

Regulation 18700(b) describes in detail the analytical process used to determine if a public official has a conflict of interest in a particular decision. As a member of the Board, Mr. Mar is a public official within the meaning of § 82048. Your request for advice presupposes that he will make or participate in making governmental decisions on collective bargaining agreements with the District.³ Your question begins at the third step of the analysis, identifying Mr. Mar's economic interests which, under § 87103, may be any of the following:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment⁴ of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d); Regulation 18703.1(b));
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b); Regulation 18703.2);

³ See regulations 18702.1 through 18702.3, which define "making," "participating in making," or "using or attempting to use his/her official position to influence" the making of governmental decisions.

⁴ An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official's immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) "Immediate family" is defined at Section 82029 as an official's spouse and dependent children.

- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);⁵
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$320 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family—this is the “personal financial effects” rule (Section 87103; Regulation 18703.5).

The specific question you pose is the extent to which (if at all) Mr. Mar’s economic interest in his wife’s income may disqualify him from voting on collective bargaining agreements with his wife’s bargaining unit. To the extent that his wife receives “income” as defined under the Act, you correctly understand that Mr. Mar would have a community property interest in that income, and in the source of that income, as well as an interest in the “personal financial effects” of any governmental decision materially affecting the income or expenses of himself or his spouse. You are not sure, however, whether employment with the District generates the “income” on which these economic interests might be based.

You recognize that, because the District is a government agency under § 82041, the salary paid by the District to Mr. Mar’s wife is not considered “income” under § 82030(b)(2), the “government salary exception” to the Act’s definition of “income,” which excludes from consideration:

“Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.”

While noting this exception, you are concerned that some terms of a collective bargaining agreement may involve “income” not covered under the “government salary exception.” You observe that collective bargaining agreements may include provisions not obviously classified as “salary and reimbursement for expenses or per diem,” and cite as examples provisions that increase or decrease the number of days or hours to be spent at work, changes in professional development requirements, or restrictions on outside employment. The number of days or hours worked could have an effect on child care or commuting expenses, professional development requirements might impose or alleviate educational costs, and restrictions on outside employment would have an obvious effect in reducing potential income from new sources.

⁵ Taking into account the community property interest in his wife’s income, Mr. Mar has an economic interest in a source of income which provides his wife \$1,000 or more in any 12 month period.

If provisions of this nature do not fall within the “government salary exception” (because they are not “salary and reimbursement for expenses or per diem”), you are concerned that they might foreseeably affect the income of Mr. Mar’s spouse, and thereby give rise to a “personal financial effect” as defined by § 87103, leading to a conflict of interest under § 87103 and regulation 18705.5.

In addition to the statutory “government salary exception” of § 82030(b)(2), subdivision (b) of regulation 18705.5 contains a parallel exception making clear that “personal financial effects” potentially causing a conflict of interest do *not* include the financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses received by a public official or members of the official’s immediate family.

The concern that animates your inquiry is that some provisions of collective bargaining agreements, like the examples noted above, simply are not “government salary” within the meaning of § 82030(b)(2) and regulation 18705.5(b). The source of this concern may be that words like “salary” have a narrower meaning in collective bargaining agreements than they do in the context of the Act’s “government salary exception.” The word central to your request for advice is defined quite broadly in regulation 18232(a), as follows:

“For purposes of Government Code section 82030(b)(2), the following definitions apply:

(a) ‘Salary’ from a state, local, or federal government agency means any and all payments made by a government agency to a public official, or accrued to the benefit of a public official, as consideration for the public official’s services to the government agency. Such payments include wages, fees paid to public officials as ‘consultants’ as defined in California Code of Regulations, Title 2, section 18701(a)(2), pension benefits, health and other insurance coverage, rights to compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and similar benefits.”

As defined by this regulation, government “salary” includes “any and all payments made... or accrued to the benefit of a public official, as consideration for the public official’s services.” This makes it clear that under the Act government “salary” includes terms and conditions of employment beyond a narrow understanding of “salary” as a sum of money paid to an employee. Items in a collective bargaining agreement relating to a multitude of benefits, including requirements for receipt of such benefits, are “wages and hours” provisions that will generally be considered “salary” terms within the meaning of § 82030(b)(2) and regulation 18232(a). In particular, we conclude that provisions of a collective bargaining agreement such as the days and hours to be worked, professional development criteria for continued employment or advancement, and restrictions on outside employment, are “salary” provisions which, when provided by a

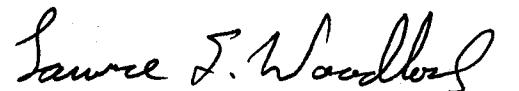
state, local or federal government agency, fall within the exception provided at § 82030(b)(2) and regulation 18232(a). Governmental decisions relating to such terms will not give rise to a "personal financial effect" under the Act, so long as the decision does not concern Mr. Mar or his wife alone, as provided in regulation 18705.5(b):

"(b) The financial effects of a decision which affects only the 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 shall not be deemed material, unless the decision is to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position."

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

Sincerely,

Luisa Menchaca
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

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