

1 GARY WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 09/735
13)
14 JOHN K. ANDERSON ,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17)

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondent John K. Anderson agree that this stipulation will be submitted for consideration by the
20 Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
27 right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent John K. Anderson violated the Political
4 Reform Act when, on June 26, 2009, he used his official position to influence governmental decisions in
5 which he had a financial interest, in violation of Government Code Section 87100 (1 count). All counts
6 are described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set
7 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Three Thousand Dollars (\$3,000). A cashier's check from Respondent John K. Anderson in said
11 amount, made payable to the "General Fund of the State of California," is submitted with this
12 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
13 Commission issues its decision and order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
15 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
16 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
17 further stipulates and agrees that in the event the Commission rejects the Stipulation, and a full
18 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
19 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

20
21 Dated: _____
22 Roman G. Porter, Executive Director
23 Fair Political Practices Commission

24 Dated: _____
25 John K. Anderson, Respondent
26
27
28

1 **DECISION AND ORDER**

2
3 The foregoing Stipulation of the parties “In the Matter of John K. Anderson,” FPPC No. 09/735,
4 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
5 Practices Commission, effective upon execution below by the Chairman.

6 **IT IS SO ORDERED.**

7
8 Dated: _____

9 _____
10 Dan Schnur, Chairman
11 Fair Political Practices Commission
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondent John K. Anderson was the finance director and city administrator for the City of Dunsmuir at all times relevant to this complaint. As the finance director and city administrator, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent impermissibly made governmental decisions in which he had a financial interest.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On June 26, 2009, as the finance director and city administrator for the City of Dunsmuir, Respondent John Anderson participated in making and influenced governmental decisions in which he had a financial interest, by participating in discussions and presenting written memoranda requesting that the Dunsmuir City Council authorize an application for \$600,000 in Community Development Block Grant (CDBG) funds, authorize Respondent to act on behalf of the City of Dunsmuir in executing all necessary documents, and authorize Respondent to negotiate and enter into a sub-recipient agreement with Great Northern Corporation for the administration of the CDBG funds. Respondent also requested the Dunsmuir City Council to authorize entering into a sub-recipient agreement with Great Northern for the administration and implementation of the city’s Economic Development Program Income – Revolving Loan Account, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

Conflicts of Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b).)

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 18109 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.

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter, obligates his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, a public official has a financial interest in a decision within the meaning of Section 87100 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 or on a member of his or her immediate family. Pursuant to Regulation 18703.3(a)(1), a public official has an economic interest in any person from whom he or she has received income aggregating five hundred dollars (\$500) or more within 12 months prior to the time when the relevant governmental decision is made.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1(a)(2), a person, including sources of income, is directly involved in a decision before an official's agency when that person, either directly or by an agent is a named party in the proceeding concerning the decision before the official or the official's agency.

Fifth, under Regulation 18705.3, subdivision (a), any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

² Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. An effect of a decision is considered “reasonably foreseeable” if there is a substantial likelihood that it will affect the economic interest, either positively or negatively. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

At all times relevant to this complaint, Respondent Anderson was Finance Director and City Administrator for the City of Dunsmuir. He owns a bookkeeping service called One-to-One Bookkeeping, and has owned it since 1997. Respondent identified Great Northern Corporation, a third-party grant administrator, as a source of income of \$10,000 or more to One-to-One Bookkeeping on his amended SEI filed on September 29, 2009, and Respondent identified One-to-One Bookkeeping as a sole proprietorship. Between June 26, 2008 and June 26, 2009, Great Northern Corporation was a source of \$67,611.62 in income to One-to-One Bookkeeping. On July 12, 2010, the Board voted on four separate sanctions, two of which would have had a personal financial effect on Respondent. Respondent voted on Item # 2, removal from all committees and voted on Item # 3, limiting Ms. Sterling from attending future conferences for one year and making her ineligible to receive any advancements or reimbursements to attend future conferences.

COUNT 1

PARTICIPATING IN MAKING, OR INFLUENCING, A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. **Respondent Was a Public Official as Defined by the Act**

As Finance Director and City Administrator for the City of Dunsmuir, on June 26, 2009, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against making a governmental decision in which he has a financial interest under Section 87100.

2. **Respondent Participated In Making, or Influenced, a Governmental Decision**

At the June 26, 2009, Dunsmuir city council meeting, Respondent Anderson participated in discussions and presented written memoranda requesting that the Dunsmuir City Council authorize an application for \$600,000 in Community Development Block Grant (CDBG) funds, authorize Respondent to act on behalf of the City of Dunsmuir in executing all necessary documents, and authorize Respondent to negotiate and enter into a sub-recipient agreement with Great Northern Corporation for the administration of the CDBG funds. In a written memorandum, Respondent also requested the Dunsmuir City Council to authorize entering into a sub-recipient agreement with Great Northern for the administration and implementation of the city’s Economic Development Program Income – Revolving Loan Account. Consequently, Respondent made governmental decisions for purposes of Regulation 18702.1, subdivision (a).

3. **Respondent Had an Economic Interest**

A public official has an economic interest in any person from whom he or she has received income aggregating five hundred dollars (\$500) or more within 12 months prior to the time when the relevant governmental decision is made. (Section 87103; Regulation 18703.3(a)(1).) Great

Northern Corporation, was as a source of income of \$10,000 or more to Respondent's business, One-to-One Bookkeeping, between June 26, 2008 and June 26, 2009.

4. Respondent's Economic Interest Was Directly Involved in the Decision

Under Regulation 18704.1(a)(2), a person, including sources of income, is directly involved in a decision before an official's agency when that person, either directly or by an agent is a named party in the proceeding concerning the decision before the official or the official's agency. Great Northern Corporation is specifically named in the resolution and the memorandum.

5. Applicable Materiality Standard

Under Regulation 18705.3, subdivision (a), any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

As Respondent provided bookkeeping services to Great Northern Corporation at the time of the decision, preparing profit and loss statements and balance sheets, for an hourly rate of compensation, the decision had a foreseeable and material effect. It was reasonably foreseeable at the time the governmental decision was made, that there would be a material financial effect; because the decisions at issue were to provide Great Northern Corporation with city grant administration related work.

By making governmental decisions in which he had a financial interest, Respondent Anderson violated section 87100 of the Act.

AGGRAVATING FACTORS

Respondent knew of the conflict of interest requirements, having served as either the finance director, city administrator, or both, at various times for approximately 10 years.

MITIGATING FACTORS

Respondent terminated his relationship as a contractor for Great Northern Corporation on August 26, 2009. Respondent informed the city council of his conflict, and subsequent action was taken to transfer all responsibility for the negotiation of contracts with Great Northern Corporation to the city's treasurer.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement

Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The making of a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).