



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
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January 31, 2023

Eugene J Solomon  
Redondo Beach City Treasurer  
PO BOX 3385  
Redondo Beach CA 90277

Re: Your Request for Advice  
**Our File No. A-23-012**

Dear Mr. Solomon:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Under the Act, are you required to recuse yourself from the Charter Review Advisory Committee (“Committee”) recommendations regarding the City of Redondo Beach’s role of Treasurer where you are an appointed, voluntary member of the Committee and a qualified candidate for the City Treasurer position on the upcoming March 7, 2023, ballot?

### CONCLUSION

No, to the extent that the Act applies to you as a public official through your service on the Committee or other City committees, the facts do not establish that it is reasonably foreseeable that the Committee recommendations will have a material financial effect on your personal finances due to the fact that a potential financial effect is contingent upon several intervening events: the approval of recommendations by the City Council to be placed on a future ballot, the vote on the

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<sup>1</sup> 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.

ballot and your success as a candidate for the office of City Treasurer for a future term. Additionally, the recommendations do not involve the hiring, firing or appointment of a person, or set a salary for the City Treasurer's position and thus would not meet the materiality standards in Regulation 18702.5, set forth below.

### **FACTS AS PRESENTED BY REQUESTER**

You sit on several City committees and, pertinent to this request, you serve as an appointed, volunteer member of the City's Charter Review Advisory Committee. The Committee is currently reviewing the City's Treasurer role and will make a recommendation to the City Council on whether the City should continue to have an elected City Treasurer, the position's roles and responsibilities, and possible term limits that may apply. The Committee makes recommendations to the City Council, but it is the City Council that decides if the questions should be placed on a future ballot.

You are running as a qualified candidate on the March 7<sup>th</sup> ballot for the office of City Treasurer. You wish to know if you are required under the Act to recuse from the Committee's discussions about the City Treasurer's office while running for this position. None of the City Treasurer questions will be on the March 7, 2023, ballot or apply to the 2023-27 term of office.

### **ANALYSIS**

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using the official's position to influence a governmental decision in which the official has a financial interest. (Section 87103.) 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, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a)).

A candidate for public office is not a "public official" under the Act. (Sections 82048.) If you are elected to the office of City Treasurer, you will be a public official for purposes of Section 87100. Additionally, a member of a committee or advisory board that has decisionmaking authority is a "public official." (Section 82048 and Regulation 18700(c)(1) and (2).)<sup>2</sup> We do not have sufficient facts to determine whether you are a "public official" based on your service on City committees including the Charter Review Advisory Committee. However, in light of our determination below that even to the extent you are a public official you would not be disqualified from the decisions, as set forth below, we need not make this determination.

Pertinent to your facts, Section 87103 defines "financial interests" to include:

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<sup>2</sup> Note: A person who serves on an agency's advisory committee is a "public official" subject to the Act only where the advisory committee has "decisionmaking authority." This type of authority includes situations where the committee has a history of its recommendation being approved without significant modification by the agency. (See Regulation 18701(c)(2).)

- Any source of income, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- An interest in the official's personal finances and those of the official's immediate family. (Section 87103.)

For purposes of the Act, "income" does not include salary received from a local government agency. Therefore, any salary you would receive if elected City Treasurer would not be "income" withing the meaning of the Act. However, you would still have an interest in your personal finances that may be implicated by salary received as the City Treasurer.

### *Foreseeability and Materiality*

Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is explicitly involved in the decision as a named party in, or the subject of the decision. An interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the interest.

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical." One factor in making this determination is the extent to which the occurrence of the financial effect is contingent upon intervening events. (*Ibid.*)

Regulation 18702.5 sets forth the materiality standards for a financial interest in an official's personal finances. Under this regulation, an official has a material financial interest if the decision may result in the official receiving a financial benefit or loss of \$500 or more in any 12-month period. Under Regulation 18702.5(b), the effect is not material if the decision would "[a]ffect only salary" for the public official unless the decision is to appoint, hire, fire, promote, demote or suspend the official or the official's immediate family, or to set a salary for the official or official's immediate family and the official or immediate family member is the only person in the job classification or position.

Here, it is not reasonably foreseeable that the Committee's recommendations regarding the City Treasurer's position will have a financial effect on your personal finances due to the number of intervening events involved: the City Council must approve a recommendation to be placed on a future ballot, and then it is subject to the public's vote. Further, any financial interest you may have in the position of City Treasurer is contingent upon your election to the position in a future election as the Committee's recommendations would be applicable to a time period beyond the term for which you are running. Nor do the recommendations involve the above factors in Regulation 18702.5, in that the recommendations do not relate to hiring, firing or appointing a person to the position or setting a salary for the City Treasurer's position. Therefore, you are not required under the Act's conflict of interest provisions to recuse yourself from participation in the Committee's recommendations regarding the Treasurer's position.

We note that the situation where a person is holding more than one public position may raise issues outside of the Act. Please check with your city attorney regarding any other laws that may apply including incompatible offices and any restriction on incompatible activities.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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