

March 14, 2012

Fair Political Practices Commission
Zachery P. Morazzini, General Counsel
428 J Street, Suite 620
Sacramento, California 95814-2329

Re: *Petition to Amend Regulation 18705.5*

Dear Mr. Morazzini:

I am a partner with the law firm of Rutan & Tucker, and serve as the City Attorney for the City of La Palma. On March 6, 2012, the La Palma City Council adopted the attached Resolution 2012-19, in support of the petition filed by Ash Pirayou of Rutan & Tucker on behalf of La Palma and several other cities to amend Section 18705.5 of Title 2 of the Code of California Regulations (the "Regulation").

The purpose of this letter is to highlight two points militating in favor of the proposed amendment to the Regulation. First, under the Regulation, City Councilmembers are deemed to have a financial interest in a decision to appoint themselves to the governing board of an external local governmental agency if it is reasonably foreseeable that the Councilmember would receive more than \$250 during a 12-month period from such appointment. In La Palma, like many cities, the entire City Council votes on appointments to outside agencies which require representation from La Palma; and most of these external agencies require a Councilmember to serve on the governing board. When an outside appointment is considered by the City Council, there must be some way for the Council to know if an individual Councilmember is interested in accepting appointment to the outside agency. Yet any Councilmember who advises the remainder of the City Council that he or she is interested in being appointed to the governing board of an external agency would necessarily participate in making the decision to appoint—the Councilmember would have made a recommendation to the decision maker (i.e., the City Council); and, in making such a recommendation, the Councilmember would also have been using his or her official position, since membership on most of the governing boards of external agencies is limited to Councilmembers. Thus, if strictly applied, the Regulation precludes Councilmembers from expressing interest in appointments to outside agency governing board. This results in the City Council having to make the appointments in a vacuum, i.e., without any information as to whether a particular Councilmember is even interested.

Second, if the Legislature had intended to prohibit City Councilmembers from voting on appointments to external agencies that provide compensation to governing board members, it

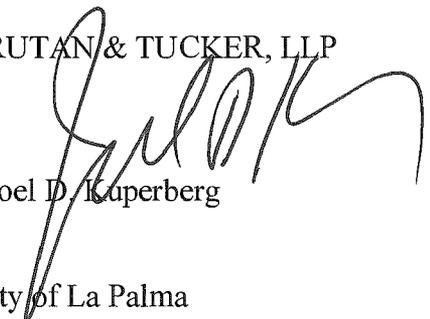
Fair Political Practices Commission
March 14, 2012
Page 2

would have clearly stated as much. Government Code Section 82030 is unambiguous—salary, per diem and reimbursement for expenses do not constitute “income” giving rise to a conflict under the Political Reform Act. There is nothing in the Political Reform Act that would lead a Councilmember to believe that voting on an appointment to another local public agency governing board would ever create a disqualifying conflict of interest. The FPPC’s interpretation of Government Code Section 87100 through the promulgation of the Regulation significantly changes the meaning and effect of Government Code Section 82030, leaving it essentially only to apply to salary, per diem or reimbursement received by a Councilmember from his or her elected city council position. If the California Legislature had intended to limit the application of Government Code Section 82030 only to salary, per diem and reimbursement received from the local government agency to which the Councilmember was elected, it would have so stated.

Thank you for this opportunity to provide input on the proposed amendment to FPPC Regulation 18705.5.

Very truly yours,

RUTAN & TUCKER, LLP



Joel D. Kuperberg

JDK:j

cc: Dominic Lazzaretto, City Manager, City of La Palma
Laurie Murray, City Clerk, City of La Palma

RESOLUTION NO. 2012-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA PALMA SUPPORTING AN AMENDMENT TO FAIR POLITICAL PRACTICES COMMISSION REGULATION 18705.5 REGARDING CITY COUNCIL APPOINTMENTS TO EXTERNAL COMMITTEES

WHEREAS, California Government Code Section 82030(b) provides that "income" does not include salary, reimbursement for expenses, per diem, or other similar benefit payments received from a state, local, or federal government agencies; and

WHEREAS, the Fair Political Practices Commission (FPPC) was created by the Political Reform Act of 1974, to administer, interpret, and enforce the Acts provisions; and

WHEREAS, the FPPC has adopted a regulation, Section 18705.5, which it has interpreted to preclude a Council Member from voting on his or her appointment to a local agency board if it is reasonably foreseeable that a Council Member could receive \$250 or more during a 12-month period from that appointment; and

WHEREAS, in adopting the Regulation, the FPPC has, notwithstanding the Government Code Section's express language to the contrary, made the receipt of salary and per diem from a local government agency a financial interest and thus, voting on appointments to a local government agency that provides a salary or per diem, a violation of the Political Reform Act; and

WHEREAS, Section 83112 of the California Government Code permits the FPPC to adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

NOW, THEREFORE, the City Council of the City of La Palma hereby resolves as follows:

SECTION 1. That the City Council hereby supports the petition submitted by the law offices of Rutan and Tucker on behalf of the City of La Palma and other Orange County Cities.

SECTION 2. That the City Council hereby encourages the FPPC to take quick action to amend Regulation 18705.5 as proposed in the petition.

SECTION 3. The City Clerk is requested to transmit a copy of this Resolution to the FPPC prior to March 15, 2012.

APPROVED AND ADOPTED by the City Council of the City of La Palma at a regular meeting held on the 6th day of March 2012.



G. Henry Charoen
Mayor

ATTEST:

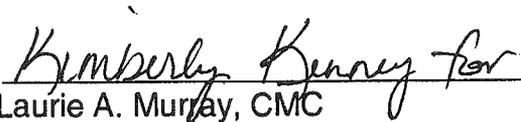


Laurie A. Murray, CMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF LA PALMA)

I, LAURIE A. MURRAY, City Clerk of the City of La Palma, California, DO HEREBY CERTIFY that the foregoing Resolution was adopted by the City Council of said City at a regular meeting of said City Council held on the 6th day of March 2012, and that it was so adopted by called vote as follows:

AYES:	Charoen, Hwangbo, Rodriguez, Shanahan, and Waldman
NOES:	None
ABSENT:	None
ABSTAIN:	None



Laurie A. Murray, CMC
City Clerk