



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 20, 2023

Keith F. Collins
Assistant City Attorney
City of Whittier
Jones & Mayer
3777 N. Harbor Blvd
Fullerton, CA 92835

Re: Your Request for Advice
Our File No. A-23-162

Dear Mr. Collins:

This letter responds to your request for advice on behalf of Whittier Councilmember Cathy Warner regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

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

Does Councilmember Warner have a potential conflict of interest in decisions involving the Uptown Specific Plan area, based on her adult daughter’s employment with, and income from, businesses located within the boundaries of the plan area?

CONCLUSION

No. Councilmember Warner’s daughter is an adult, over 18 years old. As such, she is not a “dependent” child as defined in Section 82029, and not “immediate family” for purposes of determining a financial interest for an official under Section 82029. Therefore, Councilmember

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 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.

Warner does not have a financial interest in the decisions involving the Uptown Specific Plan area based on the fact that a business that employs her adult daughter is located within its boundaries.

FACTS AS PRESENTED BY REQUESTER

Councilmember Warner's adult daughter lives in Councilmember Warner's home. Councilmember Warner's daughter does not pay Councilmember Warner any rent and does not otherwise contribute to the household income. Councilmember Warner and her adult daughter do not comingle household funds. Councilmember Warner's daughter recently took a part-time job at Auntie's Bakery & Café, a business located at 6506 Greenleaf Ave in the Whittier Uptown area for which she receives an hourly wage. This business is owned by another councilmember, Joe Vinatieri. The City Council often makes decisions that impact the businesses located within the Uptown Specific Plan.

ANALYSIS

Section 87100 of the Act prohibits a public official from making, participating in making, or in any way attempting to use official position to influence a governmental decision if the official knows or has reason to know that he or she has a financial interest in that decision. Section 87103 identifies an official's financial interests that may give rise to a disqualifying conflict of interest under the Act, including an interest in:

- Any business entity in which the official has an investment worth \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, trustee, employee, or holds any position of management (Section 87103(d)).
- Any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- Any source of income of \$500 or more in value to the official in the 12 months prior to when the decision is made. (Section 87103(c).)
- Any source of a gift or gifts of \$590 or more in value to the official in the 12 months prior to when the decision is made. (Section 87103(e); Regulation 18940(c).)
- The official's personal finances and those of immediate family members. (Section 87103.)

At issue is whether Councilmember Warner has one or more financial interests identified in Section 87103 with respect to decisions relating to the businesses located within the Uptown Specific Plan due to her adult daughter being employed by a business within the plan area. You state that Councilmember Warner does not receive income or financial support from her adult daughter. Also, the two do not comingle household funds. Barring additional facts, the only potential interest Councilmember Warner may have in a decision regarding the specific plan is an interest in her personal finances and those of immediate family members, as she has no interest in her daughter's employer as a business entity or source of income, and no interest in her daughter as a source of income. Turning to the possible effect on Councilmember Warner's personal finances and the finances of her immediate family, 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 or a member of the official’s immediate family. Under Section 82029, “immediate family” is defined as “the spouse and dependent children.” “Dependent children,” in turn, is defined as “a child ... of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.” (Regulation 18229.1.)

Councilmember Warner’s daughter is an adult, over 18 years old. As such, she is not a “dependent” child as defined in Section 82029. Accordingly, Councilmember Warner does not have a potential conflict of interest based on a financial effect on her adult daughter or her daughter’s employer. Moreover, based on the facts provided, it is not reasonably foreseeable that the decisions would have a financial effect on Councilmember Warner’s personal finances because Councilmember Warner does not receive income or financial support from her adult daughter, and the two do not commingle household funds. Accordingly, the Act’s conflict of interest provisions do not disqualify Councilmember Warner from taking part in decisions concerning the Uptown Specific Plan area based on this employment relationship.

If you have other questions on this matter, please contact me by email at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:aja