



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 14, 2024

Mark Vanni
Assistant City Attorney
City of Palo Alto
250 Hamilton Ave, 8th Floor
Palo Alto, CA 94301

Re: Your Request for Informal Assistance
Our File No. I-24-102

Dear Mr. Vanni:

This letter responds to your request for advice 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. Because your question is general in nature, we are treating your request as one for informal assistance.² 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

Assuming Palo Alto City Manager Edward Shikada would have a source of income interest in the nonprofit Stanford Health Care based on his future spouse’s employment there, would he also have a source of income interest in the nonprofit Stanford University by virtue of their close affiliation?

CONCLUSION

Yes. As explained below, Mr. Shikada would have a source of income interest in both SHC and Stanford University based on his future spouse’s employment with SHC.

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS AS PRESENTED BY REQUESTER

You seek this advice on behalf of Edward Shikada, the City Manager of Palo Alto. Mr. Shikada intends to get married, and his future spouse is employed by Stanford Health Care (“SHC”).

Stanford University is a nonprofit trust with corporate powers under State law and is a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code. Stanford University is organized into eight “schools,” one of which is the School of Medicine.

SHC is a separate nonprofit corporation with its own 501(c)(3) status.³ SHC encompasses Stanford Hospital and associated clinics in cities throughout the Bay Area. Stanford University and SHC each have their own Employer Identification Number.

The relationship between Stanford University and SHC is outlined in SHC’s bylaws, which provide that the Stanford University Board has the authority to appoint and remove members of the SHC board (Section 3.06),⁴ which currently consists of 26 members, one of which is also a member of the Stanford University Board. SHC board members are not required to be members of the Stanford University Board. The SHC Board appoints the President of the Hospital after consultation with and upon nomination from the President of Stanford University. (Section 3.01(i).) The SHC President may be removed by the SHC Board, either on its own initiative or based on a recommendation from the President of the University. (Section 6.05(f).)⁵ Additionally, the Dean of the University School of Medicine and the University Liaison for Stanford Medicine serve as ex officio Directors with voting rights. (Section 3.03(b).)

SHC’s Board is responsible for choosing all hospital employees, directing their work and establishing professional standards. The SHC Board approves SHC’s operating and capital budgets as well as the strategic plan. (Section 3.01(e).) SHC has the power to enter into contracts (Section 3.01(d)) and manage its own facilities. (Section 3.01(b).) Stanford University’s role in appointing the members of SHC’s Board means that SHC is consolidated with Stanford University for the purpose of external financial audits.

As amended in 2000, SHC’s Articles of Incorporation state its primary purposes are:

[T]o support, benefit, and further the charitable, scientific and educational purposes of the Leland Stanford Junior University (the “University”) and the University’s School of Medicine; to operate and manage Stanford Hospital and Clinics in cooperation with and in support

³ Publicly, “Stanford Medicine” refers to Stanford Hospital, Lucile Packard Children’s Hospital, and the University’s School of Medicine. However, this term is a branding convenience and not a legal entity. The actual legal entity is Stanford Health Care, which encompasses the adult hospital and associated clinics and is distinct from Stanford University and the School of Medicine.

⁴ The bylaws also provides that any vacancy occurring on the SHC Board shall be filled by Stanford University. (Section 3.10(b).)

⁵ The sole Member of the SHC corporation is Stanford University. (Section 3.02.)

of the University's School of Medicine; and to make donations, transfer assets and provide other forms of aid and assistance to, for the benefit of, or in connection with the University and the University's School of Medicine.

(Amended Articles of Incorporation, April 6, 2000, Art. 2.)

ANALYSIS

Section 87100 prohibits public officials from taking part in governmental decisions in which they have a financial interest. Section 87103 provides that a public official has a financial interest in a 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 their immediate family, or on any of the official's interests specified in Section 87103.

As pertinent to this request, an official has an interest in any source of income aggregating \$500 or more received by, or promised to, the official within the 12 months prior to the decision (Section 87103(c)), including any community property share in the income of a spouse (Section 82030(a)). From the facts provided, Mr. Shikada will have a source of income interest in SHC, the nonprofit employer of his future spouse.⁶

The determinative issue for purposes of this letter is whether the Mr. Shikada's interest in SHC potentially disqualifies him from a decision with a foreseeable material effect on Stanford University. For conflict of interest purposes, the Commission has advised that in some instances the law "pierces" through entities, such as for profit and nonprofit corporations, based on the nature of the relationship between the entity and those who control the entity. Under these circumstances, multiple persons/entities may be treated as sources of income. (*Atigh* Advice Letter, No. I-93-383, *Hogin* Advice Letter, No. A-05-070.)

In addition, in certain circumstances when the relationship between the public official and his or her employer is controlled by persons⁷ (including nonprofit entities), who also effectively control decisions of the employer, we have advised that these persons are considered to be sources of income and economic interests to the official. (*Deadrick* Advice Letter, I-03-143; *Hentschke* Advice Letter, No. A-80-069.)

In 1983, the Commission addressed this issue in the *Lee* Advice Letter, No. A-83-257, where it was asked to determine whether a councilmember would have a source of income interest in Stanford University if his spouse were to become an employee of the Stanford University Hospital. The letter initially noted that the Hospital was a nonprofit corporation, legally separate

⁶ You state that procedures have been established to ensure Mr. Shikada will have no involvement in governmental decisions affecting SHC's financial interests, and your request therefore centers on whether governmental decisions concerning Stanford University must follow the same procedures.

⁷ Note that under the Act, the term "person" is defined as "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert."

from Stanford University and that it functioned independently from Stanford University concerning personnel matters such as hiring and salary decisions. However, the Hospital's bylaws provided, in part, that: 1) the Hospital's President, who was also required to serve as a Stanford University Vice President, had the ultimate authority to hire and fire all Hospital staff; 2) the Hospital's Directors were required to be members of Stanford University's Board of Trustees; 3) the President of Stanford University and the President of the Hospital were required to be Hospital Board members; and 4) the purpose of the Hospital was to further the educational mission of Stanford University and that it should draw upon the academic resources of the School of Medicine and other schools of the University to achieve this purpose.

The *Lee* letter concluded:

Stanford University and the Hospital are really one and the same. The same group of persons holds ultimate voting control over both entities. That group is The Board of Trustees of The Leland Stanford Junior University. The Hospital's President is a Stanford University Vice President, who has ultimate authority to hire and fire all Hospital staff. The purpose of the Hospital is to serve the needs of Stanford University's educational mission. If the two entities were business entities, rather than nonprofits, we would clearly hold that the Hospital is a wholly owned subsidiary of Stanford University.

(*Lee* Advice Letter, *supra*. See also *Yang* Advice Letter, No. I-05-113 [Councilmember had source of income interest in nonprofit that employed spouse and the Healthgroup for which the nonprofit acted as the fundraising arm. While the two organizations were separate legal entities (with separate boards) that were "affiliated," the nonprofit was substantially controlled by the Healthgroup, which shared the same address and set the amount of the spouse's salary as well as any additional compensation under the incentive program]; *Atigh* Advice Letter, No. I-93-383 [councilmember who had a source of income interest in nonprofit entity that was a wholly owned subsidiary of an association with the same governing board also has an economic interest in the association].)

Here, you state that while SHC and Stanford University have an association with one another, including collaborating on medical matters, Stanford University no longer exercises the same level of control over SHC and its Board as it did when the *Lee* Advice Letter was issued in 1983. For example, you state the President of SHC is no longer required to be the Vice President for Medical Affairs at Stanford University, and SHC Board members are no longer required to be members of the Stanford University Board.⁸ However, we find it significant that the Stanford University Board has the authority to appoint and remove members (and fill vacancies) of the SHC Board, and that the SHC Board appoints the President of the Hospital only after "consultation with and upon nomination from the President of Stanford University," who also has the authority to recommend that the Hospital President be removed. Additionally, the Dean of the University School of Medicine and the University Liaison for Stanford Medicine serve as ex officio members

⁸ You also cite to a recent superior court matter (*Young et al. v. The Leland Stanford Junior University*), concerning whether Stanford University had alter ego liability for the acts of SHC, as further evidence of SHC's independence from Stanford University.

of the SHC Board with voting rights. Lastly, a primary purpose of SHC is to “support, benefit, and further the charitable, scientific and educational purposes” of Stanford University. In our view, while SHC’s bylaws have changed since the *Lee* letter was issued in 1983, Stanford University still controls the SHC Board - primarily through its power to appoint and remove SHC Board members - such that the two entities should continue to be treated as one and the same for purposes of the Act’s conflict-of-interest provisions.⁹ Accordingly, Mr. Shikada will have a source of income interest in both SHC and Stanford University as a result of his future spouse’s employment with SHC.

In light of this conclusion, Mr. Shikada is disqualified from any decision in which SHC or Stanford University is explicitly involved because the effect of a decision on a source of income interest explicitly involved is presumed foreseeable under Regulation 18701(a) and is material under 18702.3(a)(1). SHC or Stanford University will be explicitly involved if they are a named party in the decision or if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, SHC or Stanford University, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

If SHC or Stanford University are not explicitly involved in the decision, a financial effect is foreseeable if it “can be recognized as a realistic possibility and more than hypothetical or theoretical.” (Regulation 18701(b).) Under Regulation 18702.3(a)(3), the reasonably foreseeable financial effect of a governmental decision on SHC or Stanford University will be material if:

- The decision may result in an increase or decrease of their annual gross revenues, or the value of its assets or liabilities, in an amount equal to or greater than (A) \$1,000,000 or (B) five percent of their annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.3(a)(3)(A).)
- The decision may cause them to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than (A) \$250,000 or (B) one percent of their annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).)
- The official knows or has reason to know that the organization has an interest in real property and (1) the property is a named party in, or the subject of, the decision or (2) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)

Please note that the determination of a conflict of interest is dependent upon the facts involved in each decision. We recommend you contact our office if you need additional advice with respect to a particular decision before the City of Palo Alto. Also, please be aware that Section 1090

⁹ In making this determination, we are guided generally by principles outlined in the Act. First, as mandated by Section 81001, “[t]he people find and declare ... [p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interest of persons who have supported them.” Secondly, the Act “should be liberally construed to accomplish its purposes.” (Section 81003.)

generally prohibits public officers, while acting in their official capacities, from participating in the making of contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Please contact us for additional advice if a potential contract is at issue.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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