



FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 3: SOURCES OF INCOME

The City's Ethics Ordinance includes laws that prohibit city officials from influencing municipal decisions when it is reasonably foreseeable that those decisions will have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to city officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts involving sources of income. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in local and state law.

GENERAL RULES

- ❖ The Ethics Ordinance prohibits city officials from participating in a municipal decision if it is reasonably foreseeable that the decision will have a material financial effect on any person or entity from whom the official has received income of \$500 or more within the previous twelve months.
- ❖ Income includes salary, wages, reimbursement of expenses, per diem, commission income, incentive compensation, rent, proceeds from a sale, outstanding loans, and forgiveness of a loan.
- ❖ Under this rule, for example, a city official who receives compensation from a private consulting contract with a local company would likely be unable to participate in a City decision that would financially benefit the company.
- ❖ Your income also includes your 50% community property interest in the income of your spouse (which includes a registered domestic partner). In other words, any source of income of \$1,000 or more to your spouse within the previous 12 months must be considered for conflict purposes.
- ❖ Your income also includes your pro rata share of any income received by a business entity or trust in which you or your spouse own a 10-percent or greater interest. In other words, if you have a 25% ownership interest in a business entity, you have an economic interest in each client or customer who paid the business \$2,000 or more within the previous 12 months.
 - ✓ If your spouse has a 25% ownership interest in a business entity, you will have an economic interest in any clients or customers who paid that business \$4,000 (your community property pro rata share would be \$500) or more within the previous 12 months.
 - ✓ Under certain circumstances, a customer of a business entity engaged in the retail sales of goods or services to the public may not be treated as a source of income to a city official. Contact the ethics commission for additional assistance.

- ❖ If you and your spouse have a separate property agreement (such as a pre-nuptial agreement) stating that you have no community property interest in the other person's income, then you are not required to consider the other person's income for disqualification purposes.
 - ✓ Notwithstanding a separate property agreement, you can still have a conflict of interest based on your spouse's ownership interest in a business entity or real property. See the ethics commission's fact sheets on business interests and real property for additional information.
- ❖ Income does not include your salary from a former employer if all of the following are true: (a) you received, or were entitled to receive, all such salary from the former employer before you became a city official; (b) the income was received in the normal course of the previous employment; and (c) you had no expectation when assuming office that you would return to work for the former employer.
- ❖ For purposes of these rules, income does not include salary, reimbursement for expenses, per diem, or similar benefits received from a federal, state, or local governmental entity. The salary a city official's spouse receives from a job with the County of San Diego, for example, is not considered income for purposes of these conflict of interest rules. See page five for additional rules regarding income from governmental entities.
- ❖ Income also does not include an inheritance, a loan from a commercial lending institution on terms available to the public, loans from family members, campaign contributions, alimony, or child support payments.
- ❖ If you have a source of income from a business entity, you must also consider any parent, subsidiary, or affiliate of the entity for disqualification purposes. Please contact the ethics commission for additional information regarding the criteria for a parent, subsidiary, or affiliate relationship.
- ❖ Whether the financial effect of a municipal decision on a source of income is material depends on the applicable facts. As a general rule, however, the financial effect will be material if the source of income is the subject of the decision or if the decision will have a significant financial impact on the source of income, as discussed more fully below.

MATERIALITY – SOURCES THAT ARE THE SUBJECT OF THE DECISION

- ❖ The financial effect of a municipal decision on a source of income is “material” if the source is a named party in, or the subject of, the decision, including a claimant, applicant, respondent, or contracting party.
- ❖ For example, June is a deputy director in streets division. Her spouse is employed by Tech Aware, a company that sells surveillance products. June has been asked to review bids from companies seeking to install cameras on traffic lights throughout the City. Because Tech Aware is a source of income to June, and Tech Aware is one of the bidders for the City contract, June is precluded from participating in any municipal decisions relating to the City contract.
- ❖ This materiality rule applies regardless of whether the source of income is an individual, a non-profit entity, or a for-profit entity.

MATERIALITY – SOURCES THAT ARE AFFECTED BY THE DECISION

- ❖ Even if a city official's source of income is not a claimant, applicant, respondent, contracting party, or otherwise the subject of the municipal decision, the official could still be disqualified from participating in decisions that will financially affect the source.
- ❖ For these sources of income, whether a financial impact is material largely depends on the nature of the entity and the relative financial impact caused by the decision. There are different rules for individuals, non-profit organizations, and for-profit entities. For instance, a decision that causes a \$50,000 increase in revenue might be material to a small company, but comparatively negligible to a large corporation.
- ❖ When making a materiality determination for sources of income that are affected by a municipal decision, evaluate the decision's impact on the individual or entity, using the rules discussed below.

Source = An Individual

- ❖ The financial effect of a municipal decision on a source of income is material if the source is an individual and any of the following apply:
 - ✓ there is a realistic possibility that the decision will affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by \$1,000 or more; or,
 - ✓ the official knows or has reason to know that the individual (or any member of his or her immediate family) has an interest in a business entity, and there is a realistic possibility that the entity will be materially impacted by the decision. The impact will be material if the business entity is (a) the subject of the decision (see discussion above); or (b) significantly affected by the decision (see materiality rules applicable to for-profit entities below); or,
 - ✓ the official knows or has reason to know that the individual has an interest in real property and:
 - the property is the subject of the decision (for guidance, refer to the "Decisions Involving an Official's Property" section of the ethics commission's disqualification fact sheet for real property); or,
 - there is clear and convincing evidence the decision will have a substantial effect on the property.
- ❖ For example, Brendan is a council representative. He recently sold some Padres memorabilia to a local collector for \$650. When the collector learns that John works for a Councilmember, he asks Brendan for assistance with an application for a property variance pending before the City. Because the collector is a source of income to Brendan, and because Brendan knows that the collector owns real property that is the subject of a City decision, Brendan is precluded from participating in that decision.

Source = Non-Profit or For-Profit Entity

- ❖ The financial effect of a municipal decision on a source of income is material if the source is a for-profit company or a non-profit organization and any of the following apply:
 - ✓ there is a realistic possibility that the decision will increase or decrease the entity's annual gross revenues or the value of the entity's assets or liabilities by at least:
 - \$1 million; or
 - 5%, so long as the increase or decrease is at least \$10,000.
 - ✓ there is a realistic possibility that the decision will cause the entity to incur or avoid additional expenses, or to reduce or eliminate expenses by at least:
 - \$250,000; or
 - 1% of the entity's annual gross revenues, so long as the change in expenses is at least \$2,500.
 - ✓ the City Official knows or has reason to know that the entity has an interest in real property and:
 - the property is the subject of the decision (for guidance, refer to the "Decisions Involving an Official's Property" section of the ethics commission's disqualification fact sheet for real property); or,
 - there is clear and convincing evidence the decision will have a substantial effect on the property.
- ❖ For example, Maeve is a staffer in a Council office. Her spouse, Otis, works for The Old Globe Theater, a non-profit organization that routinely receives grant funding from the City's arts & culture commission. The Mayor has proposed a change to the formula by which the Commission will award grants in the future. Under these facts, Maeve may not participate in any Council decisions relating to the Mayor's proposal if there is a realistic possibility that such decisions will increase or decrease The Old Globe's annual gross revenues by \$1 million, or by 5% or more (and by at least \$10,000).
- ❖ Another example: John is a member of the planning commission. He has a 25% ownership interest in a local architectural firm. One of the firm's clients is a Pacific Beach hotel. John's pro rata share of income from the hotel during the past 12 months is more than \$500. The planning commission is considering an application for a new homeless shelter across the street from the hotel. Before John may participate in the decision regarding the shelter, he must evaluate whether there is a realistic possibility that the shelter will increase or decrease the hotel's annual gross revenues by 5% or more (and by at least \$10,000), or will impact the hotel's expenses by 1% or more (and by at least \$2,500). Separately, he will need to determine whether the decision will substantially impact the value of the hotel property.

INCOME FROM GOVERNMENTAL ENTITIES

- ❖ Payments from a governmental entity rarely trigger a conflict of interest. Salary and reimbursement from a government entity are not treated as income under state and local law and are not reportable on a Form 700 (although money otherwise received under a government contract could fall outside this exception). Even when a governmental entity is a source of income for a city official, it is not relevant that a municipal decision could financially impact the governmental entity.
- ❖ It does matter, however, that a municipal decision could impact the official. Disqualification can be triggered when it is reasonably foreseeable that a municipal decision will have a unique effect on an official receiving income from a governmental entity. Contact the ethics commission for additional assistance.

INSIGNIFICANT FINANCIAL EFFECT

- ❖ There are circumstances in which a municipal decision's financial effect is so minor that it does not rise to the level of being material. In other words, a city official does not have a disqualifying conflict of interest in a municipal decision if the financial effect of the decision is nominal or inconsequential.
- ❖ For example, Gus is a deputy director in street division. His spouse works for Phoenix Farms, a grocery chain. The City plans to make road improvements near a Phoenix Farms store that will require an hour-long closure of one of the store's parking lot entrances. Although Phoenix Farms may experience reduced business during that short period of time, the impact would be so insignificant that Gus will not be disqualified from participating in decisions relating to the road improvement project.

PUBLIC GENERALLY

- ❖ Even if the financial effect of a municipal decision on a source of income is material, you will not be disqualified from participating in that decision if you can establish that the financial effect on the source is indistinguishable from the financial effect on the public generally.
- ❖ A decision affecting a source of income is entitled to the public generally exception if the financial impact on the source is essentially the same as it is on at least 25% of all individuals, non-profit organizations, or business entities (whichever category the source falls into) located in the City.
- ❖ When determining whether a municipal decision's financial impact on a particular source of income is disproportionate to its impact on other individuals or entities in the City, consider the source's income, investments, assets, liabilities, and real property.
- ❖ In addition, the public generally exception will likely apply in the following special circumstances: (1) the imposition of taxes or assessments for water, utility, or other broadly provided public services applied equally or proportionally to everyone; (2) changes to parking rates, permits, and fees that apply to the entire City; (3) ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance, or improve public safety; (4) decisions that affect all renters of residential property; (5) situations in which the law requires a board or commission to contain appointees representing a particular trade or profession and there is no unique effect on the appointee; (6) states of emergency; and (7) permits, licenses or other use

entitlements sought from an airport or harbor. Contact the ethics commission for assistance with these circumstances.

CONTRACTS

- ❖ If the municipal decision involves a contract, be sure to also review the ethics commission's fact sheet on financial interests in a contract.

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the ethics commission at (619) 533-3476 for additional assistance.

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