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CITY OF SAN MATEO



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330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403-1388

**Office of the City Attorney**

**Telephone (650) 522-7020**

12 May 2010

Chairman  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

RE: Agenda Item 18: Amendment of Regulation 18703.3 – Definition of Source of Income

Dear Commission Chair:

On behalf of the League of California Cities City Attorneys FPPC Committee, I submit this letter for comment on the above-referenced agenda item. The proposed amendments are being advanced to include within the definition of source of income (1) persons who control a business entity that is the source of income to a local official and (2) persons who are either general partners or otherwise exercise management or control over an entity in which the public official is a partner and from which the official has received income. The purpose behind the proposed changes is to recognize the reality that a public official has an interest not only in a business entity that is a source of income to the official, but also in the people who control and make decisions for those entities. The Committee supports the Commission's interest in amending the regulations to address this interest; however, the Committee has some concerns with the language chosen to accomplish that purpose.

**Proposed Section 18703.3(a)(3)**

The Committee had three concerns with the proposed amendment. First, the proposal would provide that an official would have an economic interest in, among other things, "a controlling person of a business entity from which the official has received income..." There does not appear to be any attempt within this section to define when a person "controls" a business entity. The Committee believes it would be helpful to provide some guidance on this matter so that officials can know better which persons they should consider to be sources of income. I have discussed this with Commission staff, and they have agreed to consider this issue further.

In addition, the proposed amendment would require an official to disqualify themselves from decisions affecting persons who own a 50% or greater interest in a business entity that is a source of income to the official. While this certainly makes sense when the official knows or has reason to know who owns such an interest in business entity sources of income to the official, this is not always possible. The Committee was concerned about this and suggested that the regulations be revised to indicate that an official shall not be penalized for not treating an individual who owns a 50% or greater interest in a business entity source of income to the official as a separate source of income if the official did not know and did not have reason to know of the individual's ownership interest in the entity. In my discussions with Commission staff, they pointed out that the language in Government Code section 87100 already limits violations to situations where an official "knows or has reason to know he has a financial interest" in a decision in which he participates. This sufficiently meets the Committee's second concern.

Finally, the Committee found the language to be confusing and difficult to follow. The Committee would offer the following revision as an alternative that might make the amendment more clear:

(3) In addition to having an economic interest in any business entity from which the official has received income of five hundred dollars (\$500) or more within 12 months prior to the time when the relevant governmental decision is made, the official has an economic interest in:

(A) any person owning a 50% or greater interest in such business entity; and

(B) any person exercising control over such business entity, regardless of the extent of their ownership interest.

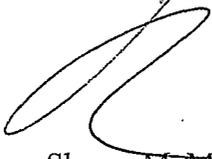
#### **Proposed Section 18703.3(a)(4)**

The Committee supports the Commission's interest in adding this subsection, but is concerned that it may be underinclusive. The proposed amendment is triggered by the official's position as either a limited or general partner in a business entity. This would appear to exclude limited liability companies, a popular alternative to partnerships. In addition, the proposed amendment would only apply to general partners who exercise management or control of the business entity. However, there are cases where management and control of a partnership (or LLC) is managed by someone other than a general partner (or LLC member). The Committee would suggest the following revisions to the proposed amendment to address these concerns:

(4) If an official is a general partner or a limited partner (or a member in the case of an LLC) in a business entity from which the official has received income of five hundred dollars (\$500) or more within the 12 months prior to the time when the relevant governmental decision is made, the official has an economic interest in the ~~general partners of the business entity~~ persons who exercise management or control of the business entity.

I hope you find these comments helpful in your deliberations on the proposed amendments. My schedule does not permit my attendance at the Commission meeting on May 13. However, a member of our Committee will be present to participate in the process and answer any questions the Commission may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn M. Mason', written over a horizontal line.

Shawn M. Mason  
City Attorney of San Mateo

CC: Scott Hallabrin  
Sukhi Brar