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**From:** Bob Brownstein [mailto:bbrownstein@atwork.org]  
**Sent:** Thursday, August 17, 2006 10:31 AM  
**To:** Terrazas, Eva  
**Subject:** RE: Conflict of Interest Letter from firm of Davis Wright Termaine

Hi Eva --

In light of the legal opinion that you just sent out, would you mind circulating to the Task Force members the attached text from the FPPC Regulations. These regulations specify the test that must be performed before anyone can determine that the economic interests of a specific business do not constitute a conflict because they are the same as the economic interests of the public generally. Needless to say, no evidence has been provided in the letter from Davis Wright Tremaine indicating that this test has been performed.

Thanks,

Bob Brownstein

-----Original Message-----

**From:** Terrazas, Eva [mailto:Eva.Terrazas@sanjoseca.gov]  
**Sent:** Wednesday, August 16, 2006 6:07 PM  
**To:** 'ClarkWilliams@hotmail.com'; Cogan, Jim; 'Darlene Bright'; 'David Parker'; 'Fatima Silva'; 'Jeff Bedolla'; 'Kirk Everett'; 'Krya Kazantzis'; Le, Maria; 'Mark'; 'Mark Schlosberg'; Morrow, Crystal; 'Pete Constant'; 'Pete Furman'; 'Richard Konda'; 'Sanjeev Bery'; 'Scott Soper'; Bob Brownstein  
**Cc:** Tucker, Sheila  
**Subject:** Conflict of Interest Letter from firm of Davis Wright Termaine

**Sunshine Reform Task Force Update:**

Attached please find a letter addressed to Ed Rast from the legal firm of Davis Wright Termaine re: Conflict of Interest Analysis of Task Force Member, Dan Pulcrano.

Look forward to seeing you at tomorrow's Task Force meeting.

Best,

*Eva M. Terrazas  
Senior Community Relations Officer  
City of San Jose  
200 E. Santa Clara Street, 17<sup>th</sup> Floor  
San Jose, CA 95113  
408.535.8119*

## Regulations of the Fair Political Practices Commission

### TITLE 2, DIVISION 6, CALIFORNIA CODE OF REGULATIONS

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[\(Back to Regulations of the Fair Political Practices Commission\)](#)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

#### **§ 18707. Public Generally.**

(a) Introduction.

Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the official can establish that the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally as set forth in 2 Cal. Code Regs. sections 18707.1 – 18707.9.

(b) Steps to Determine Application of Public Generally. To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subdivision (a) of this regulation, apply Steps One through Four:

(1) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.

(2) Step Two: For each person or real property identified in Step One, determine the applicable "significant segment" rule according to the provisions of 2 Cal. Code Regs. section 18707.1(b).

(3) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two-part test set forth in 2 Cal. Code Regs. section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.

(4) Step Four: Following the provisions of 2 Cal. Code Regs. section 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in 2 Cal. Code Regs. sections 18707.2 through 18707.9 applies to each person or real property triggering the conflict of interest.

(c) For purposes of Government Code section 87102.5 (Members of the Legislature) and Government Code section 87102.8 (elected state officers), Government Code section

87102.6(b)(2) applies.

NOTE: Authority cited: Section 83112, Government Code.  
Reference: Section 87103, Government Code.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

### **History**

1. New section filed 11-23-98; effective upon filing.
2. Amendment filed 1-16-01; effective 2-1-01.
3. Amendment of subsections (a) and (b) (2)-(4) filed 12-20-05; operative 1-19-06.

## Regulations of the Fair Political Practices Commission

### TITLE 2, DIVISION 6, CALIFORNIA CODE OF REGULATIONS

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[\(Back to Regulations of the Fair Political Practices Commission\)](#)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

#### **§ 18707.1. Public Generally. General Rule.**

(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

(b) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a "significant segment" of the public generally if any of the following are affected as set forth below:

(A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:

(i) Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 individuals who are residents of the jurisdiction.

(B) Real Property. For decisions that affect a public official's interest in real property, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency.

(C) Business Entities. For decisions that affect a business entity in which a public official has an economic interest, the decision also affects either 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

(D) Governmental Entities. For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity.

(E) Exceptional Circumstances. The decision will affect a segment of the population which does not meet any of the standards in subdivisions (b)(1)(A) through (b)(1)(D), however, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a

significant segment of the public generally.

(2) Substantially the Same Manner: The governmental decision will financially affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation. The financial effect need not be identical for the official's economic interest to be considered "financially affected" in "substantially the same manner."

COMMENT: The term "affect all members of the public" is intended to cover decisions affecting the public in general but to exclude decisions which uniquely benefit a public official.

NOTE: Authority cited: Section 83112, Government Code.  
Reference: Section 87103, Government Code.

### **History**

1. New section filed and effective 11-23-98.
2. Renumbering of former section 18707.1 to section 18707.2 and new section 18707.1 filed 1-16-2001; effective 2-1-2001.
3. Amendment of subdivisions (b)(1)(B), (b)(1)(C) and (b)(2) filed and effective 6-15-04.