

100-10-19-331
CITY COUNCIL MEETING

NOVEMBER 17, 1982

LETTER FROM CITY
ATTORNEY RE POSSIBLE
CONFLICT OF INTEREST
RE DECLARATION OF
IMPACTION BY LUSD

City Clerk Reimche read the following letter from City Attorney Stein regarding a conflict of interest for Councilmen whose immediate family members are employed by the Lodi Unified School District to vote on a decision regarding a public hearing on a Lodi Unified School District Declaration of Impaction.

"On Thursday, November 4, 1982, I contacted the Fair Political Practices Commission and asked specifically whether there would be a conflict of interest for Councilmen whose immediate family members are employed by the Lodi Unified School District to vote on a decision regarding a public hearing on a Lodi Unified School District Declaration of Impaction.

The FPPC stated there was no conflict of interest. The reasoning used and the first Section that one must look to is under Government Code Section 82030 under definitions of "income" and thereunder Section 82030 (b) (2) to wit:

"Income" also does not include:

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or FPPC that voting on a decision which will affect that income would not, therefore, be a conflict of interest.

Subsequent to speaking with the FPPC, I spoke with Dick Eichenberger of the District Attorney's office. It was his opinion that since the FPPC did not consider that a conflict of interest exists, that he would not consider prosecuting any suggested violation. He further stated that he agreed with the FPPC's opinion."

RONALD M. STEIN
City Attorney

7-cc-43 - 70-331
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Continued November 17, 1982

"...(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;"

The part that Section 82030 is under deals with the requirement of filing a conflict of interest statement. What the FPPC said is that since Section 82030 (b) (2) does not include monies received from a School District, therefore there would be no conflict of interest where a decision of a Council would affect said income.

You get to the decision regarding the voting on the School District impaction by looking further to Government Code Section 87103 (c) which contains the general prohibition against a public official voting on a project or making a decision which will affect a financial interest. Government Code Section 87103 states that an official has a financial interest in a decision if it will have an effect on any source of income, to wit:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally..."

Since salaries received from a School District are not considered reportable income hereunder, it is the position of FPPC that voting on a decision which will affect that income would not, therefore, be a conflict of interest.

Subsequent to speaking with the FPPC, I spoke with Dick Eichenberger of the District Attorney's office. It was his opinion that since the FPPC did not consider that a conflict of interest exists, that he would not consider prosecuting any suggested violation. He further stated that he agreed with the FPPC's opinion."

RONALD M. STEIN
City Attorney

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MEMORANDUM

To: Honorable Mayor and Council Members

From: City Attorney

Re: Conflicts of Interest

Date: November 4, 1982

On Thursday, November 4, 1982, I contacted the Fair Political Practices Commission and asked specifically whether there would be a conflict of interest for Councilmen whose immediate family members are employed by the Lodi Unified School District to vote on a decision regarding a public hearing on a Lodi Unified School District Declaration of Impaction.

The FPPC stated there was no conflict of interest. The reasoning used and the first Section that one must look to is under Government Code Section 82030 under definitions of "income" and thereunder Section 82030(b)(2) to wit:

"Income" also does not include:

"... (2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;"

The part that Section 82030 is under deals with the requirement of filing a conflict of interest statement. What the FPPC said is that since Section 82030(b)(2) does not include monies received from a School District, therefore there would be no conflict of interest where a decision of a Council would affect said income.

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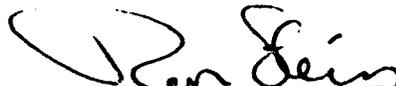
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Honorable Mayor and Council Members
Re: Conflicts of Interest

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally ..."

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RONALD M. STEIN
City Attorney

RMS:vc

NOTICE OF PUBLIC HEARING REGARDING
DECLARATION OF IMPACTION DATED
SEPTEMBER 7, 1982 BY LODI UNIFIED
SCHOOL DISTRICT BOARD OF TRUSTEES

WHEREAS, Ordinance No. 1149, entitled, "An Ordinance of the City of Lodi to Provide for the Dedication of Land or Fees or Both as a Condition to the Approval of New Residential Developments, for the Purpose of Providing Classroom Facilities Where Conditions of Overcrowding Exist in a Public School Attendance Area", which was adopted by the Lodi City Council on August 2, 1978, provides that the Governing body of a school district which operates, in whole or in part, within the City of Lodi may at any time pursuant to Government Code Section 65971, notify the City Council that it has found that:

(1) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing, (2) all reasonable methods of mitigating conditions of overcrowding have been evaluated; and (3) no feasible methods for reducing such conditions exist. Such notification shall remain in effect until withdrawn in writing by the governing body of the school district.

Upon receipt of such notice, the City Council shall schedule and conduct a public hearing on the notification for the purpose of allowing interested parties to comment on the matter. Following such hearing, the City Council shall determine whether it concurs in such finding. If the City Council concurs, it shall by resolution designate the school as an overcrowded school.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby set a Public Hearing on Wednesday, January 5, 1983 at the hour of 3:00 p.m., or as soon thereafter as the matter may be heard, in the Council Chambers, City Hall, 221 West Pine Street, Lodi, California, to receive public input on notification received from the Lodi Unified School District declaring a state of impaction in twenty attendance areas.

Information regarding this item may be obtained in the office of the City Clerk at 221 West Pine Street, Lodi, California. All interested persons are invited to present their views either for or against the above proposal. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein and oral statements may be made at said hearing.

Dated: November 17, 1982

By Order of the City Council

ALICE M. REIMCHE
City Clerk