

MEMORANDUM OF LAW

DATE: January 18, 1991

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Meaning of "Nexus" Relating to Income
Interests and Participation in Governmental
Decisions/Conflict of Interest

This is in response to your memorandum addressed to City Attorney John Witt, which asked him to analyze and answer six (6) hypothetical questions aimed at giving you further guidance to avoid conflict of interest situations. As explained to your Chief of Staff Ben Dillingham by telephone on January 9, 1991, to answer those six (6) hypothetical questions would require complex legal analyses and several pages. It is our understanding that, instead, you are essentially seeking further guidance on how to recognize and appropriately respond to potentially disqualifying income interests. Therefore, your six (6) hypothetical questions are withdrawn.

Referring to a City Attorney Memorandum of Law dated June 5, 1989 (copy attached), you specifically request clarification of the term "nexus" as used to determine whether and when an income interest disqualifies a public official from governmental decisionmaking. We therefore limit this response to further clarifying the term "nexus" as it relates to analyzing "income" interests.

The term "nexus" appears in the new "materiality" regulations adopted by the Fair Political Practices Commission ("FPPC") and is used to determine whether the financial effect of a particular governmental decision will be material on a public official's income interests. FPPC Regulation 18702.1(a)(i) and (d). The term "nexus" is not a term used to determine the "materiality" of financial effects on either investment or real property interests.

Also, the term "nexus" arises only when an elected official's economic (income) interest is directly, as opposed to indirectly, involved in the governmental decision. As the applicable regulation states:

18702.1 Material Financial Effect: Official's
Economic Interest is Directly Involved in the Decision.

a. The effect of a decision is
material if any of the following
applies:

(1) Source of Income or Gifts
- Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency or there is a nexus) sic as defined in subdivision (d) between the purpose for which the official receives income and the governmental decision;

The term "nexus" is defined in subsection (d) of Regulation 18702.1. It reads as follows:

1. Definitions of the term "nexus" appearing in Black's Law Dictionary and Webster's Third New International Dictionary are not helpful. Black's Law Dictionary defines the term "nexus" in reference to federal tax law only. It defines the term "nexum," a term closely related in spelling and derivation, to mean "the obligation or bond between contracting parties," and refers to a particular form of ancient Roman contract. Black's Law Dictionary 1044 (6th ed. 1990). Webster's dictionary defines "nexus" to include "connection, interconnection, tie, link." Webster's Third New International Dictionary 1524 (1965).

(d) There is a nexus between the purpose for which an official receives income and a governmental decision if the official receives income to achieve a goal or purpose

which would be achieved, defeated, aided, or hindered by the decision.

This definition shows that the FPPC clearly intends that a factual determination has to be made each time a public official's income interest is directly involved in a governmental decision. That factual determination is: "Is there a link (nexus) between the purpose for which the official receives the relevant income and the governmental decision at hand?" The factors to be used to make that determination are set forth in the definition, namely, does the official receive the income for a goal or purpose that would be achieved, defeated, aided or hindered by the governmental decision?

Unfortunately, there is no hard and fast rule that will readily make these determinations. The answer will depend on the particular facts and circumstances of a particular situation.

We emphasize that the term "nexus" is not used to determine materiality of financial effects on income interests that are indirectly, as opposed to directly, affected by a particular governmental decision. These determinations are made by reference to FPPC Regulation 18702.5 (non-profit entity source of income or gifts indirectly involved in a decision) or 18702.6 (source of income or gifts who is an individual indirectly involved in the decision). Those regulations are attached for your reference.

We appreciate your frustration at not having a clearly defined set of guidelines that will assuredly determine your course of action each time you are confronted with a potentially disqualifying "income" interest. As the above rules and definitions illustrate, however, the answer in each instance may be determined only after the facts of circumstances of each instance are known and analyzed.

JOHN W. WITT, City Attorney

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Attachments

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