




**Interoffice Memorandum  
Office of the City Attorney**

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DATE: August 27, 2020  
TO: City of Elk Grove City Council  
FROM: Jonathan P. Hobbs, City Attorney   
SUBJECT: California Northstate University

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**QUESTIONS PRESENTED**

1. Does Councilmember Patrick Hume have a conflict of interest, precluding his participation in considering and voting on the pending California Northstate University (“CNU”) hospital project in light of Councilmember Hume’s spouse’s employment with Sutter Health (“Sutter”) in Sacramento?
2. Does Councilmember Darren Suen have a conflict of interest, precluding his participation in considering and voting on the CNU hospital project in light of his spouse’s employment with St. Joseph’s Medical Center in Stockton California, which is a member facility of Dignity Health (“Dignity”)?

**BRIEF ANSWER**

1. No. Councilmember Hume’s participation in the decision to approve or disapprove the CNU project will not have a reasonably foreseeable material financial impact on him.
2. No. Councilmember Suen’s participation in the decision to approve or disapprove the CNU project will not have a reasonably foreseeable material financial impact on him.

**FACTUAL BACKGROUND**

**A. The CNU Project.**

CNU has a pending land use application for entitlements for the development of a medical center and campus, including a teaching hospital, at West Taron Drive in the City of Elk Grove. The land use entitlements sought for the CNU hospital project would require City Council approval. The proposed approvals are expected to be presented to the City Council sometime in 2021. If the application is approved, the construction commencement date and

opening of the new CNU facility are unknown, although CNU has indicated that it wants to start construction as soon as possible.

**B. Patrick Hume.**

Councilmember Hume's spouse, Lisa Hume, is employed by Sutter as the Director of Healthcare Philanthropy, South Valley. She works out of Sutter's Memorial Hospital in Modesto, California. Sutter is a nonprofit organization. Mrs. Hume is a salaried employee of Sutter. Sutter has an existing medical plaza with medical offices in Elk Grove. Sutter does not have a hospital facility in Elk Grove. Mrs. Hume does not work out of Sutter's Elk Grove offices. Sutter has made no indication to Mrs. Hume that the proposed CNU hospital project, if approved, would have any impact on Mrs. Hume's employment or income with Sutter.

**C. Darren Suen.**

Councilmember Darren Suen's spouse, Denise Suen, is employed in a Laboratory Marketing position at Dignity's St. Joseph's Medical Center on California Street in Stockton, California. Dignity is a nonprofit organization. Mrs. Suen is a salaried employee of Dignity. Dignity has an approved project in the City of Elk Grove for a new hospital to be built at Waymark Road and Elk Grove Boulevard, but construction of the hospital has not yet commenced. Dignity has indicated that construction may commence in 2023, and that the facility could be open sometime in 2026 or 2027. Mrs. Suen would not work at the newly proposed Dignity hospital, and she would have no direct affiliation with the new Dignity hospital in Elk Grove. Dignity has made no indication to Mrs. Suen that the proposed CNU facility, if approved, would have any impact on Mrs. Suen's employment or income.

**ANALYSIS**

**A. The Political Reform Act.**

Under the California Political Reform Act, Government Code sections 81000 *et seq.*, a City Councilmember may not "participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Gov. Code § 87100.) A Councilmember would have a disqualifying conflict of interest if it was reasonably foreseeable that the decision would have a material financial impact on a source of income of \$500 or more. (Gov. Code § 87103(c).) A Councilmember has a community property interest in his or her spouse's income. (Gov. Code § 82030(a).)

A Councilmember does not have a disqualifying conflict of interest in a matter unless the decision would have a reasonably foreseeable material financial effect on the Councilmember's financial interest. (Gov. Code § 87103.) A financial impact is presumed to be reasonably foreseeable if the subject financial interest is explicitly involved in the proceedings, i.e. the source of income "is a named party in, or the subject of, a governmental decision before the official or the official's agency." (FPPC Regulations § 18701(a).) That is not the case here, as the party to the entitlement proceedings is CNU, not Sutter, Dignity, Mrs. Hume, or Mrs. Suen. Therefore, foreseeability is analyzed under regulations where the financial interest is not explicitly involved in the decision. (FPPC Regulations § 18701(a).) Under that standard, to be

reasonably foreseeable, the impact does not necessarily need to be likely, but there must be “a realistic possibility and more than hypothetical or theoretical” possibility that an impact will occur. (FPPC Regulations § 18701(b).) “If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.” (Ibid.) If “an effect is only a mere possibility, it is not reasonably foreseeable.” (*Smith v. Superior Court of Contra Costa County* (1994) 31 Cal.App.4th 205, 212.)

If a financial impact is reasonably foreseeable, the next step is to determine the materiality of the impact. A financial effect on a government decision is “not material if it is nominal, inconsequential, or insignificant.” (FPPC Regulations § 18702(b).) A financial impact on a Councilmember’s personal finances is considered material if it would result in the Councilmember or Councilmember’s immediate family (including a spouse) gaining or losing \$500 or more in any 12 month period due to the decision. (FPPC Regulations § 18702.5(a).) Where the source of income is a nonprofit organization (such as Sutter or Dignity), the impact of a decision is material if the decision would cause either of the following:

- An impact to the organization’s assets or liabilities, in at least the following amounts: \$1,000,000; or five percent of the organization’s annual gross receipts and the increase or decrease is at least \$10,000.
- The incurring or avoiding of expenses by the organization in at least the following amounts: \$250,000; or one percent of the organization’s annual gross receipts and the change in expenses is at least \$2,500.

(FPPC Regulations §18702.3(a)(3).)

#### **B. Patrick Hume.**

Lisa Hume (Patrick Hume’s spouse) is a salaried employee of Sutter. Mrs. Hume’s office is in Modesto, and not Elk Grove. Sutter does not have a hospital in Elk Grove that might compete against CNU. No facts have been presented that would suggest that Councilmember Hume’s decision on the CNU project would have any impact on Mrs. Hume’s income (and by extension Councilmember Hume’s community property interest in Mrs. Hume’s income). Any potential impact would be “hypothetical or theoretical” and not a “realistic possibility.” (FPPC Regulations § 18701(b); *Smith*, supra.)

Because it does not appear that there is a reasonably foreseeable financial impact concerning Councilmember Hume’s decision on the CNU project, it is not necessary to analyze in detail whether any such impact would be material. Nonetheless, even if there were a reasonably foreseeable impact, no facts have been presented that would indicate that the materiality standards set forth above have been satisfied. I conclude that Councilmember Hume does not have a disqualifying conflict of interest that would preclude him from participating in the decision to approve or disapprove the CNU project.

**C. Darren Suen.**

Denise Suen (Darren Suen's spouse) is a salaried employee of Dignity. The issue is whether Councilmember Suen's vote on the CNU project could be influenced by his spouse working for a competing health care organization that has an approved development project in the City of Elk Grove, which would include a hospital that might compete with CNU. However, no facts are presented that would indicate that Councilmember Suen or Mrs. Suen would be financially impacted by Councilmember Suen's decision on the CNU project. Any financial impact on Mrs. Suen (and by extension Councilmember Suen) appears to be "hypothetical or theoretical" and not a "realistic possibility." (FPPC Regulations § 18701(b); *Smith*, supra.)

Mrs. Suen works in Stockton, California at St. Joseph's Medical Center, which is a member of Dignity. Councilmember Suen has been advised by Mrs. Suen that the various member medical facilities of Dignity are relatively autonomous. There is no indication that Mrs. Suen would work at the forthcoming Dignity facility in Elk Grove, or that such employment at the Elk Grove site is being contemplated by either Mrs. Suen or Dignity. And, there is no indication that she would have any direct affiliation to the Elk Grove facility. No facts have been presented that would indicate that Mrs. Suen's income would be impacted by the approval or development of the CNU project. I conclude that there is not a reasonably foreseeable impact on Councilmember Suen that would preclude him from considering the approval or disapproval of the CNU project.

Because it does not appear that there is a reasonably foreseeable financial impact concerning Councilmember Suen's decision on the CNU project, it is not necessary to analyze in detail whether any such impact would be material. Nonetheless, even if there were a reasonably foreseeable impact, no facts have been presented that would indicate that the materiality standards set forth above have been satisfied. I conclude that Councilmember Suen does not have a disqualifying conflict of interest that would preclude him from participating in the decision to approve or disapprove the CNU project.

**CONCLUSION**

For the reasons presented, I conclude that neither Councilmember Hume, nor Councilmember Suen have a disqualifying conflict of interest that would preclude either Councilmember from making decisions and voting on the CNU project.