

EXCERPT

**COURT TESTIMONY: CHRIS FREELAND, APRIL 26, 2023; LARRY WHITHORN, APRIL 26, 2023; TONY WU, APRIL 28, 2023
TOPIC: CONFLICTS OF INTEREST**

This lawsuit was filed against the City of West Covina by a former fire chief for disability discrimination, disability retaliation, whistleblower retaliation, and intentional infliction of emotional distress. The City of West Covina lost the case. The former fire chief was awarded \$4.1 million and almost \$1 million in attorney fees. West Covina is appealing the lawsuit.

Simply stated, conflicts of interest are circumstances in which public officials have a conflict between their private or financial interests and their duty to serve the public interest. State and local conflict of interest rules must be followed. Elected public officials and public sector employees are expected to follow an ethical approach to government service. While most do, ethical lapses do occur resulting in some elected officials and appointed employees becoming, as political science professor John Pelissero states, involved in conflicts of interest—both real and perceived.

This testimony describes Councilman Tony Wu’s “suggestion” to former Chief Whithorn to move to West Covina and Wu’s offer to be his “bank.” Councilman Wu owns two business—a real estate company and a mortgage company and would be considered a conflict of interest. See page 5.

It should be noted cities cannot legally require any city employee to live within its city limits. (California residency law is shown on page 2.) Wu did not “require” Whithorn to move. That said, Wu’s “suggestion” was inappropriate and could easily create an awkward (hostile) working condition.

Jerri Potras, June 12, 2024

Note: *Note: In this excerpt, “Q” is Anthony Nguyen, attorney for the plaintiff. He is questioning “A” Chris Freeland, former city manager of the City of West Covina.*

**FAIR POLITICAL PRACTICES COMMISSION
CONFLICT OF INTEREST RULES**

Under California’s Political Reform Act rules, a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

Source: Fair Political Practices Commission. History of the Political Reform Act.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT MOSK 54 HON. MAURICE A. LEITER, JUDGE
4
5 LARRY WHITHORN,)
6 Plaintiff,)
7 vs.) No. 20STCV08916
8 CITY OF WEST COVINA,)
9 Defendant.)
L0
L1 REPORTER'S TRANSCRIPT OF PROCEEDINGS
L2 WEDNESDAY, APRIL 26, 2023
L3

5 Q Keeping on Council Member Wu, do you recall a
6 conversation or interaction that took place between
7 Chief Whithorn and Council Member Wu before Chief
8 Whithorn took his medical leave that in which there was
9 some kind of reference to Council Member Wu saying
10 words to the effect of he can be Chief Whithorn's bank?

11 A I do. So any time a council member gets
12 elected to the city council, one of the first things
13 the city manager does is make sure that we go through
14 an orientation of the operations of the city. It's not
15 uncommon that a brand-new city council member has never
16 really seen how the day-to-day operations of a city
17 operate. And so it's my responsibility to get them as
18 much information as possible on those day-to-day
19 operations so when they go to a city council meeting or
20 are making policy decisions they have the most
21 information they have. Early on in the first couple of
22 weeks of a new Council Member coming on board, they
23 each go through an orientation where they meet with the
24 director, myself, and the new Council Member
25 individually to go over what's going on in that
26 department, what they do, what they are staffing is and
27 some of the issues. And so there was that orientation
28 that was done with Chief Whithorn and Council Member Wu

1 at the time. Here is a new Council Member and here are
2 some of the things that are going on in the department.
3 And one of the things I think it was Mr. Wu said is
4 because he's into the real estate and lending business
5 is I'd be more than happy to be your bank in order to
6 help you refinance or buy a home in the community.

7 Q Do you remember Chief Whithorn having a
8 reaction where he seemed concerned about that offer by
9 Council Member Wu?

10 A He did. And he said it was to me it was
11 inappropriate and I didn't disagree. Unfortunately,
12 having worked with elected officials for 20-some-odd
13 years, it's not uncommon for council members to brag
14 about the industry they are in or to say inappropriate
15 things.

16 Q Or attempt to curry favor?

17 A I don't know if he was trying to do that. But
18 it was probably not the best thing to say.

CALIFORNIA RESIDENCY LAW

- **California Constitution**
Article 11 Local Government Section 10 (b)

A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.

- **California Government Code Section 50083**

No local agency or district shall require that its employees be residents of such local agency or district.

Note: Note: In this excerpt, "Q" is John David, attorney for the plaintiff. He is questioning "A" Larry Whithorn, plaintiff and former West Covina Fire Chief. Thomas M. O'Connell is attorney for the defendant.

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2 FOR THE COUNTY OF LOS ANGELES
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9 Defendant. }
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11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 WEDNESDAY, APRIL 26, 2023
13

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24 Q I see. Now, can you tell us who Tony Wu is?
25 A He's a council member for the City of West
26 Covina.
27 Q When did you first meet Mr. Wu?
28 A 2015. End of 2015. In my office.

1 Q Can you tell us about that meeting?
2 A Yes. Chris Freeland brought him in. It was
3 the introduction of a new council member. He wanted to
4 know about the fire department and what was going on.
5 For the most part it was okay. But as Chris mentioned,
6 he said that I should live in the City of West Covina,
7 that the police chief and the fire chief need to live
8 in the City of West Covina. And at the time I used to
9 live in the City of West Covina. But I had since moved
10 my family to Claremont. And I told them -- I said, "I
11 live in Claremont."
12 He said, "You need to come back to West
13 Covina. In fact, I'll be the bank and help you get
14 that house."
15 I said, "No thank you."
16 Q And why did you pass that offer up?
17 A It was inappropriate and I felt like he was
18 trying to buy me to you scratch my back; I'll scratch
19 your back. And it just -- for what we were meeting for
20 that had no bearing whatsoever.
21 Q Now, following that meeting, did Mr. Wu do --
22 strike that.
23 Following that meeting, how did Mr. Wu treat
24 you?
25 MR. O'CONNELL: Objection. Vague.
26 THE COURT: Overruled.
27 THE WITNESS: Early on, okay. I could tell he
28 was a little upset because I said no. But for the most

1 part early on he appeared to be really no different
2 than most. But then things changed fairly quick.

3 BY MR. DAVID:

4 Q So this is late 2015 when you first met him
5 and he gets elected. Is that right?

6 A That's correct.

**Note: In this excerpt, "Q" is Anthon Ngyuen, attorney for the plaintiff.
"A" is Tony Wu, councilmember, City of West Covina.**

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 54 HON. MAURICE A. LEITER, JUDGE

4 LARRY WHITHORN,)
5 PLAINTIFF,)
6 VS.) CASE NO.: 20STCV08916
7 WEST COVINA,)
8 DEFENDANT.)

9
10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 FRIDAY, APRIL 28, 2023

4 Q. SEPARATELY, AND I'LL WRAP THIS UP, DO YOU RECALL
5 HAVING A CONVERSATION WITH CHIEF WHITHORN AND OFFERING TO
6 BE HIS BANK?

7 A. NO, NO.

8 Q. OKAY. YOU HAVE YOUR OWN MORTGAGE LENDING
9 COMPANY; CORRECT?

10 A. I OWN A REAL ESTATE MORTGAGE BANKING COMPANY,
11 YES.

12 Q. WHAT'S THE NAME OF IT?

13 A. SUPREME FUNDING.

14 Q. OKAY. AND SO YOU'RE DENYING THAT?

15 A. NO.

16 Q. YOU NEVER MADE THAT OFFER TO --

17 A. NEVER SAID THIS TO ANYBODY IN THE CITY.

18 Q. OKAY. AND DIDN'T YOU ALSO TELL CHIEF WHITHORN
19 AT ONE POINT THAT YOU SHOULD FOLLOW YOUR ORDERS -- THAT
20 HE SHOULD FOLLOW YOUR ORDERS?

21 A. ABSOLUTELY NOT.

22 Q. AND THAT YOU COMMUNICATED TO HIM THAT WHEN
23 YOU'RE DONE, THE CITY WILL BUILD A STATUE OF YOU?

24 A. I DON'T NEED STATUE.

25 Q. OKAY. YOU DON'T WANT A STATUE?

26 A. NO. I DON'T NEED IT. I DON'T EVEN NEED MY
27 PICTURES ANY PLACES. THE CITY PUT MY PICTURE, I SAY TAKE
28 IT OFF. I DON'T WANT TO SEE ME. NO, I'M NOT INTERESTED

1 IN THAT KIND OF THING.
 2 MY JOB IS TO HELP THE CITY DOING THIS NONPAYING
 3 JOB. IT'S VERY HONOR FOR PEOPLE ELECT ME, AND THAT'S WHY
 4 I'M HERE; OKAY? I'M HERE TO PROTECT THE CITY. I DON'T
 5 NEED A STATUTE. I'M NOT CHINA.
 6 Q. WHAT DOES THAT MEAN?
 7 A. MEANING THE CHINA LEADER, THEY LIKE THE STATUTE,
 8 BUT NOT ME.
 9 Q. FAIR ENOUGH.
 10 A. I'M AMERICAN.
 11 MR. NGUYEN: I HAVE NO FURTHER QUESTIONS. THANK
 12 YOU.
 13 THE WITNESS: THANK YOU.
 14 THE COURT: THANK YOU.

RELATED TO THIS ISSUE

FIVE CATEGORIES OF FINANCIAL INTEREST

California's Political Reform Act lists five categories of financial interest that disqualifies a public official from participating in a government decision. These categories are summarized as follows:

- Decisions that would impact a *business entity* in which one is invested or holds a position as an owner, officer, or employee;
- Decisions by government involving *real property* in which the public official has ownership, investment, or leases;
- Decisions regarding individuals or entities from which the public official derives *income* or would derive income in the future;
- Being the recipient of *gifts* from individuals or entities who have business before the government; and
- A public official's *personal finances* or those of a family member being impacted by a government decision

Source: John Pelissero, PhD. (2023). Markkula Center for Applied Ethics. Santa Clara University.)

RELATED TO THIS ISSUE

FIVE COMMON CONFLICTS OF INTEREST IN GOVERNMENT

Although most elected public officials and top appointed managers in governments follow an ethical approach to their government service, ethical lapses do occur. A conflict of interest occurs when a public official has a conflict between their private or financial interest and their duty to serve the public interest. Most public entities adopt rules on conflict of interest and include this topic in elected official and department head training. Here are the five most common conflicts of interest.

1. **Hiring for government jobs and nepotism.** Public official—elected and appointed—have a fiduciary responsibility to ensure budgets and jobs are managed effectively, efficiently, and never used to benefit a public official's private interest, e.g., awarding jobs to and/or spending budgets on family.
2. **Financial interest.** Public officials have a disqualifying interest if a government decision benefits their personal, family, or business financial interest.
3. **Contracting with government.** Government contracts should fulfill a public purpose and serve the wider interests of the community. A conflict of interest arises when the public official is an officer, owner, manager, or employee of the entity or has a family member in such a role. Appearances of involvement in an action are as unethical as formally acting on such.
4. **Accepting gifts.** Most governments set reasonable limits on public official's ability to accept gifts while on office. These limits are intended to prevent an individual or entity from using a gift to influence public official decisions or from receiving a financial benefit from the gift. Generally small dollar amounts are allowed and must reported on conflict of interest forms.
5. **Influencing a government decision:** If a decision—even a broad policy, a legislation action, or routine government decision—benefits or appears to benefit the public official, a conflict of interest is present. The official is disqualified from participation and should recuse, abstain, or delegate the decision to an official who does not possess an apparent conflict of interest.

(Source: John Pelissero, PhD. (2023). Markkula Center for Applied Ethics. Santa Clara University.)

For more specific information on conflicts of information see "An Overview of Conflicts of Interest Under the Political Reform Act". California Fair Political Practices Commission (FPPC) for more specific information at www.fppc.ca.gov.