



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

August 24, 2020

Beverly Roxas
Assistant City Attorney
City of South Lake Tahoe
1901 Lisa Maloff Way, STE300
South Lake Tahoe, CA 96150
broxas@cityofslt.us

Re: Your Request for Advice
Our File No. A-20-082

Dear Ms. Roxas:

This letter responds to your request for advice on behalf of Hilary Roverud regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

As the Deputy Direct of Developmental Services, does the Act prohibit Ms. Roverud from taking part in governmental decisions involving the planning and development of the 56-Acre Master Plan (“Project”) where her husband is an employee of the firm awarded the design contract for the Project?

CONCLUSION

Yes. The Act prohibits Ms. Roverud from taking part in decisions related to the planning and development of the Project because those decisions would have a reasonably foreseeable material financial effect on a source of income to her.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

The City of South Lake Tahoe (“City”) is currently in the process of developing a 56-Acre Master Plan (the “Project”) for 56 acres within South Lake Tahoe. The purpose of the Project is to develop a comprehensive strategy for the project site, including facilities, programs and services responsive to the community’s demographics and needs. The Project will serve to guide the City in capital improvement planning, maintenance and operational planning, and budgetary decision making.

Hilary Roverud serves as the Deputy Director of Development Services for the City of South Lake Tahoe. She has been employed with the City since 2005 and has held her current position since 2014. In this capacity, Ms. Roverud’s duties would include management of the Project. Management would entail overseeing the consultant’s work (including draft work product), coordinating and participating in community workshops, and eventually presenting the Master Plan to the City Council for approval. Specifically, Ms. Roverud would like to know whether she would be permitted to:

- Participate in discussions or decisions regarding the project;
- Participate in the management of the project; and
- Provide supervisory or advisory support to other city staff involved in the project.

Design Workshop is the firm that has been awarded the design contract for the City’s 56-Acre Master Plan. Ms. Roverud’s spouse has worked for Design Workshop (the “Firm”) since 2004. His current title is Associate Landscape Architect, and his primary duties involve project management and design work. He is not a member of the design team for the 56-Acre Master Plan and will not be involved in the project. Ms. Roverud’s husband has employee-owned stock and his shares are currently valued at over \$2,000.

The Firm tentatively plans to work on this project for 14 months and will be tasked with the following:

- Project Coordination and Project Management
- Data Collection & Site Assessment
- Public Outreach & Engagement
- Draft Alternative, prepare Draft and Final Master Plan
- Prepare the Environmental Document
- Conduct Stakeholder and Focus Group Meetings
- Conduct public meetings (3)
- Present to the City Planning Commission (1)
- Present to a joint City Recreation Commission/El Dorado County Recreation Board (1)
- Present to a joint City Council/Board of Supervisors Meeting (2)

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. Section 87103 defines financial interests to include:

- Any business entity in which the public official, or member of the official's immediate family (which includes a spouse), has a direct or indirect investment worth \$2,000 or more. (Sections 82029, 82034, and 87103(a).)
- Any source of income, including your community property interest in your spouse's income, aggregating \$500 or more in value provided or promised to, received by, the public official in the 12 months prior to the time when the decision is made. (Sections 82030, 87103(c).)
- Any business entity in which the official, or the official's spouse, is a director, officer, partner, trustee, employee or holds any position of management. (Section 87103(d).)
- Your personal finances, including those of your immediate family. (Section 87103.)

Assuming Ms. Roverud meets the financial standards set forth above, she has a community property interest in her spouse's income from the Firm. Therefore, she has a financial interest in the Firm as a source of income. Next, we determine if it is reasonably foreseeable that a decision will have a material financial effect on her financial interest.

Foreseeability and Materiality

Regulation 18701(a) states that a financial effect is presumed reasonably foreseeable where the financial interest is explicitly involved as a named party or subject of the decisions. A financial interest is the "subject of a proceeding" if the decision involves a contract with the financial interest. (Regulation 18701(a).) Additionally, the financial effect of a governmental decision on an official's financial interest in a business entity is material if the entity contracts with a government agency. (Regulation 18702.1(a)(1)(C).)

Where the Firm has entered into a contract with the City of South Lake Tahoe, the Firm is explicitly involved, and it is reasonably foreseeable that decisions regarding the Project will have a material financial effect on Ms. Roverud's husband's employer, a source of income.

Making, Participating, or Influencing a Decision

As a public official, Ms. Roverud must not make, participate in making, or attempt to influence a decision in regard to the Project. Regulation 18704 defines "making, participating in making, or using his or her official position to influence a governmental decision" as follows:

- (a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

- (b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- (c) Using Official Position to Attempt to Influence a Decision. A public official uses his or her official position to influence a governmental decision if he or she:
 - (1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or
 - (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

As the Deputy Director for the Development Services Department, Ms. Roverud's role in the project would have her making and participating in decisions regarding the Project within her own department, as well as assisting in presenting recommendations to the City Council. Providing recommendations to the City Council would also constitute participation in making or using her official position to attempt to influence a decision. As Ms. Roverud's has a disqualifying conflict of interest, she may not make a decision, participate in a decision, or attempt to influence a decision pertaining to the Project. This includes managing the project, as well as providing supervisory or advisory support to other city staff involved in the project.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja