

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

October 24, 1984

Timothy J. Sabo
Attorney at Law
5855 Topanga Canyon Blvd., Ste. 100
Woodland Hills, CA 91367

Re: Advice Letter No. A-84-222

Dear Mr. Sabo:

Recently, you asked our office whether members of your law firm can serve as both general counsel to the City of Fontana's Redevelopment Agency and Industrial Development Authority, and as bond counsel to the Agency, the Authority and the City.

DISCUSSION

The Political Reform Act will not prevent firm members from serving as both general counsel and bond counsel, but it may affect their governmental decision making in these positions. If, in either capacity, a firm member qualifies as a "public official," he or she will be subject to the Act's disclosure and disqualification provisions. In the past, we have stated that a person holding the position of either general counsel or bond counsel qualifies as a "public official." Your letter prompted a reconsideration of whether this is the proper conclusion with regard to the position of bond counsel. Because it is important for us to resolve this matter correctly, we are not issuing a final determination at this time. You may continue to follow our past advice until we provide you with new advice in either an advice letter or formal opinion. This will give the staff additional time in which to gather more information about the functions of bond counsel.

If you have any questions, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Staff Counsel
Legal Division

JSM:plh

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

August 28, 1984

Timothy J. Sabo
5055 Topanga Canyon Blvd., Ste. 100
Woodland Hills, CA 91367

Re: A-84-222

Dear Mr. Sabo:

Your letter requesting advice under the Political Reform Act has been referred to Robert E. Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Barbara A. Milman
General Counsel

BAM:plh

TIMOTHY J. SABO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 100

5855 TOPANGA CANYON BOULEVARD
WOODLAND HILLS, CALIFORNIA 91367

(818) 704-0195

SUITE 207
440 WEST COURT STREET
SAN BERNARDINO, CALIFORNIA 92401

(714) 884-2960
(714) 824-7302

IN ASSOCIATION WITH
ERICK D. STOWE, P.C.
1666 SOUTH UNIVERSITY BOULEVARD
DENVER, COLORADO 80210

(303) 698-2423

*LICENSED IN COLORADO
AND WYOMING

TIMOTHY J. SABO
DAVID F. GONDEK
BRUCE D. SNYDER

OF COUNSEL
RICHARD W. STRONG

Aug 27 8 22 AM '84

August 21, 1984

Mr. John Keplinger
Executive Director
Fair Political Practices Commission
1100 "K" Street
Post Office Box 807
Sacramento, California 95804

Dear Mr. Keplinger:

This request for advice is being submitted to the Fair Political Practices Commission (the "Commission") in connection with my role as Agency Attorney for the Fontana Redevelopment Agency (the "Agency"). I am seeking guidance from the Commission regarding my participation as the Agency Attorney in a proposed Agency tax-exempt bond financing in light of the provisions of Government Code Section 87100.

The City Council members of the City of Fontana, California (the "City"), also serve as the members of the Agency, and the City and the Agency have previously adopted and approved four (4) redevelopment plans and the Agency has initiated the study of an amendment to one (1) of these redevelopment plans which may provide for the expansion of that redevelopment project area. Additionally, the Agency is considering whether to provide various forms of redevelopment assistance to foster residential, commercial and industrial development and rehabilitation within specific redevelopment project areas of the City. The City may also undertake the financing of single and multifamily housing projects through the issuance of mortgage revenue bonds. The City has also formed the Fontana Industrial Development Authority (the "Authority") in accordance with Government Code Section 91500, et seq., for the purpose of creating new employment opportunities within the City. I also serve as legal counsel to the Authority.

The sale of tax-exempt municipal securities to finance certain necessary public improvements is one of the methods of stimulating residential,

commercial and industrial development within the City in addition to providing mortgage moneys through tax-exempt bond financings directly for such projects. In addition to our role as Agency Attorney and counsel to the Authority, this Firm has been and/or may in the future be requested to render bond counsel opinions to the Agency, the City or the Authority in addition to the other general counsel or special counsel legal services which this Firm provides to those public agencies. This Firm is presently listed in the Directory of Municipal Bond Dealers of the United States as a nationally recognized firm of bond counsel attorneys. In view of the fact that in the typical situation this Firm has participated as Agency Attorney in the preparation and review of documents and consulted with the Agency Staff and Agency Members in connection with the legal framework within which a particular public improvement project or other tax-exempt financing project is proposed, a question has arisen concerning this Firm's eligibility to render a bond counsel opinion to the Agency regarding the tax-exempt financing for such a project. The principal question which arises in this context concerns the definition of "income" for purposes of applying Government Code Section 87100 to my role as Agency Attorney and as Bond Counsel to the Agency in connection with a particular public improvement tax-exempt financing or other tax-exempt financing project. Therefore, pursuant to Government Code Section 83114(b), I am submitting this request for written advice regarding the eligibility of this Firm to serve as Bond Counsel to the Agency, the City and the Authority.

Question Presented:

I represent the Agency on a continuing basis as general counsel and such representation includes the preparation and review of documents in connection with the redevelopment plan adoption and amendments process, preparation and review of various agenda items and attending Agency meetings. Under such circumstances, may I also serve as Bond Counsel to the Agency, the City or the Authority in connection with financings for public improvement projects, single and multifamily housing projects or industrial development bond financings to be undertaken in furtherance of those redevelopment projects for which I, or associate attorneys in this Firm, as counsel to the Agency, have previously provided legal services?

Role of Agency Attorney

The Agency Attorney serves as general counsel to the Agency. The scope of the legal services which this Firm provides to the Agency includes the representation of the Agency in court proceedings, preparation and review of necessary reports and memoranda, resolutions and ordinances to be adopted by the Agency and the City in connection with the adoption of or amendments to the redevelopment plans or other redevelopment activities; advising the Agency and Agency Staff with regard to negotiations with private developers for the redevelopment of specific sites within the redevelopment project areas and the preparation and review of owner participation agreements and disposition and development agreements, advising the Agency regarding various transactions with other taxing agencies which derive taxes from the various redevelopment project areas, and assisting the Agency, the City and the Authority in the assembly and preparation and review of the documentation necessary in connection with proposed tax-exempt bond financings for projects located within the City.

The Agency Attorney is compensated on an hourly basis plus reimbursable expenses. Such hourly fee arrangement covers all services rendered as the Agency Attorney. All bills for legal services and out-of-pocket expenses as Agency Attorney are submitted to the Agency Staff and approved for payment by official action of the City Council.

Effect of Providing Bond Counsel Services to the Agency
on the Financial Interests of the Agency Attorney

At the time of adoption of each of the redevelopment plans currently in force and effect in the City, it was not precisely known which specific public improvement projects the Agency would initiate or the manner in which residential, commercial or industrial development would be assisted through tax-exempt financings. Nevertheless, economic conditions and national financial and real estate market forces have enabled the Agency to subsequently consider projects which were not specifically contemplated at the time of adoption of the redevelopment plans.

As Bond Counsel to the Agency, the City or the Authority in connection with a particular tax-exempt financing, this Firm would receive compensation for

rendering a Bond Counsel opinion to the Agency, the City or the Authority. Such a tax-exempt financing would in most instances implement a redevelopment plan for which I have previously rendered certain legal services to the Agency. As is customary with tax-exempt municipal bond financings, bond counsel for the public agency is typically compensated on a percentage basis if and when such tax-exempt obligations are in fact issued. Employment contracts for bond counsel services by and between the public agency and bond counsel occasionally provide that if the obligation is not issued, bond counsel will be compensated by the public agency at an hourly rate plus costs for the time and expenses actually incurred prior to abandonment of the financing. Employment contracts for bond counsel services which incorporate such hourly rate provisions are not uncommon.

Government Code Section 87100 provides that no local public official may make or participate in the making of a governmental decision in which he knows or has reason to know that he has a financial interest. An official has a "financial interest" in a decision within the meaning of Government Code Section 87100 if it is reasonably foreseeable that a decision will have a material financial effect on "(c) any source of income, . . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. . . ." (Government Code Section 87103(c)).

In its advice letters, the Commission has previously noted that the fees which may be paid to an attorney for a public agency for rendering general counsel services constitute "salary". The Commission has previously stated in the Ritchie advice letter (A-79-045) that "payments to a retained city attorney on an hourly basis, i.e., tied to the amount of work performed for the city are clearly analogous to the salary received by public employees. . . ." The Commission concluded in the Ritchie advice letter that the attorney fees for services rendered to the city council and bond counsel fees to the redevelopment agency are the "salary" and are therefore excluded from the term "income" as used throughout the Act. The Commission has recently stated in the Martin advice letter (A-83-260) that with regard to "bond issues, attorneys are often paid a fixed percentage of a maximum bond issue amount. Because the amount to be paid is fixed, and since this is the customary payment arrangement, it is sufficiently similar in nature to hourly payments and can be considered to be salary. This result recognizes the nature of

the attorney-client relationship and the need to allow a city attorney to advise his clients on future legal actions."

Conclusion

It appears that the Commission's analysis of the facts and circumstances in the Ritchie advice letter as well as the Martin advice letter are applicable to this Firm. The facts in the Ritchie advice letter concerned participation by an attorney in rezoning decisions as city attorney and his subsequent participation in a tax-exempt financing involving development of such rezoned property as general counsel and bond counsel to the community redevelopment agency of the city. A similar relationship is proposed in the case of this Firm in connection with rendering a bond counsel opinion to the Agency for public improvement tax-exempt financings. The fact that this Firm may also be requested to provide a bond counsel opinion to either the City or the Agency in connection with a single or a multifamily mortgage revenue bond financing does not seem to require a conclusion which is different from the Ritchie advice letter.

As the Agency Attorney, I respectfully request the Executive Director of the Commission to review the foregoing analysis and provide guidance to me in connection with this request for advice. If I may be of any further assistance to your office in connection with this request for advice, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

TIMOTHY J. SABO
A PROFESSIONAL CORPORATION


Timothy J. Sabo

TJS:re

Enclosures

cc: Dr. William Kragness, Chairman of the Fontana Redevelopment Agency
Jack Ratelle, Executive Director of the Fontana Redevelopment Agency