



California Fair Political Practices Commission

January 6, 1986

Claudia M. Brooks
Smith & Brooks
P.O. Box 672
Redlands, CA 92373-0581

Re: Advice Letter on Behalf of
Margaret C. Wright, dated
August 28, 1985, Our File
No. A-85-184

Dear Ms. Brooks:

On August 28, 1985, the Commission issued the above-referenced advice letter to you on behalf of your client Margaret C. Wright. In that letter, at the bottom of page 2 and top of page 3, I pointed out that decisions as to which Ms. Wright might need to disqualify herself "includes effects upon the official's own pocketbook (2 Cal. Adm. Code Section 18702.1, copy enclosed) as well as on those economic interests enumerated in Section 87103." While the letter concludes that her shares in certain mutual water companies are not "investments" or "interests in real property" within the meaning of the Political Reform Act^{1/}, any decision which affects the shares' value would be a decision which has an "effect upon the official's pocketbook." See, again, 2 Cal. Adm. Code Section 18702.1(a)(4).

This office has recently received information to indicate that the shares have a value and are transferrable and that the value may be affected by decisions which Ms. Wright could participate in as a director of the San Bernardino Valley Municipal Water District. If such is the case, disqualification would be required as to any such decisions having at least a \$250 effect upon the aggregate value of her shares.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

Claudia M. Brooks
January 6, 1986
Page 2

In light of these additional facts, we urge that you caution your client as to her participation in such decisions and urge that she immediately seek further, clarifying advice.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:nwm
cc: Michael Pruden

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, 1985

Claudia M. Brooks
Smith & Brooks
P.O. Box 672
Redlands, CA 92373-0581

Re: Your Request on Behalf of
Margaret C. Wright
Our File No. A-85-184

Dear Ms. Brooks:

You have written to request advice on behalf of Margaret C. Wright, one of the elected directors of the San Bernardino Valley Municipal Water District, with respect to her ownership of shares of stock in the North Fork Mutual Water Company and the Bear Valley Mutual Water Company. The question which you have raised is whether Mrs. Wright's interests as a shareholder of such mutual water companies' stock is a basis for potential disqualification because the District does enter into contracts from time-to-time with these two water companies and makes decisions affecting them. You have presented the following additional facts for our consideration.

FACTS

The North Fork and Bear Valley Water Companies are mutual water companies organized under the General Corporations law of California for the purpose of serving water at cost to their stockholders in proportion to the number of shares of such stock held by the stockholders respectively. 1 The water is served for irrigation purposes, principally on citrus groves. Sections (i) of Articles Second of the current Articles of Incorporation of both the North Fork and Bear Valley Mutual Water Companies provide that the companies shall not be operated for profit, but rather on a nonprofit basis. I am advised further that each company has been given tax-exempt status pursuant to I.R.C. section 501(c)(5).

Claudia M. Brooks
August 28, 1985
Page 2

The owners of shares in said mutual water companies are assessed for their pro-rata share of the cost of the water delivered to them, plus expenses. They receive no dividends, profits or other income as a result of their stock ownership.^{2/}

The Articles of Incorporation of the two water companies provide that water delivered to shareholders may only be delivered to lands within the service district designated by the water company. The Articles of Incorporation, however, do not provide that the water shares are appurtenant to the parcels of land served thereby.^{3/}

Mrs. Wright and her husband own collectively approximately 7% of the outstanding shares of North Fork Mutual Water Company, and well less than 1% of the outstanding shares of Bear Valley Mutual Water Company. It is probable that the value of their combined interest in each company is over \$1,000.

^{1/} See Definition of "Mutual Water Company" at Public Utilities Code section 2725.

^{2/} See Civil Code section 330.25 which prohibits such water companies from distributing any gains, profits, or dividends to their members or shareholders except on the dissolution of the corporation.

^{3/} See Civil Code section 330.24.

ANALYSIS

The Political Reform Act (the "Act") ^{1/} provides that no official shall make, participate in making or use his or her official position to influence the making of any governmental decision in which he or she has a financial interest. Section 87100. This includes affects upon the official's own pocketbook

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified. Because contracts are involved you may wish to refer to Sections 1090, et seq., as well. We do not provide advice on these sections. However, your attention is directed to Section 1091(b)(6). You may wish to consult with the Office of the Attorney General.

(2 Cal. Adm. Code Section 18702.1, copy enclosed) as well as on those economic interests enumerated in Section 87103. Among those interests are the following:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

* * *

Section 87103.

It appears that the interest of a shareholder of a mutual water company as North Fork or Bear Valley does not constitute an interest in a "business entity," in "real property," or in a "source of income" for purposes of Government Code Section 87103.

The term "business entity" as referred to in the Political Reform Act is defined at Government Code Section 82005 as an "organization or enterprise operated for profit." Both North Fork and Bear Valley Mutual Water Companies are operated on a nonprofit basis and have nonprofit tax-exempt status.

"Real Property" is defined in Civil Code Section 658 in relevant part as follows:

"Real or immovable property consists of:

1. Land....
3. That which is incidental or appurtenant to land...."

Corporations Code Section 330.24, dealing with water companies, provides that such a company may provide in its articles that its shares shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate is so issued and a certified copy of such articles is recorded in the office of the County Recorder.

The Articles of Incorporation of neither of the two mutual water companies contains such a provision. Furthermore, you understand that the share certificates do not contain a provision that they are appurtenant to specific land parcels.

Finally, since the shareholders of North Fork and Bear Valley Mutual Water Companies receive no dividends, profits or income from those companies as a result of their own stock ownerships; and since Section (i) of Article Second of the Articles of Incorporation of each company states that the respective corporation does not exist with a view to pecuniary gain or profit to its shareholders, etc., the ownership of shares of said corporations should not be considered an interest in a "source of income."

Based on the foregoing, it would seem that Mrs. Wright's ownership of mutual water company stock shares does not fall within one of the three categories (i.e., an interest in a "business entity," in "real property" or in a "source of income").

Lastly, Mrs. Wright is not an officer, director, etc., of the mutual water companies, which are not business entities; consequently, she does not have a financial interest in District decisions which affect the two water companies.

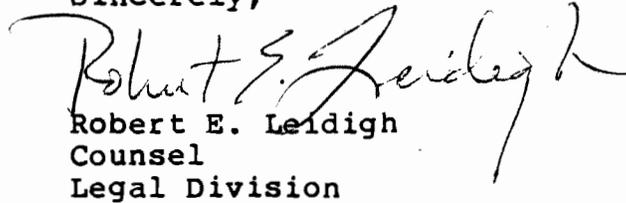
However, Mrs. Wright's own real property interests (she apparently owns lands for which she obtains water) and any farming business which she operates thereon could be affected by some of the District's decisions and she should be alert to such potential disqualification situations. These decisions might

Claudia M. Brooks
August 28, 1985
Page 5

involve contracts to provide water to the companies which would have a "pass-through effect" upon her water deliveries, availability, or costs. Should a prospective decision come up where there is any question in this regard, please do not hesitate to contact us again.

If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

SMITH & BROOKS F P P C

ATTORNEYS AT LAW
130 WEST VINE STREET
POST OFFICE BOX 672

REDLANDS, CALIFORNIA 92373-0581

TELEPHONE
(714) 793-3333

JAMES A. SMITH
CLAUDIA M. BROOKS

AUG 15 1 09 PM '85

August 15, 1985

Ms. Barbara A. Milman
Chief, Legal Division
California Fair Political
Practices Commission
1100 "K" Street
Sacramento, CA. 95814

Re: San Bernardino Valley Municipal Water District

Dear Ms. Milman:

Pursuant to Government Code section 83114, advice and an opinion is requested with respect to the duties of Margaret C. Wright, one of the elected directors of the San Bernardino Valley Municipal Water District, [hereinafter referred to as "District"], with respect to her ownership of shares of stock in the North Fork Mutual Water Company and the Bear Valley Mutual Water Company. The question raised is whether Mrs. Wright's interests as a shareholder of such mutual water companies' stock is, or is not, considered an interest in a "business entity", in "real property", or in a "source of income", which, under the terms of Government Code section 87103, could give rise to a "financial interest" in a governmental decision. Mrs. Wright has requested me to obtain an opinion from you on this matter. The District does enter into contracts from time to time with the aforesaid water companies, and make decisions affecting them.

The North Fork and Bear Valley Water Companies are mutual water companies organized under the General Corporations law of California for the purpose of serving water at cost to their stockholders in proportion to the number^{1/} of shares of such stock held by the stockholders respectively. The water is served for irrigation purposes, principally on citrus groves. Sections (i) of Articles Second of the current Articles of Incorporation of both the North Fork and Bear Valley Mutual Water Companies provide that the companies shall not be operated for profit, but rather on a nonprofit basis. I am advised further that each company has been given tax-exempt status pursuant to I.R.C. section 501 (c) (5).

The owners of shares in said mutual water companies are assessed

^{1/} - See Definition of "Mutual Water Company" at Public Utilities Code section 2725.

Ms. Barbara A. Milman
Chief, Legal Division
August 15, 1985
Page 2

for their pro-rata share of the cost of the water delivered to them, plus expenses. They receive no dividends^{2/}, profits or other income as a result of their stock ownership. 2/

The Articles of Incorporation of the two water companies provide that water delivered to shareholders may only be delivered to lands within the service district designated by the water company. The Articles of Incorporation, however, do not provide that the water shares are appurtenant to the parcels of land served thereby. 3/ I understand as well that the share certificates likewise bear no statement to the effect that they are appurtenant to land.

Mrs. Wright and her husband own collectively approximately 7% of the outstanding shares of North Fork Mutual Water Company, and well less than 1% of the outstanding shares of Bear Valley Mutual Water Company. It is probable that the value of their combined interest in each company is over \$1,000.

From my research of this issue, it appears that the interest of a shareholder of a mutual water company as North Fork or Bear Valley does not constitute an interest in a "business entity", in "real property", or in a "source of income" for purposes of Government Code section 87103. My reasoning is as follows:

The term "business entity" as referred to in the Political Reform Act is defined at Government Code section 18005 as an "organization or enterprise operated for profit." Both North Fork and Bear Valley Mutual Water Companies are operated on a nonprofit basis and have nonprofit tax-exempt status.

"Real property" is defined in Civil Code section 658 in relevant part as follows:

"Real or immovable property consists of:

1. Land; . . .
3. That which is incidental or appurtenant to land; .."

Corporations Code section 330.24, dealing with water companies, provides that such a company may provide in its articles that its shares shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate is so issued and a certified copy of such articles is recorded in the office of the County Recorder.

2/ - See Civil Code section 330.25 which prohibits such water companies from distributing any gains, profits, or dividends to their members or shareholders except on the dissolution of the corporation.

3/ - See Civil Code section 330.24.

Ms. Barbara A. Milman
Chief, Legal Division
August 15, 1985
Page 3

The Articles of Incorporation of neither of the aforesaid mutual water companies contains such a provision. Furthermore, I understand that the share certificates do not contain a provision that they are appurtenant to specific land parcels.

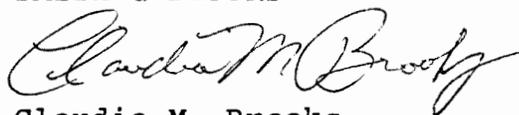
Finally, since the shareholders of North Fork and Bear Valley Mutual Water Companies received no dividends, profits or income from those companies as a result of their own stock ownerships; and since Section (i) of Article Second of the Articles of Incorporation of each company states that the respective corporation does not exist with a view to pecuniary gain or profit to its shareholders, etc., the ownership of shares of said corporations should not be considered an interest in a "source of income."

Based on the foregoing, it would seem that if Mrs. Wright's ownership of mutual water company stock shares do not fall within one of the three categories, (i.e., an interest in a "business entity," in "real property" or in a "source of income"), then her interest therein could not be the subject of a "financial interest" under the Political Reform Act provisions.

I would very much appreciate your review of, and your opinion on, this matter at your earliest convenience. I am enclosing for your information copies of the most current Articles of Incorporation and Amendments thereto of the North Fork and Bear Valley Mutual Water Companies. Should you wish any further information, please feel free to call me at the above number.

Most Sincerely yours,

SMITH & BROOKS



Claudia M. Brooks

CMB:sb

Encs.

cc: Mr. and Mrs. Wright