



# California Fair Political Practices Commission

April 10, 1986

Thomas M. Marovich, Attorney  
24 South Washington Street  
Sonora, CA 95370

Re: Your Request for Advice  
Our File No. A-86-086

Dear Mr. Marovich:

You have written requesting advice on behalf of yourself and Jerry Potter, a member of the Board of Directors of the Tuolumne Recreation and Park District, concerning each of your duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> The facts, as indicated in your letter and in our subsequent telephone conversations, are as follows.

## FACTS

Mr. Potter is a member of the Board of Directors of Friends of Sierra Railroad ("Friends"), a California non-profit corporation. He receives no pay in his position as board member of Friends. He is also a newly elected member of the Board of Directors of the Tuolumne Recreation and Park District. In this capacity, he is paid \$5.00 per board meeting.

For the past several years you have acted as attorney for Friends. In the past 12 months, you have received in excess of \$250.00 in legal fees from Friends.

The Sierra Railroad line runs from Oakdale (in Stanislaus County) through Sonora (in Tuolumne County) to its terminex in Tuolumne City (also in Tuolumne County). The rail line is 56.5

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<sup>1/</sup>Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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miles in length. The last 6.5 miles of the line (between Standard and Tuolumne City) was abandoned through ICC proceedings several years ago, but the right of way and rails are still largely intact.

The 50-mile portion of the rail line between Oakdale and Standard is presently used for commercial and special excursion purposes (but not for regular passenger traffic).

The rail line is of considerable historic significance and Friends was formed and is now in existence for the purpose of promoting the preservation of the railroad for historic purposes. Friends is financed through dues, donations, and fundraising events such as excursions.

About one-half of the abandoned 6.5 mile portion of the line is within the boundaries of the Tuolumne Recreation and Park District, a public agency organized pursuant to Chapter 4 of the Public Resources Code.

In the past, Friends made an attempt to acquire the abandoned 6.5 miles of railroad right of way but was unsuccessful. Friends gave up its attempts to acquire the 6.5 miles of railroad approximately two years ago.

You did much of the legal work on Friends' attempt to acquire the 6.5 miles of railroad. However, since the acquisition attempt died, your primary role has been in the preparation of contracts and documents needed for Friends' fundraising excursions.

In 1985, the Board of the Tuolumne Recreation and Park District expressed an interest in acquiring the same 6.5 miles of railroad which Friends had been interested in acquiring, for recreation and light-rail purposes. If the District acquires this portion of railroad, Friends intends to bid on a contract to operate the railroad.

The board of the Recreation District has indicated it feels it needs an attorney (other than the county counsel) to represent it and to pursue this proposed acquisition. You have submitted a proposal to the District for legal services at the fee rate of \$50.00 per hour. If the board accepts your proposal and you are retained as the District legal counsel, you intend to continue to act as counsel for Friends, but on a pro bono basis.

QUESTION

Under the Political Reform Act, would you or Mr. Potter be disqualified from participating in decisions regarding acquisition of the railroad property by the District?

ANALYSIS

Section 87100 requires that public officials disqualify themselves from making or in any way participating in any decision in which they have a financial interest. An official has a financial interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect on, among other interests, a source of income to the official of \$250 or more in the 12 months preceding the decision or a business entity in which the official is an officer or director.<sup>2/</sup> Section 87103(c).

Under the Act, salary and reimbursement for expenses or per diem received from a state, local, or federal government agency does not constitute income. Section 82030(b)(2). Therefore, under the facts provided, Mr. Potter does not have any financial interest which would serve as a basis for disqualification from District decisions regarding acquisition of the railroad property.

Friends is a source of income to you. Therefore, you may not participate in any decision which will have a material financial effect on Friends, until 12 months have passed.

Commission regulations 2 Cal. Adm. Code Sections 18702(b)(3) and 18702.1 (copies enclosed) specify when the reasonably foreseeable effect of a decision on a source of income will be considered material.

Section 18702(b)(3) provides that the effect of a decision on a source of income will be considered material if:

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(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

(C) In the case of a source of income which is a business entity, the business entity will be

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<sup>2/</sup>As defined in the Act, nonprofit entities are not "business entities." Section 82005.

affected in a manner described in subsection  
(b)(1) above; or

(D) If the source of income is not a business  
entity, the decision will have a significant  
effect on the source.

2 Cal. Adm. Code Sections  
18702(b)(3) B, C & D

Under the facts presented, if the decision could have a significant effect on Friends, or if there is a nexus between the decision and the purpose for which you received income from Friends, you must disqualify yourself.<sup>3/</sup> The nexus test means that an official may not accomplish in his public capacity what he was paid to do in his private capacity. Thus, if in your capacity as counsel for Friends, you sought within the past 12 months to have the District acquire or operate the 6.5 miles of railroad, you are prohibited under the nexus test from making, participating in, or attempting to influence the District's decision to acquire or operate the railroad. However, if your activities on behalf of Friends during the past 12 months did not relate to the District's acquisition or operation of the railroad, the nexus test would not require your disqualification

Finally, you may not participate in any decision in which Friends appears before you in connection with the decision. 2 Cal. Adm. Code Section 18702.1(a). Commission regulation 2 Cal. Adm. Code Section 18702.1(b) provides that:

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

Therefore, you will be disqualified for a one-year period from making, participating in or using your position to influence the Board's decision regarding awarding of the

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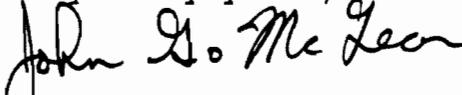
<sup>3/</sup>Id.

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contract to operate the railroad because Friends will be bidding on that contract.

If you should have any further questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "John G. McLean". The signature is written in a cursive style with a large initial "J" and "M".

John G. McLean  
Counsel  
Legal Division

JGM:sm  
Enclosures

THOMAS M. MAROVICH  
ATTORNEY  
24 S. Washington St.  
~~XXXXXXXXXXXXXXXXXXXX~~  
SONORA, CALIFORNIA 95370

(209) 532-6937

March 7, 1986

Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804-0807  
Attn: Robert Leidigh

Re: Request for written advice pursuant to Gov. Code sec. 83114(b)

Dear Mr. Leidigh:

I am writing to you on behalf of myself and Jerry Potter of P. O. Box 489, Tuolumne, CA 95379, PH: (209) 928-4938.

Mr. Potter is a member of the Board of Directors of Friends of Sierra Railroad, a California non-profit corporation. He receives no pay in his position as board member of Friends.

For the past several years I have acted as attorney for Friends. In the past 12 months, I have received in excess of \$250.00 in legal fees from Friends.

The Sierra Railroad line runs from Oakdale (in Stanislaus County) through Sonora (in Tuolumne County) to its terminex in Tuolumne City (also in Tuolumne County). The rail line is 56.5 miles in length. The last 6.5 miles of the line (between Standard and Tuolumne City) was abandoned through ICC proceedings several years ago but the right of way and rails are still largely intact.

The 50-mile portion of the rail line between Oakdale and Standard is presently used for commercial and special excursion purposes (but not for regular passenger traffic).

The rail line is of considerable historic significance and Friends of the Sierra Railroad was formed and is now in existence for the purpose of promoting the preservation of the railroad for historic purposes. Friends is financed through dues, donations, and fund raising events (such as excursions).

About one-half of the abandoned 6.5 mile portion of the line is within the boundaries of the Tuolumne Recreation and Park District, a public agency organized pursuant to Chapter 4 of Division 5 of the Public Resources Code (commencing at Sec. 5780, thereof).

In the past, Friends has made an attempt to acquire the abandoned 6.5 miles of railroad right of way but has been unsuccessful.

In 1985, the Board of Directors of the Tuolumne Recreation and Park District expressed an interest in acquiring the 6.5 miles for recreation and light-rail transportation purposes. At present, there are three newly elected members of the five member board, including Jerry Potter. Potter is paid \$5.00 per board meeting.

The board of the Recreation district has indicated it feels it needs an attorney (other than the county counsel) to pursue this proposed acquisition. I have submitted a proposal to the District for legal services (at the fee rate of \$50.00 per hour).

If the board accepts my proposal and I am retained as the District legal counsel, I intend to continue to act as counsel for Friends but on a pro bono basis.

Because Jerry Potter has these dual positions with Friends and the District, and because I may soon have a similar dual capacity, I approached Mr. Potter with the suggestion that I write this letter for both of us. We are requesting that the FPPC issue a formal written advice as to whether any conflicts of interest under the Fair Political Practices Act now exist (as to Mr. Potter) or would exist (if I became the Recreation District's attorney and continued to act as attorney for Friends on a pro bono basis).

The contemplated acquisition of the abandoned rail line involves the expenditure of substantial Recreation District funds (in excess of \$80,000.00). Mr. Potter and I feel the opinion of the FPPC on the above questions will be very helpful to the District Board of Directors as it proceeds to make a final decision on whether the District should act to acquire the railroad property.

Your attention to the above is greatly appreciated. If you need additional information, feel free to contact the undersigned or Mr. Potter.

Sincerely,

  
Thomas M. Marovich

cc: Jerry Potter



# California Fair Political Practices Commission

March 12, 1986

Thomas M. Marovich  
Attorney  
24 W. Washington St.  
Sonoma, CA 95370

Re: A-86-086

Dear Mr. Marovich

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me 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,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean  
Counsel  
Legal Division

JGM:plh