

FACTS

You were recently elected Tulare County Assessor. You are concerned about whether you may have conflicts of interest by virtue of the fact that you own a 100 percent interest in your CPA practice and a 50 percent interest in Mansfield Equipment Co., Inc.

Mansfield Equipment Co., Inc., is a heavy equipment company located in Barstow, California which is outside of Tulare County. The primary customer of the company is the Santa Fe Railway Company. Santa Fe has substantial property holdings in Tulare County; however, this property, except for approximately 14 low-valued parcels, is valued by the State Board of Equalization.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a governmental decision 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.

* * *

(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(a), (c) and (d).

You own investment interests in your CPA practice and in Mansfield Equipment Co. which are undoubtedly each worth \$1,000

or more. Therefore, you may not participate in any governmental decision which will have a reasonably foreseeable material financial effect on these business entities which is distinguishable from the effect on the public generally.

In addition, you may not participate in any governmental decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any source of income to you of \$250 or more in the 12 months preceding the decision.^{3/} Since you own a 10-percent or greater interest in both your CPA practice and Mansfield Equipment, income provided to these businesses will be attributed to you on a pro rata basis.^{4/} (Section 83030.)

Assuming that a decision will affect your CPA firm, Mansfield Equipment, or a person who has been a source of income to you of \$250 or more in the 12 months preceding the decision, you must analyze whether the effect is reasonably foreseeable, material, and will be distinguishable from the effect on the public generally. Each of these elements is discussed below.

Foreseeability

An effect on an official's economic interest is foreseeable when there is a substantial likelihood that it will ultimately occur as a result of a governmental decision. An effect does not have to be certain to be reasonably foreseeable; however, if an effect is a mere possibility, it is not foreseeable. (See, Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975); copy enclosed.)

Materiality

Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in making a determination as to whether the

^{3/} In your letter, you indicated that if allowed to keep your tax practice, you would be willing to submit to the county counsel a list of your clients as long as it could remain confidential. It should be noted that if your pro rata share of income from any person exceeds \$10,000 in a calendar year, that person must be publicly disclosed in your annual statement of economic interests. (Section 87207(c).)

^{4/} For example, as a 50% owner of Mansfield Equipment, a source of \$500 in income to Mansfield Equipment will be considered a source of income to you of \$250.

effect of the decision on any one of the official's economic interests will be "material." It is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material.

Whether an effect on a business entity in which an official has an investment, or which is a source of income to an official, will be considered material depends on the financial size of the business entity. (Regulation 18702.2.) For example, an effect of only \$10,000 on the gross revenues or assets of a small business is material. (Regulation 18702.2(g).) However, in the case of a Fortune 500 company such as Santa Fe, the effect would need to be at least a \$1 million effect on the company's gross revenues or assets for it to be material. (Regulation 18702.2(c).)

A similar "sliding scale" applies to effects on real property in which an official holds a direct or indirect interest. As a general rule, an effect of \$10,000 or more on the fair market value of real property is material. When the effect is between \$1,000 and \$10,000, it may be material, depending on the value of the real property. (Regulation 18702(b)(2).) An effect below \$1,000 is deemed not material. (Regulation 18702(b)(2)(B).)

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests. (Regulation 18702(a).) For example, the effect may be material if the decision significantly affects the use or enjoyment of land or other interests, or if the official's receipt of income from a private source is directly related to the decision. (Regulation 18702(b)(3)(B).)

In special situations, an effect is considered material regardless of its dollar value. These situations include the following:

(1) A person or business entity in which the official has an investment interest worth \$1,000 or more, or which is a source of income of \$250 or more to the official in the last 12 months, "appears before" the official in connection with the decision. (Regulation 18702.1(a)(1) and (2).) Thus, if, for example, Santa Fe "appears before" you in connection with a decision, you may not participate in that decision. A person or business entity "appears before" an official if it is a named party to the proceeding or initiates the proceeding by

Gregory B. Hardcastle
January 21, 1987
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filing an application, claim, appeal or similar request.
(Regulation 18702.1(b).)

(2) The decision would affect the zoning, annexation, sale, lease, actual or permitted use of, or taxes or fees imposed on real property in which the official has an interest of \$1,000 or more. (Regulation 18702.1(a)(3).)

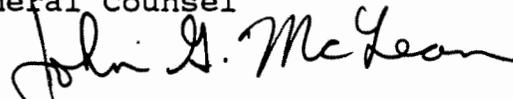
Public Generally

A determination must be made as to whether the effect of the decision on the official's economic interest will be distinguishable from the effect on the public generally. Regulation 18703 (copy enclosed) provides that a material financial effect of a governmental decision on an official's economic interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. For example, a decision by a city council to increase the sales tax, which will affect all residents of the city, does not affect any individual city councilmember in a different manner than it affects the public generally. As a result, it does not create a conflict of interest for any city councilmember. By way of contrast, a decision concerning a zoning variance for an official's business or home, which has a different effect on the official's economic interest than on other members of the general public, may constitute a conflict of interest for the official.

We would be pleased to provide you with more specific guidance regarding specific decisions which come before you. If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosures

December 15, 1986

Fair Political Practice Commission
P.O. Box 807
Sacramento, California 95804

DEC 18 9 31 AM '86

Attn: Ms. Diane Griffiths, General Counsel

Re: Letter of Advice--Conflict of Interest

Dear Ms. Griffiths:

As the Tulare County Assessor Elect I have some concerns regarding whether or not conflicts of interest may be present with my outside interests. There are two areas of concern; one being my CPA practice and the other being my 50% ownership interest in Mansfield Equipment Co., Inc., a heavy equipment company.

As far as my CPA practice is concerned, I would like to maintain a small tax practice in order for me to stay current with the tax laws plus keep my clients happy out of allegiance to them. I do not plan to operate a fullfledged accounting practice because of the time which would be required and my desire to give the taxpayers of Tulare County a concerned and hard-working Assessor. If allowed to keep my tax practice, I would be willing to submit to our County Counsel a list of my clients as long as it could remain confidential. As the Assessor there would be no direct involvement in either their property appraisals or the filing of their business property tax statements, if applicable.

Mansfield Equipment Co., Inc. is a heavy equipment company located in Barstow, California which is outside of Tulare County. The primary customer of the company is the Atchison, Topeka & Santa Fe Railway Company. Santa Fe has a substantial amount of property holdings in Tulare County, however, this property, except for approximately fourteen low-valued parcels, is valued by the State Board of Equalization on the Board's Utility Company Roll. Again, if for some reason some of Santa Fe's property were to be appraised or subject to an equalization hearing I would declare myself as not independent and have a neutral party handle any of the property tax matters which might arise. Please rest assured that I feel I am neutral but would want no involvement in the valuation of Santa Fe's property. I cannot see any issue arising anyway.

As you can see, I am concerned about conflicts of interest. I do not wish to leave any doubts in the minds of the voting public that there may be a conflict with my business ventures. I also wish to be able to properly disclose my interests with regard to my annual declaration of financial interests. I am hoping that you may be able to give me the proper direction to ensure that my sincere objectives are being met.

If you have any questions or need some clarification on any of the issues please feel free to call. My home phone number is (209) 732-8430; my CPA office is (209) 625-3025; and after January 5, 1987 I can be reached at the Tulare County Assessor's Office (209) 733-6361.

I look forward to your reply and will do anything within my power to comply with your direction to ensure that no conflict of interest occurs.

Thank you very much for your time and cooperation, it is very much appreciated.

Yours truly,



Gregory B. Hardcastle
Tulare County Assessor-Elect
3545 W. Monte Vista
Visalia, California 93277

cc: Ms. Lita Blatner, County Counsel
County Civic Center
Visalia, California 93291



California Fair Political Practices Commission

December 19, 1986

Gregory B. Hardcastle
Tulare County Assessor-Elect
3545 Monte Vista
Visalia, CA 93277

Re: 86-338

Dear Mr. Hardcastle:

Your letter requesting advice under the Political Reform Act was received on December 18, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh