



# California Fair Political Practices Commission

July 10, 1987

Greg Luke, Councilman  
535 Encinitas Blvd., Suite 100  
Encinitas, CA 92024

Re: Your Request for Advice  
Our File No. A-87-161

Dear Mr. Luke:

We have received your request for advice regarding your duties under the Political Reform Act (the "Act")<sup>1/</sup> as a member of the City Council of the City of Encinitas and as a member of the Board of Directors of the Cardiff Sanitation District.

## QUESTION

Do any obligations arise under the Act if you do engineering work in your private capacity for the City of Escondido relating to that city's sewage treatment plant?

## CONCLUSION

Based upon the facts which you have provided in your letter, you must avoid any participation in decisions which would affect your engineering work. You have indicated that you will do so, should the need arise.

## FACTS

You are one-half owner of the engineering firm of Luke-Dudek Civil Engineers, Inc. Your firm is preparing to submit a proposal to the City of Escondido to prepare an engineering study on that city's sewage treatment plant. The

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Our advice is limited to the provisions of the Act and does not cover other conflict of interest provisions involving contractual relationships such as Government Code Section 1090.

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purpose of the study is to determine what treatment facilities will be required in the future to treat the anticipated increase in sewage flows.

Escondido, located about fourteen miles inland, releases its treated waste water to a pipeline which transports the flows to an ocean outfall. The ocean outfall disperses waste water off the coast. The Cardiff Sanitation District (of which you are a board member), the Solana Beach Sanitation District, and the City of Escondido jointly own and share expenses to operate the ocean outfall. The terms of the joint ownership are defined in a contract. The City of Encinitas (of which you are a councilmember) has no involvement with the ocean outfall.

The scope of work on which Luke-Dudek will be submitting a proposal is confined to the future wastewater treatment facility needs for Escondido. The scope of work does not address the jointly owned ocean outfall.

The Cardiff Sanitation District will not be reviewing or approving the study and will not be directly affected by the results of the report. The engineering fees paid by Escondido for the study will be the same regardless of the study's conclusion as to Escondido's future needs.

You have indicated that should it be necessary during the course of the study to communicate with the Cardiff Sanitation District staff, you will have Escondido's staff engineers make the necessary contacts. You will not work with the Cardiff Sanitation District staff in your private, engineering capacity.

#### ANALYSIS

Under the Act, an official must disqualify himself from making, participating in making, or using his official position to influence the making of any governmental decision in which he has a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

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

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(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), (d)

You are an owner and officer/employee of Luke-Dudek. It is a source of income to you. As such, Luke-Dudek is an economic interest of yours under each of the provisions of Section 87103 quoted above. Consequently, you must disqualify yourself from making, participating in making, or in any way using your official positions to influence any governmental decision which will have a reasonably foreseeable material financial effect on you or on Luke-Dudek.<sup>2/</sup>

You hold two positions as a public official. You are a councilmember in Encinitas and a board member of the Cardiff Sanitation District. Your proposed engineering study will be done for the City of Escondido. You are not a public official with respect to Escondido. Neither of the agencies for which you are a public official will have any involvement in reviewing or approving the engineering study for Escondido. Consequently, you are not in a position to make a governmental decision which would affect your private financial interests.<sup>3/</sup>

Lastly, you have decided that if the study is performed by Luke-Dudek and if any contact with the Cardiff Sanitation

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<sup>2/</sup> Under the circumstances set forth in your letter, it is clear that any such effect on you or on Luke-Dudek will be distinguishable from the effect on the public generally. (Section 87103; Regulation 18703.)

<sup>3/</sup> This assumes that the Cardiff Sanitation District played no role in causing the City of Escondido to decide that it needs to have this study performed.

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District staff should be necessary, you will have others make those contacts in order to avoid any appearance that you are somehow using your official position with the district to influence the conduct of its staff.

As a reminder to you, you also have reporting responsibilities under the Act with respect to your economic interests. (Sections 87200, et seq., and 87300, et seq.) As one-half owner of Luke-Dudek, each source of income to Luke-Dudek is a source of one-half that amount in income to you. (See Section 82030(a).) Therefore, if a client pays \$20,000 or more to Luke-Dudek during a calendar year, the name, address and business activity of that client must be disclosed on your annual statement of economic interests if the client is doing business in the jurisdiction, has done business in the jurisdiction during the past two years or plans to do business in the jurisdiction. (See Section 87207(b).)

In addition, you should also remember that any source of income to you of \$250 or more, on a pro rata basis, can also be a basis for disqualification. If you are involved in a decision which will have a reasonably foreseeable material financial effect upon such a client, disqualification will be required unless the decision affects the public generally in a similar manner.

I trust that this letter adequately responds to your inquiry. The advice herein is limited to the Act's provisions. Should you wish to seek advice regarding the provisions of Government Code Section 1090, we suggest that you consult with your city attorney. If you have questions regarding this letter, I may be reached at (916) 322-5901.

Diane M. Griffiths

General Counsel

  
By: Robert E. Leidigh  
Counsel, Legal Division

DMG:REL:jaj

87-161

June 9, 1987

Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

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Attn: Diane Griffiths, General Council

Gentlemen:

I am a member of the Encinitas City Council. By virtue of this position, I also sit as a member of the Cardiff Sanitation District, Board of Directors, a subsidiary special district.

I am one-half owner of the engineering firm of Luke-Dudek Civil Engineers, Inc. My firm is preparing to submit a proposal to the City of Escondido to prepare an engineering report for that City's sewage treatment plant. The purpose of the study is to determine what treatment facilities will be required in the future to treat their anticipated increased flows.

Escondido, located about fourteen miles inland, releases its treated wastewater to a pipeline which transports the flows to an ocean outfall. The ocean outfall disperses wastewater off the coast. The Cardiff Sanitation District (of which I am a board member), the Solana Beach Sanitation District, and the City of Escondido jointly own and share expenses to operate the ocean outfall. The terms of the joint ownership are defined in a contract.

The scope of work which Luke-Dudek will be proposing on deals only with the future wastewater treatment facility needs for the City of Escondido. The scope of work does not address the jointly owned ocean outfall.

The Cardiff Sanitation District will not be reviewing or approving the report and will not be directly affected by the results of the report. The same engineering fees will be paid by the City of Escondido, regardless of the results of the report. Thus, the conclusions reached in the report would not affect my financial interests.

Should it be necessary to communicate with the Cardiff Sanitation District staff, I will stipulate that Escondido's staff engineers make the necessary contacts. I will not work with the Cardiff Sanitation District staff in any professional capacity.

Based on the foregoing facts, would any of the FPPC rules be violated by my performing engineering services for the City of Escondido?

Thank you for your assistance.

Very truly yours,



Greg Luke  
City Councilman  
City of Encinitas

428 "J" Street, Suite 800  
Sacramento, CA 95814