



California Fair Political Practices Commission

March 11, 1988

Susan D. Hatfield
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

Re: Your Request for Advice
Our File No. I-88-055

Dear Ms. Hatfield:

You have requested advice about application of the Political Reform Act (the "Act")^{1/} to the duties of an unidentified engineering aide with the Marin Municipal Water District.

Pursuant to Regulation 18329(c)(4)(C) (copy enclosed), we are treating your request as one for informal assistance because you have not identified the person about whom you are requesting advice.^{2/}

QUESTION

The Marin Municipal Water District requires backflow prevention device testers to be certified by the American Water Works Association (AWWA).

Does the Act prohibit a district employee from conducting classes on his own time to teach individuals how to become backflow prevention device testers certified by the American Water Works Association?

CONCLUSION

Conducting private classes is not a governmental decision. The Act does not limit the employee's ability to conduct private classes in an area related to his governmental duties.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code Regs. Section 18329(c)(3).)

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Nevertheless, if the employee received more than \$250 in income from a student in the class, the employee would be disqualified from participating in a governmental decision that would have a material financial effect on the student, which was distinguishable from the effect on the public generally. The employee also would be disqualified if a decision foreseeably would have a material financial effect on a business in which the employee had an investment worth \$1,000 or more.

FACTS

An engineering aide administers the Marin Municipal Water District's program to protect the public water supply from cross-connections. The aide's responsibilities include: 1) keeping informed of state law concerning district or county regulation of cross-connections, 2) answering customers' questions about backflow prevention devices, 3) occasionally inspecting backflow prevention devices for proper operation, and 4) determining whether new connections need backflow prevention devices. The aide reports to an engineering supervisor and the district's principal engineer.

Backflow prevention device testers must be certified. In mid-1987, the district and most other water providers in the Bay Area decided to require only AWWA certification for all testers. The districts no longer recognize certification by any other organization.

The district employee is planning to teach classes on his own time to individuals who want to become AWWA-certified backflow prevention device testers. Students would pay tuition fees of about \$315. Classes would be given three or four times a year with 12 to 20 students in each class. The employee would divide the tuition with another person who is not a district employee. AWWA would not pay the district employee for conducting the classes nor for recommendations about AWWA's tests.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making or in any way 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 decision if it is reasonably foreseeable the decision will have a material financial effect, distinguishable from its effect on the public generally, on the following: 1) the official, or 2) a business entity in which the official has an investment interest worth

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at least \$1,000, or 3) a source of income of at least \$250 promised to or received by the official within 12 months before the decision. (Section 87103(a) and (c).)

Regulation 18700(c) (copy enclosed) defines participation in the making of a governmental decision for a designated employee.

(c) A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

Teaching private classes on the employee's own time is not a governmental decision. The Act does not limit the employee's right or ability to teach the classes.

On the other hand, the employee would be disqualified from participating in a decision that would have a foreseeable material financial effect on a person or business entity that was a source of income of \$250 or more within 12 months before the decision. (Section 87103(c).) For example, the employee might be disqualified if he participated in a decision about the District's certification requirements for testers. If that decision foreseeably would have a material financial effect on a student who had paid the employee at least \$250 within 12 months before the decision, the employee would be disqualified.

Furthermore, the enterprise of giving classes for a fee would be a business entity under the Act. (Section 82005.)

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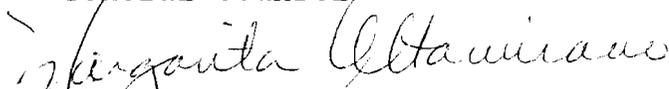
The employee also would be disqualified if a decision would have a foreseeable material financial effect on the employee's business, if his investment interest in the business were worth at least \$1,000. See enclosed Regulation 18702.2(g) for guidelines to determine whether a financial effect on a business entity is material.

Government Code Sections 1090 and 1125 also may apply to the employee's situation, but the Commission does not administer these sections. We refer you to the California State Attorney General's office for advice about Sections 1090 and 1125.

I hope this letter provides you with adequate guidance. Please call me at (916) 322-5901 if you have any questions about this letter.

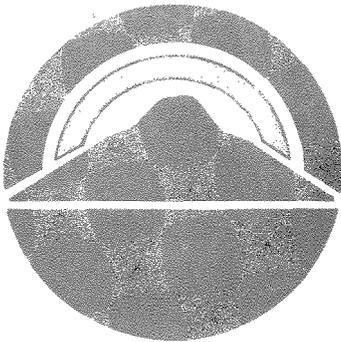
Sincerely,

Diane M. Griffiths
General Counsel



By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:da



MARIN MUNICIPAL WATER DISTRICT

220 NELLEN AVENUE CORTE MADERA, CALIFORNIA 94925 (415) 924-4600

FILED
JAN 28 1988

January 27, 1988

Diane Griffiths
General Counsel
California Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Request for Informal Assistance

Dear Ms. Griffiths:

Question

I am legal counsel for the Marin Municipal Water District. Recently, facts involving a District employee were presented to me with a request that a determination be made regarding whether a conflict of interest would exist if the employee were to engage in certain outside employment in light of his duties as an employee of the Marin Municipal Water District. I have attempted to set forth below all facts which I believe are pertinent to an assessment of whether a conflict of interest would exist. Please do not hesitate to contact me if you need additional information.

Facts

The employee in question is an engineering aide with the Marin Municipal Water District. His primary responsibilities lie in the administration of the District's program to protect the public water supply from actual or potential cross-connections. The employee's activities are supervised by the Engineering Supervisor and the District's Principal Engineer. In his job, he has four areas of responsibility. First, he is responsible for keeping abreast of changes in state law which may affect district or county regulation of cross-connections. Second, he is responsible for dealing with questions from District customers who are required to install and maintain backflow prevention devices. Third, he inspects installed backflow prevention devices from time to time when a question arises regarding whether they are operating properly. Finally, he is responsible for investigating and determining whether new connections

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require backflow protection. He is not responsible for inspection of the devices during installation or during annual tests required by District Ordinance No. 236.

Annual tests of the backflow prevention devices are performed by individuals who are "certified inspectors" who must pass the test administered by the American Water Works Association (AWWA) to establish their competence to act as testers. Until this year, section 7605 of Title 17 of the California Administrative Code imposed on local water purveyors and health departments the duty to see that annual tests of backflow prevention devices were made in accordance with the provisions of Title 17, section T17-7583. On June 25, 1987, section 7605 was amended to provide greater specificity regarding the obligations of local water purveyors to ensure competent testing of backflow prevention devices and to specify in greater detail the requirements such devices must meet. The District has required certification of testers since 1982 to meet its obligation to assure their competency.

In mid-1987, the District, and most other Bay Area water purveyors, decided to discontinue accepting certification from the University of Southern California (USC), which did not require recurring examinations at regular intervals and require AWWA certification of all testers. State law allows local water purveyors to decide how the competency of testers will be assured. The District may implement its own testing program, but has not chosen to do so to date.

Prior to discontinuance of the acceptance of USC certification, the employee recommended to the Principal Engineer that the District require only AWWA certification and drop the USC certification. The employee has advised me that his recommendations regarding the backflow prevention program have "nearly always been accepted by the Principal Engineer." While the employee's duties do not appear to involve negotiation, they do appear to include advising or making recommendations. Since the decision regarding which certification to require of backflow testers was made by the Principal Engineer, he would appear to be the decision-maker regarding this matter and any advice given by the employee to him to be advice given without "significant intervening substantive review".

The employee in question plans to conduct classes on his own time for individuals seeking to become certified backflow prevention device testers. Students taking the class would pay approximately \$315 tuition and each class would have between 12 and 20 students and be given three or four times a year with the assistance of another individual who is not a District employee and with whom the employee will divide the tuition paid by the students. The students might be residents of Marin or any nearby county since certification is required by water purveyors throughout the

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area. The employee would receive no compensation from AWWA for conducting these classes or for making recommendations to AWWA regarding the contents of the test.

I have concluded that, based on the foregoing facts, the employee would have a conflict of interest because he is in a position to advise the decision-maker, the Principal Engineer, regarding which testing program to utilize to assure the competency of backflow testers and thus participates in the making, and influences, a governmental decision. In my view, it would be reasonably foreseeable that the decision would have a material financial effect on the employee, distinguishable from its effect on the public generally, because absent the District's decision to require AWWA certification, there would be less incentive for local backflow prevention testers to enroll in the employee's class (local individuals might still enroll in such a class if planning to work outside Marin in areas requiring AWWA certification). My conclusion may be overly conservative, particularly since I believe there is a substantial question whether there is a sufficient nexus between the employee's recommendations and the income which would be generated by the classes taught by him.

I look forward to receiving your advice on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Suzan D. Hatfield". Below the signature, the initials "(S.D.)" are written in a smaller, less legible script.

Suzan D. Hatfield

SDH:eb



California Fair Political Practices Commission

February 8, 1988

Suzan D. Hatfield
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

Re: 88-055

Dear Ms. Hatfield:

Your letter requesting advice under the Political Reform Act which was received on February 1, 1988 by the Fair Political Practices Commission has been reassigned to Margarita Altamirano. If you have any questions, you may contact her in the Legal Division, directly at (916) 322-5901.

Very truly yours,

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

Diane M. Griffiths
General Counsel

DMG:plh



California Fair Political Practices Commission

February 1, 1988

Suzan D. Hatfield
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

Re: 88-055

Dear Ms. Hatfield:

Your letter requesting advice under the Political Reform Act was received on February 1, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

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