



California Fair Political Practices Commission

May 6, 1988

Curtis Coleman
District Counsel
South Coast Air Quality Management District
9150 Flair Drive
El Monte, CA 91731

Re: Your Request for Advice;
Our File No. I-88-127

Dear Mr. Coleman:

You have written requesting our assistance with respect to the duties and obligations of South Coast Air Quality Management District Board Member Dr. Jack R. Witz. Dr. Witz and you have sought only general guidance without regard to any specific pending decision. Therefore, we treat your letter as a request for informal assistance.^{1/}

QUESTION

One or more companies held by the parent company of Dr. Wirtz' employer may be retained by persons subject to district regulations to study, analyze, and advise with respect to district regulations. When will Dr. Wirtz be required to disqualify himself from district decisions?

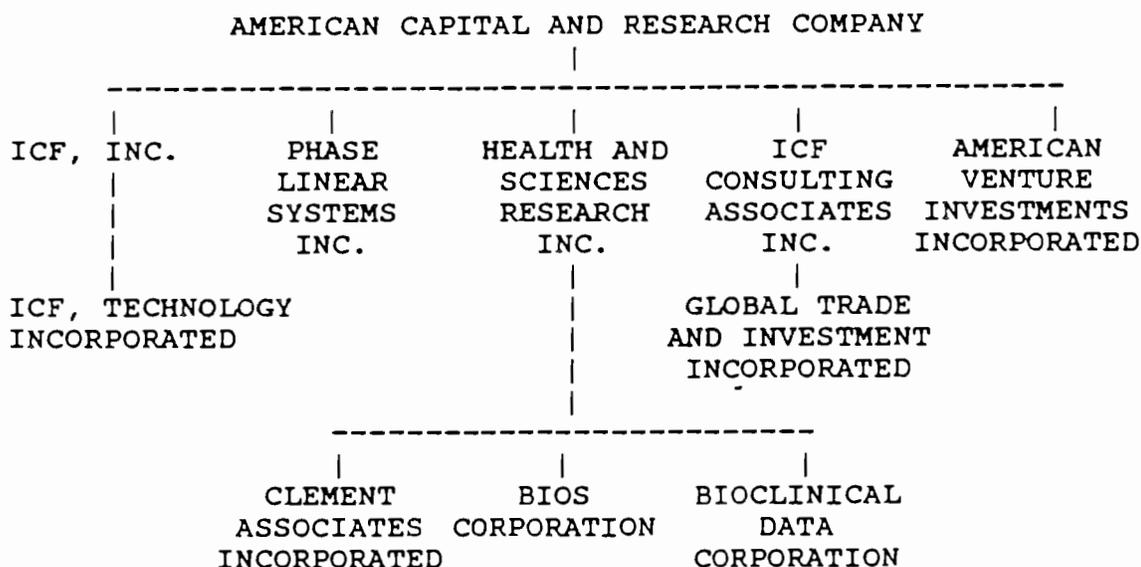
CONCLUSION

Generally, Dr. Witz may not participate in any decisions which will have a reasonably foreseeable material financial effect on his employer, the parent company or any of its subsidiaries.

^{1/} 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 of Regs. Section 18329(c)(3).)

FACTS

Dr. Jack R. Witz is a member of the board of the South Coast Air Quality Management District (the "district"). He is a management employee of ICF Technology, Inc., which is a wholly-owned subsidiary of ICF, Inc., which is, in turn, a wholly-owned subsidiary of American Capital and Research Corporation ("ACR"). ACR is an employee-owned holding company which is also the parent company to several other related entities. You have provided a helpful diagram which shows the corporate structure, and it is reproduced below for purposes of clarity.



All of the subsidiaries of ACR together have about 1,000 employees. ICF Technology, Dr. Witz' employer, has about 400 employees, of which approximately 60 are located in California.

Each of the various ACR subsidiaries provides consulting services to government and private sector clients. ICF Technology is the scientific and engineering branch of ICF, Inc. ICF Technology provides services which include: Environmental remedial investigations and feasibility studies, compliance assistance, technology assessment and feasibility studies, community relations, emergency response, siting studies, and geotechnical and hydrogeological studies.

The services provided by the parent, ICF, Inc., include: Analyses of energy supply, demand, transportation and prices; government legislation and regulation; and strategic planning and marketing issues facing producers, consumer, shippers and supporting equipment industries.

In the coming months and years, the district will consider broad-ranging regulatory measures designed to reduce the emissions of air contaminants within the district's jurisdiction. Such measures may include technological controls on power generating facilities and on petroleum production, refining, and marketing operations. However, they may also include measures designed to reduce the use of petroleum-based fuels and solvents within the district's jurisdiction.

In addition, measures which have already been discussed for reducing the toxic air contaminant emissions have generated concern among other public agencies responsible for controlling water pollution and treatment of wastewater. Those agencies have pointed out the potential cross-media impacts of the district's regulations in this area.

Dr. Witz states that there is a possibility that one or more of the companies held by ACR might be retained by persons subject to the district's regulations to study, analyze, and advise with regard to such regulations.

ANALYSIS

The Political Reform Act (the "Act")^{2/} provides that no public official shall make, participate in, or use his official position to influence, a governmental decision in which the official has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official, a member of the official's immediate family, or on any the following economic interests.

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

^{2/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. 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.

(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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Section 87103(a)-(e).

Your letter indicates that Dr. Witz has an investment interest in ACR which exceeds \$1,000 in value and which represents approximately 5% of ACR stock. Your letter also indicates that Dr. Witz is an employee of and holds a position of management with ICF Technology. Consequently, both ACR and ICF Technology are economic interests of Dr. Witz. However, because he does not own 10% or more of ACR, sources of income to ACR or its wholly-owned subsidiaries are not sources of income to Dr. Witz.^{3/} (Section 82030(a).)

The issue then is whether any of the decisions which Dr. Witz would be participating in as a district board member would have a reasonably foreseeable material financial effect on ACR or any of its wholly-owned subsidiaries. An effect on the subsidiary is treated as an effect on the parent (ACR). (Regulation 18706, copy enclosed.)

^{3/} This assumes that Dr. Witz does not receive any commission-type income based upon the work performed for a specific client of ICF Technology. If he does, that client would be considered a source of that commission-type income. (See, Regulation 18704.3.)

You have advised me over the telephone that ACR is not publicly-traded nor is it qualified for public sale. However, it has sufficient income and assets to meet the standards set forth in Regulation 18702.2(f) for listing on the National Association of Securities Dealers National Market List. (A copy of Regulation 18702.2 is enclosed.) Consequently, the standards for measuring materiality are those set forth in Regulation 18702.2(e), which are as follows:

(e) The effect of a decision on any business entity not covered by (c) or (d) but which is qualified for public sale in this state pursuant to Corporations Code Section 25110 (which applies to partnerships and other business entities as well as corporations), will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

Thus, if it is reasonably foreseeable that a decision will have an effect of the foregoing nature and magnitude on either ACR or one of its wholly-owned subsidiaries, Dr. Witz would be required to disqualify himself.^{4/} Given the broad area of activities in which his firm and ACR's many subcomponents are involved, it is conceivable that almost any decision by the district regarding the regulation of emissions of contaminants could lead to some additional consulting work by one of the firms. However, the standard is "reasonably foreseeable." The Commission has advised that reasonable foreseeability is more than a mere possibility and less than a certainty. It requires a substantial likelihood. (In re Thorner (1975) 1 FPPC Opinions 198, copy enclosed.) In Thorner, the Commission

^{4/} We assume that because of the nature of the business of ACR's subsidiaries that the effects of decisions on them will be distinguishable from the effects of decisions on the public generally. However, it is conceivable that a particular decision could affect them similarly to the general public.

Mr. Coleman
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discussed several possible scenarios to provide guidance as to when the effects of a decision are reasonably foreseeable. Since we have provided you with a copy of Thorner, we will not reiterate those scenarios here. If you have questions after reading the opinion, feel free to contact us.

Obviously, a factual determination on a case-by-case basis will be required to determine whether it is reasonably foreseeable that a particular decision will result in an ACR subsidiary obtaining a consulting contract for \$30,000 or more. Certainly, where an ACR subsidiary has bid on such work or a regular client will be affected by the decision, making it likely that such work will be forthcoming, such an effect is reasonably foreseeable under Thorner. We are available to assist with such analyses when specific decisions are contemplated.

Lastly, Dr. Witz may not participate in a district decision if there is a "nexus" between the decision and the purpose for which he receives income. For instance, if Dr. Witz worked for a client on developing proposed amendments to a district regulation, he could not then participate in a district decision on those amendments. (See Best Advice Letter, No. A-81-032; and Swallow Advice Letter, No. A-86-229, copies enclosed.)

I trust that this letter adequately responds to your inquiry. Should you have further questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

by: Robert E. Leidigh
Counsel, Legal Division

ENC:

REL:da



South Coast
AIR QUALITY MANAGEMENT DISTRICT

9150 FLAIR DRIVE, EL MONTE, CA 91731

APR 18 1988
572-6406

April 5, 1988

Mr. Lidek
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

Re: Attachment 1 to March 22, 1988 Letter

Dear Mr. Lidek:

Enclosed please find Attachment 1 which was inadvertently omitted from my March 22, 1988 letter re: Request for Formal Written Advice on Behalf of Jack R. Witz, South Coast Air Quality Management District Board Member.

Very truly yours,

Curtis E. Coleman
District Counsel

CLC:je
Encl.
cc: Jack Witz
Cynthia Markert
David Nawi

American Capital and Research Corporation (ACR) is an employee owned financial holding company that holds ICF Technology, Incorporated (as a subsidiary of ICF Incorporated), as well as four other companies. The following is a brief description of ACR's five subsidiary companies and the services offered and clients serviced by each.

- ICF Incorporated is one of the nation's most successful professional and technical services firms in the environmental and energy fields. In the energy area, ICF provides analyses of energy supply, demand, transportation and prices; government legislation and regulation; and strategic planning and marketing issues facing producers, consumer, shippers and supporting equipment industries. Clients include utilities; and coal, oil and gas producers, manufacturers, and transportation companies. In the environmental area, ICF provides economic, policy, and financial analysis services to federal, state, and local government agencies. ICF Technology, Incorporated, a wholly-owned subsidiary of ICF Incorporated, is the scientific and engineering arm of ICF. ICF Technology offers environmental remedial investigations and feasibility studies, compliance assistance, technology assessment and feasibility studies, community relations, emergency response, siting studies, and geotechnical and hydrogeological studies. ICF Technology clients include government agencies, law firms, industrial firms, and trade associations.
- Health and Sciences Research Incorporated is a health policy and biological sciences firm. Health and Sciences Research Incorporated has a national reputation for its work for health maintenance organizations and preferred provider organizations, and for analysis and evaluation of health care legislation. For private clients, the firm prepares feasibility studies, business plans, applications for state licensure, and market segment contract applications. ICF is assisting DOD evaluate and improve the health care it provides to its beneficiaries. Clement Associates, Incorporated, a wholly owned subsidiary of Health and Sciences Research Incorporated, provides risk assessments of exposure to toxic substances. Clement clients include law firms, government agencies, industrial clients, and trade associations. Health and Sciences Research Incorporated has two other subsidiaries: BIOS Corporation and BioClinical Data Corporation.
- Phase Linear Systems Incorporated is systems firm which develops and markets sophisticated mainframe computer products and solves complex operations research, artificial intelligence, and programming problems.
- American Venture Investments Incorporated is a venture capital firm which draws on the research skills in its affiliated companies to place venture capital in high technology companies.
- ICF Consulting Associates Incorporated is a firm of economists and

business planners who consult on regulatory economics, litigation support, and competitive analysis across a wide range of regulated industries. ICF Consulting Associates Incorporated owns 50 percent of Global Trade & Investment Incorporated, which supplies commercial and government clients with advice on international trade policy, export marketing and investment opportunities, and international financial issues.



South Coast
AIR QUALITY MANAGEMENT DISTRICT

9150 FLAIR DRIVE, EL MONTE, CA 91731 (818) 572-6200

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March 22, 1988

Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento. CA 95804-0807

Re: Request for Formal Written Advice on Behalf
of Jack R. Witz, South Coast Air Quality
Management District Board Member

Dear Sir or Madam:

I am the District Counsel for the South Coast Air Quality Management District, a regional air quality management district created by the Legislature pursuant to Chapter 5.5, Part 3, Division 26 of the California Health and Safety Code. That District is governed by an eleven member Board of Directors appointed pursuant to Health and Safety Code Section 40420. The duties of Board members include establishing policies for the District to implement, adopting and amending the air quality management plan (Health and Safety Code Section 40460, et seq.), adopting regulations which have the force and effect of law, adopting a budget, approving staff positions, and approving certain contracts.

One of the District Board members, Dr. Jack R. Witz, is the Governor's appointee to the Board. Dr. Witz currently works for ICF Technology, Incorporated. While he is in a management position, he has less than a 10% ownership interest in that company. He does have about a 5% interest in American Capital and Research Company, in the form of stock interests building up for retirement benefits. ICF Technology, Incorporated is a wholly owned subsidiary of ICF Incorporated. ICF Incorporated is a wholly owned subsidiary of American Capital and Research Corporation (ACR). ACR is an employee owned holding company which holds five

The South Coast Air Quality Management District Board will, in the coming months and years, be called upon to consider broad ranging and far reaching regulatory measures designed to reduce the emissions of air contaminants in the South Coast District. Such measures may include technological controls on power generating facilities and petroleum production, refining, and marketing operations. However, they may also include measures designed to reduce the use of petroleum based fuels and solvents within the South Coast District. In addition, measures already discussed for the reduction of toxic air contaminant emissions have already caused concern among other public agencies responsible for controlling water pollution and treatment of wastewater, citing cross-media impacts of our regulations.

Given the controversial nature of the regulations to be considered, and the need for information on the impacts of those regulations, Dr. Witz has requested some guidance concerning what matters he may or may not participate in as a member of the South Coast Air Quality Management District Board, in view of the possibility that one or more of the companies held by ACR might be retained by persons subject to District regulations to study, analyze, and advise with regard to such regulations.

We would appreciate your guidance in this matter. If you need any further information, please contact me at your convenience.

Very truly yours,



Curtis L. Coleman
District Counsel

CLC:pc

cc: Jack Witz
Cynthia Markert
David Nawi



California Fair Political Practices Commission

March, 28, 1988

Curtis L. Coleman
South Coast Air Quality
Management District
9150 Flair Drive
El Monte, CA 91731

Re: 88-127

Dear Mr. Coleman:

Your letter requesting advice under the Political Reform Act was received on March 28, 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
cc: Jack R. Witz