



California Fair Political Practices Commission

January 12, 1989

Richard D. Rogers
4070 Goldfinch Street
Suite B
San Diego, CA 92103

Re: Your Request for
Informal Assistance
Our File No. I-88-463

Dear Mr. Rogers:

This is in response to your request for advice regarding whether the Political Reform Act^{1/} restricts you in bidding on excess highway properties sold by the State of California. Your request appears to relate to future hypothetical events rather than a specific pending matter. Therefore, we consider your request to be one for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTION

Does the Political Reform Act restrict or prohibit you from bidding upon or purchasing excess highway properties sold by the State of California?

^{1/} 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.

^{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 of Regs. Section 18329(c)(3).)

CONCLUSION

The Political Reform Act does not restrict or prohibit you from bidding upon or purchasing excess highway properties sold by the State of California. However, the provisions of Section 1090 may apply to your bid upon or purchase of property sold by the state. The Commission does not administer Section 1090. Please contact the Attorney General's Office for advice in this regard.

FACTS

You are a right of way agent for the California Department of Transportation. As part of your job duties you appraise real property upon which the State of California intends to build highways. Occasionally, the state does not use all of the property it purchases for this purpose. It therefore sells the property to the general public. You desire to bid upon and purchase some of these properties. However, you do not intend to buy any properties with which you have come into contact in connection with your work.

ANALYSIS

Section 87100 sets forth the general rule concerning conflicts of interest confronting public officials. It states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 defines the term "financial interest." It states:

87103. Financial Interest. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her 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.

(b) Any real property in which the public official has a direct or indirect interest 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.

(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.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Since you are a "public official"^{3/} working for state government, these sections would apply to determine whether you have a conflict of interest in connection with a government decision in which you intend to participate.

Before the conflict of interest restrictions of Section 87100 apply to an official, he or she must have an economic interest which could be affected by the governmental decision at issue. Section 87103 makes clear that the interest must be one that is either held by or promised to the official at the

^{3/} Section 82048 states, in pertinent part: "'Public official' means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government."

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time he or she is participating in the decision. A desire to acquire an interest in the future that is not legally enforceable does not constitute an economic interest under the Act.

As an appraiser of real property that will be purchased and perhaps sold by the state, you could be in a position to influence the eventual fair market value of the property. If you hold an interest in that or other property whose value could be affected by the appraisal, then you will be disqualified from doing the appraisal under Section 87100. However, where you hold no legal interest in the property, as defined under Section 87103, you are not disqualified under the Political Reform Act from appraising it.

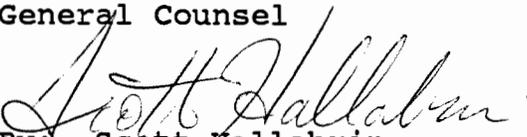
Consequently, the Act does not restrict or prohibit you from bidding upon or purchasing excess highway properties sold by the State of California. As described above, the Act's limitations apply only in cases where you have a financial interest in the property and your duties as a state official may affect that interest.

Finally, please note that Section 1090^{4/} may apply to your bid upon or purchase of real property sold by the state. The Commission, however, does not administer this section. Please contact the Attorney General's Office for advice regarding application of this section.

Please contact me at (916) 322-5901 if you have any additional questions.

Sincerely,

Diane M. Griffiths
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

^{4/} Section 1090 prohibits a public official from making a contract in which he or she has a financial interest.

TO: Fair Political Practices Commission
1100 K Street Building
P.O. Box 807
Sacramento, CA 95814

DAS-PM-761
(5/78)

SUBJECT: REQUEST FOR ISSUANCE OF OPINION OR ADVICE (GOVT. CODE § 83114)

I request the FPPC to issue [an opinion] (or) [written advice] (line out the one that does not apply) with respect to my duty under the Department of Transportation's Conflict of Interest Code in conjunction with Title 9 (Political Reform) of the Government Code.

I am making this request on behalf of:
(name(s) of all persons, class or group of employees, organization, etc. - e.g. myself and PEGC - sought to be protected by the opinion or advice)

FPPC
DEC 12 8 33 AM '88

*The material facts which underly this request are as follows:
I am a right of way agent in the appraisal function. I appraise right of way for highways. I wish to bid on properties declared excess by the State. I will not be bidding on any property with which I have had personal experience, or contact, in connection with my work.

*The questions which are based on the above mentioned facts are as follows:

1. Must I request permission to bid on each parcel individually;
2. Should I register each bid with someone: If so, Whom?
3. What specific criteria should I apply to any parces on which I wish to bid: (Disqualifying criteria)

i declare that I have requested this opinion/advice from the Commission in good faith and disclosed truthfully all the material facts underlying this request.

DATED: December 3, 1988

Richard D. Rogers
SIGNATURE

Please send the written opinion or advice to: (Type or Print)

Please send carbon copy to:

E. R. Kirwan,
Deputy District Director
Right of Way
P.O. Box 85406
San Diego, CA 92138-5406

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* Additional pages may be added if needed.