



California Fair Political Practices Commission

March 6, 1989

Phillip A. Beautrow
California Waste Management Board
1020 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-042

Dear Mr. Beautrow:

This is in response to your letter requesting advice regarding your duties and responsibilities as a member of the California Waste Management Board under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

As an appointed member of the Waste Management Board and a manager of landfill development for Waste Management of North America, what guidelines should you follow to avoid real and perceived conflicts of interest?

CONCLUSION

As a public official, you are required to disqualify yourself from participation in any decision which would foreseeably have a material financial effect on Waste Management of North America distinguishable from its effect on the public generally.

^{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.

FACTS

You were appointed to the California Waste Management Board (the "board") in 1974. Your appointment was made pursuant to Government Code Section 66740(e), which provides:

(e) One representative of the public appointed by the Senate Committee on Rules, who shall be a registered civil engineer under the laws of this state and have specialized education and experience in natural resources conservation and resources recovery.

As a member of the board, you participate in the formulation, adoption and revision of state policy and regulations concerning solid waste management. In addition, the board reviews city and county waste management plans for compliance with the regulations and may approve or reject the plans.

While the primary responsibility for the enforcement of waste management standards is with the local designated agency, the board is also responsible for approving designation of the local agencies that are charged with enforcing the state waste management standards, and approving the local agency decisions concerning permits to private waste management companies.

In March of 1988, you were hired by Waste Management of North America ("Waste Management") as manager of landfill development. Waste Management is the largest firm in the nation in the waste management field. You have recently become concerned over allegations that by virtue of your position with Waste Management you have a conflict of interest regarding all issues which are brought before the board. You are seeking some guidance regarding your responsibilities under the Act.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. This prohibition not only includes voting on an issue, but also includes any contacts or attempts to influence any member, officer, employee or consultant of the agency concerning that issue. (Regulations 18700 and 18700.1, copies enclosed.)

A "public official" is defined in Section 82048 and Regulation 18700(a)(1) to include salaried or unsalaried members of

boards or commissions with decision-making authority. Because the board makes final governmental decisions concerning waste management regulations and policies, the members of the board are public officials within the meaning of the Act.

Section 87103 specifies that a public 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 or a member of his or her immediate family or on:

(c) Any source of income ... 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(c) and (d).

Because of your position as manager with Waste Management, you are required to disqualify yourself from any decision of the board which could foreseeably have a material financial effect on Waste Management distinguishable from the effect on the public generally.

An effect is considered reasonably foreseeable if there is substantial likelihood that it will occur. Certainty is not required; however, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Direct Conflict of Interest

Regulation 18702.1 (copy enclosed) provides that the effect of a decision is material if any business entity in which the public official is an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in the decision before the public official's agency. Waste Management is directly involved in a decision before the board when Waste Management or Waste Management's agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or the subject of, the proceeding concerning the decision before the official or the official's agency;

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Regulation 18702.1(b).

Consequently, as a manager for Waste Management you are required to disqualify yourself from participating in any board decision in which Waste Management is directly involved.

Indirect Conflict of Interest

A public official also is required to disqualify him or herself from participating in governmental decisions which indirectly have a foreseeable material financial effect on his or her economic interest. Whether the indirect effect of a decision is material depends on the financial size of the business entity. Regulation 18702.2 (copy enclosed) provides guidelines regarding when an effect on a business entity is material based on the financial size of the business entity. For a business entity such as Waste Management, which is listed on the Fortune Magazine Directory of the 500 largest U.S. Industrial Corporations, Regulation 18702.2(a) provides that the effect of a decision is material if:

(1) The decision will result in an increase or decrease to the gross revenues for a fiscal year of ... \$1,000,000 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 ... \$250,000 or more; or

(3) The decision will result in the increase or decrease in the value of assets or liabilities of ... \$1,000,000 or more.

Thus, you are required to disqualify yourself from participation in any decision which could foreseeably increase or decrease the gross revenues, assets or liabilities of Waste Management by \$1,000,000 or more, or increase or decrease expenses by \$250,000.

Public Generally Exception

A public official is not required to disqualify himself from a decision which would foreseeably and materially affect his or her

economic interest if the effect on the official's interest is not distinguishable from the effect on the public generally. (Section 87103.) For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it would affect the general public or a significant segment of the public. (Regulation 18703; and In re Legan (1985) 9 FPPC Ops 1, copies enclosed.)

With specific exceptions, an industry, trade or profession does not constitute a significant segment of the general public. Regulation 18703 provides:

* * *

(c) An industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the creation of the official's agency or office contains a finding and declaration, including an express reference to section 87103 of the Government Code, to the following effect:

The Legislature [or other authority] declares that the individual[s] appointed to the office of _____ is [are] intended to represent and further the interest of the [specified industry, trade or profession], and that such representation and furtherance will ultimately serve the public interest. Accordingly, the Legislature [or other authority] finds that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

(d) In absence of an express finding and declaration of the type described in subsection (c) of this section, such an industry, trade or profession constitutes a significant segment of the public generally only if such a finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstances.

Regulation 18703(c) and (d).

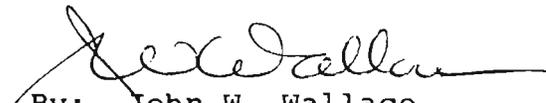
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The exceptions in Regulation 18703(c) and (d) do not apply to your situation because you were not appointed to the board as a representative of the solid waste industry pursuant to state law. While there are industry representatives appointed to your board, you were appointed as a public member with specified expertise. (Swallow Advice Letter, No. A-86-229, copy enclosed.)

I trust this clarifies application of the law to your position on the board. Should you require further advice in regard to specific factual situations that might arise, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: John W. Wallace
Counsel, Legal Division

DMG:JWW:plh

Enclosures

CALIFORNIA WASTE MANAGEMENT BOARD

1020 NINTH STREET, SUITE 300
SACRAMENTO, CALIFORNIA 95814F.P.P.C.
JAN 19 1 03 PM '89

January 12, 1989

Fair Political Practices Commission
State of California
1100 K Street
Sacramento, CA 95814

Gentlemen:

Recently there has been concern expressed from some factions as to a potential conflict of interest caused by my membership on the California Waste Management Board and my employment by private industry. My membership is described in Title 7.3 Section 66740(e) as follows:

"One representative of the public appointed by the Senate Committee on Rules, who shall be a registered civil engineer under the laws of this state and have specialized education and experience in natural resources conservation and resources recovery."

I have been a member of the California Waste Management Board since 1974 and have been employed by private industry since 1983. (My resume is enclosed.) I have always conducted myself in a manner above reproach. In March 1988, I joined Waste Management of North America. Although my employment does not present any conflicts, Waste Management of North America is the largest firm in the field and presents a tempting target for various allegations of impropriety.

To avoid any real or perceived conflicts, I would like to receive guidelines as soon as possible to assist me in carrying out my duties as a Board Member. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "P. A. Beautrow".

Phillip A. Beautrow
Board Member

Enclosure

PHILLIP A. BEAUTROW
120 Cedar Lane
Santa Barbara, CA
(805)962-8957

EDUCATION:

University of California, Berkeley. BS Civil Engineering 1958

Registered Civil Engineer, CA.

PROFESSIONAL EXPERIENCE:

MANAGER OF LANDFILL DEVELOPMENT

Waste Management of North America, Irvine CA.

Develop strategies for increasing landfill capacity. Target and investigate potential sites. Assist with permitting. Manage consultants.

(3/88 - Present)

MANAGER OF CORPORATE DEVELOPMENT

Laidlaw Waste Systems, Inc., San Mateo, CA. Responsible for all phases of permitting activities for a cement plant kiln fuel program using waste solvents. Development of waste management projects for the prior GSX/Genstar subsidiaries.

(1983 - 1988)

PRINCIPAL CIVIL ENGINEER

Ventura Regional County Sanitation District, Ventura, CA Managed engineering, construction and solid waste operations for a unique, county-wide special district. Responsibilities included: budgeting, research, planning, resource recovery, hazardous waste disposal and contract administration.

(1973 - 1983) Retired.

SENIOR CIVIL ENGINEER

Civil Engineering consultants in Ventura & Santa Barbara, CA Planning, design, and construction management of numerous water supply, sewerage and general civil engineering projects. Managed office staff and client relations.

(1959 - 1973)

OTHER ACTIVITIES:

Member of the California Waste Management Board, Senate Appointee. (1974 - present)
Responsible for state-wide programs involving resource recovery, recycling, litter control, and regulations governing waste management in the state. Active with public and private refuse industry activities in California.

PERSONAL:

Height: 6'0", Weight: 180, Married, 3 children, U.S. Navy Veteran, Private Pilot, Skier

REFERENCES:

On request

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PERSONAL:

Height: 6'0", Weight: 180, Married, 3 children, U.S. Navy Veteran, Private Pilot, Skier

REFERENCES:

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California Fair Political Practices Commission

January 23, 1989

Phillip A. Beautrow
California Waste Management
Board
1020 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Letter No. 89-042

Dear Mr. Beautrow:

Your letter requesting advice under the Political Reform Act was received on January 19, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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 "Kathryn E. Donovan".

Kathryn E. Donovan
Acting General Counsel

KED:plh