



California Fair Political Practices Commission

March 21, 1989

Anne D. McGowan
3855 Via Nona Marie, Suite 204
Carmel, CA 93923

Re: Your Request for Advice
Our File No. A-89-121

Dear Ms. McGowan:

You have requested advice on behalf of Mr. Zad Leavy concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to his duties as a park district board member. The following advice is based upon the facts provided in your letter.

This letter concerns Mr. Leavy's ability to participate in future decisions of the park district. We make no comment on Mr. Leavy's participation in any past decisions. (Regulation 18329(c)(4)(A), copy enclosed.) In addition, our advice is limited to provisions of the Act. We cannot provide advice about other conflict-of-interest laws, such as Government Code Section 1090.

QUESTION

Under the Act, must Mr. Leavy disqualify himself from participating in a decision regarding the park district's purchase of property from a land trust, since he provides legal services to the land trust and has received \$250 or more for his services during the past 12 months?

CONCLUSION

Mr. Leavy must disqualify himself from participating in a decision which will materially affect the land trust.

^{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.

FACTS

Mr. Zad Leavy, a park district board member, also serves as general counsel to a land trust, a nonprofit corporation. His position as general counsel is generally as a volunteer, but over the past eight years he has been retained and paid by the land trust at reduced rates for occasional specific projects. On February 27, 1989, you informed us in a telephone conversation that the land trust has paid Mr. Leavy \$250 or more for his services in the past 12 months.

About two years ago, the park district wanted to purchase certain property, but lacked the funds. The land trust agreed to purchase the property and act as a holding company until the park district obtained the requisite funds. The park district is now in a position to purchase the property from the land trust, which will sell the property to the district at a price which reflects only the actual costs incurred by the land trust. Therefore, the land trust will not realize a profit from the sale.

Mr. Leavy neither participated in any discussions or negotiations concerning the property on behalf of the land trust, nor did he provide legal services to the land trust or receive any compensation in this matter. In fact, another attorney was retained to represent the land trust.

ANALYSIS

The Political Reform Act prohibits a public official from making, participating in or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100). 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 its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(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.

Section 87103(c).

The land trust is a source of \$250 or more in income to Mr. Leavy during the past 12 months. Therefore, Mr. Leavy may not participate in any decision if it is reasonably foreseeable that

the decision will have a material financial effect on the land trust.

Since the park district now intends to purchase the property from the land trust, it is reasonably foreseeable that any district decision involving this property will affect the land trust. In order for an effect to be reasonably foreseeable, it must be more than a mere possibility; there must be a substantial probability. (In re Thorner (1975) 1 FPPC Ops. 198, at 203-206.) Based on the facts provided, this standard is met.

We must next determine if the effect of the decision on the land trust is "material." Regulation 18702.1 (copy enclosed) contains guidelines for determining if the effect of a decision is material when an official's economic interest is directly involved in the decision. Pursuant to Regulation 18702.1, the effect of a decision is material if:

(a) (1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency or there is a nexus (as defined in subdivision (d)) between the purpose for which the official receives income and the governmental decision;

* * *

(b) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

* * *

(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, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

(Regulation 18702.1(a) (1),
(b) (2) and (3), emphasis
added.)

Anne McGowan
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The land trust has paid Mr. Leavy \$250 or more in the past 12 months. Under Regulation 18702.1(a)(1), there is a material financial effect since the land trust will be the subject of a decision involving a contract between the land trust and the park district. Thus, Mr. Leavy's disqualification from these decisions is required.

The disqualification requirement contained in Regulation 18702.1(a)(1) applies unless one of the exemptions listed in Regulation 18702.1(c) applies. Since the decision affects the gross receipts of the land trust, it does not appear that any of the exemptions pertain in this situation. (See also Regulation 18702.5, which sets forth guidelines that measure a material financial effect in terms of gross annual receipts; profit is not a factor.)

Therefore, in accordance with the Act and regulations cited, Mr. Leavy must disqualify himself from any park district decision regarding the purchase of property from the land trust.

This letter does not address conflict-of-interest matters covered by laws, such as Government Code Section 1090, which are not part of the Act. Please contact your county counsel or the Attorney General's office if you require advice on Section 1090.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Jill R. Stecher
Counsel, Legal Division

DMG:JRS:plh

Enclosure



California Fair Political Practices Commission

February 27, 1989

Anne D. McGowan
3855 Via Nona Marie, Suite 204
Carmel, CA 93923

Re: Letter No. 89-121

Dear Ms. McGowan:

Your letter requesting advice under the Political Reform Act was received on February 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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,

Diane M. Griffiths
General Counsel

DMG:plh

ANNE D. MCGOWAN
STEVEN J. ANDRÉ

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February 9, 1989

John Larson, Chairman
Fair Political Practices Commission
1428 J Street
Sacramento, California 95804

Re: Request for Advice Letter

Dear Mr. Larson:

Please respond as soon as possible with an "Advice letter" on the following facts:

Park district board member serves also as general counsel to a land trust, a nonprofit corporation. His position as general counsel is generally as volunteer, but over the past 8 years he has been retained and paid by the land trust at reduced rates for occasional specific projects.

District, approximately 2 years ago, wished to purchase property for open space, but lacked funds. The land trust agreed to purchase and hold the property and sell it to district at such time when district obtained funds. Board member has not participated in any discussions or negotiations for the property on behalf of the land trust, nor has he provided any legal services to the land trust or received any compensation whatsoever in this matter; another attorney was retained to represent the land trust.

The district now has sufficient funds to purchase the property. The land trust wishes to sell the property to the district for a price merely to reimburse the land trust for actual costs incurred by the land trust; the land trust will realize no profit from the sale.

May the district board member participate in the decision of the district to purchase the property from the land trust?

We would appreciate the Commission's prompt consideration of this request.

Yours truly,



Anne D. McGowan

(916) Jan 1989

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February 9, 1989

MEMORANDUM
TO: [Redacted] - Commission

RE: [Redacted]

DATE: [Redacted]

As possible with an "advice letter" on the

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... member participate in the decision of the ... purchase the property from the land trust?

... appreciate the Commission's prompt consideration of this

Sincerely,



Anne D. McGowan

bcc: Gary Tate, District Manager, MPRPD
Zad Leavy, Esq.