



California Fair Political Practices Commission

April 6, 1989

Darrell W. Larsen
County Counsel
County of Sutter
463 Second Street
Yuba City, CA 95991

Re: Your Request for Advice
Our File No. A-89-143

Dear Mr. Larsen:

You have requested advice concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to your duties as the Sutter County Counsel. The following advice is based upon the facts provided in your letter.

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. You should consult the Attorney General about Section 1090.

QUESTION

Under the Act, must you disqualify yourself from participating in a decision to contract with a law firm to provide legal services to the county, if an attorney with the law firm is one of several persons who invested in rental property in which you have an interest?

CONCLUSION

You may participate in decisions regarding a Sutter County contract with the law firm. Based on the facts provided, you do not have an economic interest in either the law firm or the attorney.

FACTS

You and your wife hold a 50-percent interest in a note and deed of trust on certain rental property which was sold in

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

December of 1988. You and your wife had co-owned the property with several other people. The other investors are Mr. R and his wife, who hold a 2½-percent interest, and Mr. R's relative, who holds a 47½-percent interest. Additionally, Mr. R and his wife and you and your wife have filed a lawsuit for property damage caused by third parties.

Mr. R, who is an attorney in Sutter County, has a financial relationship with the M law firm, pursuant to which he receives periodic income. You do not know the specifics of such relationship, other than that it is not a partnership. Since the M law firm is actively involved in the representation of public entities, it is conceivable that Sutter County will contract for legal services with this firm in the future.

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:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) 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.

(Section 87103.)

You may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any real property in which you have an interest or any person or entity who was a source of income to you within the 12 months preceding the decision. (Section 87103(b) and (c).) Under the Act, your interest in the deed of trust is an interest in real property. (Section 82033.) Based on the facts provided, the decision to contract with the M law firm will not foreseeably affect the real property in which you have an interest.

The facts in your letter also require us to determine if you have a source of income which would be affected by the contract decision. Section 82030 defines income as the proceeds from any sale and "a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater." You and your wife held a 50-percent interest in certain rental property which was sold in December of 1988. From late 1987 until the sale of the property, Mr. R and his wife held a 2½-percent interest in the property. Therefore, if you and your wife derived \$250 or more from either the rental or the sale of the property within the past 12 months, the renter, the purchaser, or both, were sources of income to you. Based on the facts provided, the decision to contract with the M law firm will not foreseeably affect these persons.

We next inquire as to whether you have an investment interest in Mr. R. Although it is clear from the facts provided that Mr. R is not a direct source of income, the underlying question is whether you have an investment interest in him because of your previous combined ownership interests in the rental property. For purposes of the Act, your combined ownership interests in the rental property constituted an "investment" in a "business entity." (See Sections 82005 and 82034.)

In In re Nord (1983) 8 FPPC Ops. 6 (copy enclosed), the Commission considered whether a partner in a partnership has an investment interest in both the partnership and his business partners. The Commission held that, in a closely held partnership (35 or fewer partners) with two or fewer controlling general partners, the partners have an investment interest in both the partnership and the controlling general partners. However, we conclude that the holding in Nord does not apply to the facts you have presented.

Since the property has been sold, you and Mr. R are no longer business partners, nor does any partnership appear to now exist. Thus, we conclude that you do not have an investment interest in Mr. R, or in any business entity which you co-owned with Mr. R.

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Therefore, a county contract with the M law firm, which may indirectly affect Mr. R, would not have an effect on any business entity or any real property in which you have a direct investment or in which you are a partner, since you and Mr. R sold the property in 1988. (Section 87103(a), (b) and (d).)

Under the Act, since you do not have a financial interest which would affect your participating in or making decisions regarding Sutter County contracting with the M law firm for legal services, you may participate in such decisions.

This letter does not address conflict-of-interest matters covered by laws, such a Government Code Section 1090, which are not part of the Act. Please contact 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

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SUTTER**

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February 28, 1989

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

ATTN: Legal Division

Gentlemen:

I request a legal opinion with regard to the possibility of a conflict of interest in those cases in which the County of Sutter may contract for legal services with a law firm to which I will refer as the M firm. I am the County Counsel of Sutter County.

From late 1980 until late 1987, my wife and I held an undivided joint interest in certain rental real property with another attorney, Mr. R, and his wife. Each family had a 50% interest. In late 1987, Mr. R and his wife sold 95% of their interest in the subject property to a relative of Mr. R. In December of 1988, the entire property was sold and as of the time of this opinion request, the residual interests from that real estate investment are a 50% interest in the proceeds of a note and deed of trust on the property held by my wife and me, a 2 1/2% interest held by Mr. R and his wife, and a 47 1/2% interest held by Mr. R's relative. In addition, Mr. R and his wife as well as my wife and I are the four plaintiffs in a lawsuit filed as a consequence of damage done to the property by third parties.

Mr. R has a financial relationship with the M firm pursuant to which he receive periodic income. I am not privy to the specifics of that relationship other than it is my understanding that it is not a partnership. As the M firm is actively involved in representation of public entities, it is conceivable that my employer, Sutter County, will contract for services with such firm in the future. While it is my belief that Mr. R is not a "source of income" to me nor is he presently a business partner of mine, if ever he was, I would appreciate your guidance in this regard. I would add that during the period of the property ownership, there was never an expressed partnership agreement nor was there an understanding that any participant in the investment had unrestricted authority to bind the others with regard to either policy or financial decisions. All parties, other than Mr. R's relative, actively participated in management of the rental property and upon occasion made financial decisions such as incurring expenses for repairs, which were subsequently

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approved by the other investors and paid from the business account maintained for the subject rental property. In late February of 1989, the foregoing situation was discussed with Ms. Jill Stecher of your legal staff. Should you need further information which I can supply, please do not hesitate to call upon me.

Very truly yours,



DARRELL W. LARSEN
SUTTER COUNTY COUNSEL

DWL:jlb



California Fair Political Practices Commission

March 6, 1989

Darrell W. Larsen
Sutter County Counsel
463 Second Street
Yuba City, CA 95991

Re: Letter No. 89-143

Dear Mr. Larsen:

Your letter requesting advice under the Political Reform Act was received on March 3, 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,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh