

FACTS

You are employed as a Secretary/Manager with Reclamation District No. 2068 (hereafter the "district"). The district is a local public agency providing retail water service to agricultural land within the district. In addition, the district provides for drainage of irrigation water, storm drainage and flood control. The services provided include the construction and installation of equipment necessary to provide the above services. Property owners are charged for this construction and installation on a time and materials basis, except where general district benefits are involved. These costs may be apportioned between the property owner and the district either by the elected Board of Trustees (hereafter "board") or the manager at the board's discretion. Rates for the services are established by the board on an annual basis and are applicable to all property owners.

A property owner has asked you to act as his local representative and manage a 400 acre agricultural property located within the district. Management services anticipated include securing tenant farmers, tenant relations, negotiating leases with tenants, arranging and authorizing property improvements and other property related tasks and financial matters required to keep the property a productive agricultural unit. You expect to receive \$2,500 annually for your services.

ANALYSIS

Section 87100 prohibits any 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. 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 its effect on the public generally, on the official or a member of his immediate family,³ 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

³ An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

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, (copy enclosed).

You are a public official. (Section 82048.) Should you accept the position as the property owner's representative, the property owner will become a source of income to you. (Section 82030.) Accordingly, you may not participate in any governmental decision which will have a reasonably foreseeable and material financial effect on the property owner which is distinguishable from the effect on the public generally.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

Materiality

Regulation 18702 sets forth the guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, then Regulation 18702.1 (copy enclosed) applies to determine materiality. Thus, for example, if the property owner is directly involved in a decision before the board, the effect of the decision would be deemed material.⁴ Accordingly, you would be

⁴ This assumes that you accept the property owner's offer and receive or are promised \$250 or more in the 12 months preceding the decision. (Section 87103(c).)

required to disqualify yourself from making, participating in making or in any way attempting to use your official position to influence that governmental decision.

If on the other hand, the property owner would be indirectly affected by the decision, then Regulations 18702.2 through 18702.6 (copies enclosed) would apply to determine whether the effect of the decision is material.

Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87100.) For the Reclamation District, the public consists of all property owners in the district. If the decision does not affect all property owners in the same way, disqualification may be required unless the effect of the decision on your source of income, the property owner, is the same as the effect on a significant segment of the public. (Regulation 18703.)

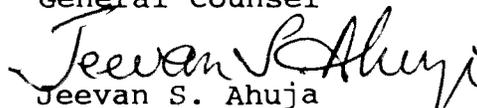
Accordingly, you may accept the property owner's offer to become his local representative. However, you must determine on a case-by-case basis whether you must disqualify yourself from certain governmental decisions which affect the property owner.

Please note that although the Act does not prevent you from accepting the property owner's offer to become his local representative, there may be other provisions of the law which prohibit such employment. Specifically, you may want to check any statements of incompatible activities adopted for the district pursuant to Section 1125, et seq.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


Jeevan S. Ahuja
Counsel, Legal Division

KSD/JSA:aa
Enclosures

IRRIGATION



DRAINAGE

RECLAMATION DISTRICT NO. 2068

May 2, 1989

General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

REGARDING: Potential Conflict of Interest
RECLAMATION DISTRICT NO. 2068

Reclamation District No. 2068 requests an assessment and determination of the potential conflict of interest in the matter herein presented.

The District's Secretary/Manager has been asked by a landowner, within the District, to act as his local representative and manage a 400 acre agricultural property within the District on the landowners behalf. It is expected that such management will involve securing tenant farmers, tenant relations, negotiating leases with tenants, arranging and authorizing property improvements and other property related tasks and financial matters as might be required to keep the property a productive agricultural unit. Compensation is expected in the amount of \$2,500.00 annually.

The Secretary/Manager is a designated employee and the chief executive officer of the agency. Responsibilities include the management of all aspects of the District operation. This position reports directly to the elected Board of Trustees and is in a position to recommend to the Board on all matters of policy, rate setting and operation of the District.

Reclamation District No. 2068 is a local public agency providing retail water service to agricultural land within the District. In addition, drainage of irrigation water, storm drainage and flood control is provided by the District. Individual services made available to property owners include those listed above and the construction and installation of equipment necessary to provide the above services. Rates are established by the Board of Trustees on an annual basis and include a Maintenance and Operations Assessment, Standby Charge and Water Rates. These are applied to all properties consistent with Board policy. Charges for construction and installation are made on a time and materials basis except, where general District benefits are involved. These costs may be apportioned between the landowner and the District either by the Board or the Manager, at the Board's discretion.

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The Board of Trustees has been consulted on this matter and finds no conflict to exist, but requests your review of this matter. Your prompt attention is appreciated. If additional information is required please contact Mike Hardesty, 916 678-5412 office, 916 756-9004 res.

Sincerely,

RECLAMATION DISTRICT NO. 2068

A handwritten signature in cursive script, appearing to read "T.M. Hardesty". The signature is written in dark ink and is positioned above the typed name.

T.M. Hardesty
Secretary/Manager