



California Fair Political Practices Commission

December 26, 1989

Don H. Vickers
Deputy County Counsel
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Your Request for Informal Assistance
Our File No. I-89-575

Dear Mr. Vickers:

This is in response to your request for confirmation of telephone advice regarding application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to a member of the Santa Barbara County Board of Supervisors. Because your request is a general inquiry rather than a request for advice as to a specific decision pending before the agency, we treat your request as one for informal assistance.²

QUESTION

Is a paid membership in a nonprofit country club a disqualifying asset?

CONCLUSION

A paid membership in a nonprofit country club is an asset which may require disqualification if the membership is transferable for value.

FACTS

A member of the Santa Barbara County Board of Supervisors holds a paid membership in a nonprofit country club located in

¹ Government Code Section 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; Regulation 18329(c)(3), copy enclosed.)

Santa Maria. The value of this membership is approximately \$25,000.

An application has been filed with the board of supervisors for development of a private golf course in Santa Inez, a community located approximately 30 miles from Santa Maria. It is possible that an increase in availability of golf courses in the county could have a negative impact on the value of memberships in established country clubs.

You requested telephone advice on September 26, 1989, at which time I advised you that the membership was an asset and that, pursuant to Section 87103 and Regulation 18702.1(a)(4) (copy enclosed) the supervisor could not participate in any decision which would increase or decrease the value of his country club membership by \$250 or more.

You have stated in your request for confirmation of telephone advice that you question whether a membership in a nonprofit organization is a kind of financial interest which may require disqualification under Sections 87100 and 87103. You correctly point out that Section 87103 enumerates five interests which constitute financial interests. You conclude that none of these interests appears to cover an interest like the one in question.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her position to influence a governmental decision in which the official knows or has reason to know he or she 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 the 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.

Section 87103.

It appears that in reaching your conclusion that club membership is not a disqualifying asset, you are referring to subdivisions (a), (b), (c), (d) and (e) of Section 87103. However, prior to listing these alternative subsections, Section 87103 clearly states that an official has a financial interest in a decision if 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.³

Decisions affecting a public official include those which affect the official's personal assets. The Commission has determined that the effect of a decision is material if the decision will increase or decrease the personal expenses, income, assets (other than interest in real property), or liabilities of the official or his or her immediate family by at least \$250. (Regulation 18702.1(a)(4).)

Membership in a country club is an intangible asset if the membership can be transferred for value. You have stated that the supervisor's membership is currently valued at \$25,000. Presumably, the supervisor could sell this membership either to the club or to a prospective new member.

Construction of a country club within 30 miles of the club to which the supervisor board member belongs may result in a decrease in the value of his club membership because prospective country club members would have more choices available. If the change in value of the supervisor's membership would amount to \$250 or more, the supervisor must disqualify himself from participating in decisions related to the development of a private golf course in Santa Inez.

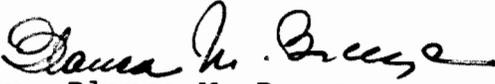
³ "Immediate family" means the spouse and dependent children of the public official. (Section 82029.)

File No. I-89-575
Page 4

I trust this letter responds to your question. Should you have any further questions regarding this matter, please contact me at (916) 322-5901.

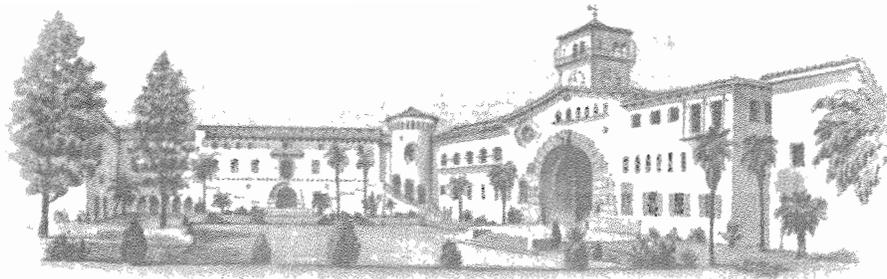
Sincerely,

Kathryn E. Donovan
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures



MARVIN LEVINE
Acting County Counsel

COUNTY COUNSEL
SANTA BARBARA COUNTY

105 East Anapamu Street
Santa Barbara, CA 93101

Telephone: (805) 568-2950
FAX: (805) 568-2982

October 2, 1989

Ms. Blanca Breeze
Fair Political Practices Committee
428 J Street, Suite 800
Sacramento, California 95814

Oct 4 2 06 PM '89
F P P C

Dear Ms. Breeze:

I appreciate your help regarding the application of the disqualification provisions of the Fair Political Practices Act to a decision which might have some impact on the value of a membership in a nonprofit country club. After our conversation I reviewed the matter further and thought it best if I wrote to you to make clear a concern which remains in my mind.

An application has been filed to develop a private golf course. A board member who is a member of a country club believes it is possible that the increase in golf courses in the county could have a negative impact on the value of memberships in established country clubs. You indicated that Section 18702.1(a)(4) of the commission regulations was applicable and that the supervisor in question would be disqualified from participating in a decision if it was reasonably foreseeable that the decision would increase or decrease the value of the asset in question i.e. his country club membership by \$250 or more.

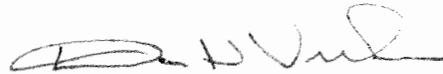
The question I have is whether that application of Section 18702.1(a)(4) is consistent with the statutory disqualification provisions which the regulation purports to implement. In particular I question whether a membership in a non profit organization is a kind of financial interest which can require disqualification under Sections 87100 and 87103 of the Government Code. Section 87103 enumerates five interests which constitute financial interests. None of these interests appears to cover an interest like the one in question.

Blanca Breeze
October 2, 1989
Page 2

I would appreciate your thoughts on this matter.

Very truly yours,

MARVIN LEVINE
ACTING COUNTY COUNSEL

A handwritten signature in dark ink, appearing to read "Don H. Vickers". The signature is fluid and cursive, with a prominent loop at the end.

DON H. VICKERS
DEPUTY COUNTY COUNSEL



California Fair Political Practices Commission

October 11, 1989

Don Vickers
Deputy County Counsel
County of Santa Barbara
106 East Anapamu Stret
Santa Barbara, CA 93101

Re: Letter No. 89-575

Dear Mr. Vickers:

Your letter requesting advice under the Political Reform Act was received on October 4, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze 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,

Kathryn E. Donovan
General Counsel

KED:plh