

December 22, 2011

Greg Gillott
Acting County Counsel
810 Court Street
Jackson, CA 95642

Re: Your Request for Advice
Our File No. A-11-222

Dear Mr. Gillott:

This letter responds to your request for advice on behalf of Amador County Supervisor Richard Forster regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, our advice is limited to obligations arising under the Act. We do not address the applicability, if any, of other conflict-of-interest laws such as common law conflict of interest.

QUESTION

May a county supervisor provide input on a decision regarding the repurposing of a former camp for juvenile delinquents?

CONCLUSION

Yes. The county supervisor does not have a cognizable economic interest under the Act and is therefore not precluded under the Act from offering input on behalf of his constituents.

FACTS

You represent Richard Forster, Amador County Supervisor for District One. Supervisor Forster also works for the Department of Juvenile Justice ("DJJ"), a division of the California Department of Corrections ("CDCR"), as a case manager at the Pine Grove Youth Correctional

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Camp. Recently, CDCR closed a youth camp and has agreed to repurpose it. Supervisor Forster would like to have input on behalf of his county district regarding the decision that CDCR (not the county board of supervisors) will make.

ANALYSIS

The Act's conflict-of-interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a "financial interest." (Section 87100.) Section 87103 provides that a public official has a "financial interest" in a governmental 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, a member of his or her immediate family, or on any of the official's economic interests.

Under the Act, a conflict of interest exists only when a public official has a financial interest in a particular governmental decision. To determine whether a public official has a "conflict of interest" in a specific governmental decision, we employ a standard eight-step analysis outlined at subdivisions 1 through 8 of Regulation 18700(b).

Step One: Is Supervisor Forster a "public official"?

Yes. As a member of the Amador County Board of Supervisors, Supervisor Forster is a public official under the Act. (Section 82048.) Consequently, he may not make, participate in making, or otherwise use his official position to influence any decisions that will have a reasonably foreseeable material financial effect on any of his economic interests. (Regulations 18702.1-18702.4.)

Step Two: Will Supervisor Forster be making, participating in making or otherwise influencing a governmental decision?

Supervisor Forster would like to provide input on CDCR's decision on behalf of his constituents. The decision in question will be made by CDCR, not by the County Board of Supervisors. Under the Act, an official "influences a governmental decision" when he attempts to use his official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence any member, officer, employee or consultant of the agency. This provision applies regarding a decision that "is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency." (Regulation 18702.3.) Supervisor Forster is not providing input on a decision that is 'within or before' the County Board of Supervisors.

For agencies that do not meet the definition above, the Act considers an official to be "influencing the decision" if: "for the purpose of influencing the decision, the official acts or purposes to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency." (Regulation 18702.3(b).) Supervisor Forster intends to act as a representative of the Amador County Board of Supervisors when he adds his input, on

behalf of his constituents, to CDCR's decision. Under Regulation 18702.3, Supervisor Forster is influencing or attempting to influence a decision.

Step Three: What is Supervisor Forster's Economic Interest?

A public official has a financial interest in a decision within the meaning of Section 87103 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, a member of his or her immediate family, or on any one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.)

The applicable economic interests include:

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).)
- An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)
- Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
- A public official also has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is also known as the "personal financial effects" rule. (Section 87103, Regulation 18703.5.)

The only economic interest you have described in your request for advice is Supervisor Forster's income from DJJ, a division of CDCR. This is income from a state agency and as such is excluded from the Act's definition of "income." (See Section 82030(b)(2).) You have not provided information regarding any other source of income. Moreover, while effects on personal finances can also be disqualifying,² none of the situations that would disqualify a public official, even regarding his governmental income, are at issue in this case. Because Supervisor Forster does not have an economic interest as defined in the Act, and consequently does not have a conflict of interest, we do not address the remaining steps of the analysis.

² A conflict may be triggered when the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family (if it is different from salaries paid to other employees of the government agency in the same job classification or position), or when the member of the public official's immediate family is the only person in the job classification or position.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl