

January 24, 2012

Louis D. Van Mullem, Jr.
Air Pollution Control Officer
Santa Barbara County Air Pollution District
260 North San Antonio Rd., Suite A
Santa Barbara, CA 93110

Re: Your Request for Informal Assistance
Our File No. I-11-235

Dear Mr. Van Mullen Jr.:

This letter responds to your request for advice regarding the 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.) Because your question is general in nature, we are treating your request as one for informal assistance.²

Please note that the Commission does not provide advice on bodies of law outside the confines of the Act. Thus, we offer no opinion on the application of other incompatible activities and conflict-of-interest laws that may apply including, but not limited to, common law conflict of interest and Government Code Section 1090.

QUESTION

As an employee of the Santa Barbara Air Pollution Control District, may you take part in a decision by the district regarding the Vandenberg Air Force Base despite the fact that you hold stock in AECOM, a company that will likely be consulting the Air Force in the proceeding?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

To the extent that AECOM's involvement in any particular decision before the Santa Barbara Air Pollution Control District regarding the Vandenberg Air Force Base is limited to the consultation services provided to the Air Force and barring any additional facts, you may take part in the decision so long as the reasonable foreseeable financial effect on AECOM is less than the applicable materiality standard under Regulation 18705.3(c)(1).

FACTS

You have held the position of Air Pollution Control Officer with the Santa Barbara Air Pollution Control District (the "District") since August 22, 2011. Until October of 1998, you served as a Colonel in the United States Air Force and were stationed at Vandenberg Air Force Base in the County of Santa Barbara where you were responsible for the oversight of the base's compliance with Federal and state regulations including those of the District. Upon retiring from the Air Force, you were hired by AECOM, Inc. a Fortune 500 company that has approximately 45,000 employees and revenue of \$7.7 billion for the fiscal year ending June 30, 2011.

AECOM has been an Air Force prime contractor for more than 35 years and delivers environmental programs services to Air Force customers worldwide including restoration, environmental quality, conservation, pollution prevention, military construction, military housing, and sustainment and modernization projects. While AECOM does not own or operate any air polluting emitting equipment subject to regulation by the District, AECOM currently provides consulting and permit support services to Vandenberg Air Force Base and maintains an office in Santa Maria with gross income of approximately \$1.2 million per year.

As an employee of AECOM, you previously managed its Santa Maria office, where you oversaw and directed approximately 26 employees. Part of your responsibilities was to directly advise Vandenberg Air Force Base on compliance with environmental regulations, including District regulations and permit requirements. You left AECOM on August 19, 2011, prior to assuming your position with the District. In addition, all income from AECOM was received prior to assuming your position with the District. All income from AECOM was also received in the normal course of your employment and there was no expectation when you assumed your position with the District that you would renew your employment with AECOM. Nevertheless, you still own AECOM stock valued at more than \$25,000.

As an employee of the District, you seek assistance regarding your potential involvement in decisions affecting Vandenberg Air Force Base including, but not limited to, decisions regarding permits, variance petitions, and general rules and regulations. In many of these decisions, it is likely that the Air Force will be advised by AECOM through its Santa Maria office.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in any given governmental decision.

Step One: Are you a “public official?”

The Act’s conflict-of-interest provisions apply only to “public officials.” (Sections 87100, 87103; Regulation 18700(b)(1).) A “public official” is “every member, officer, employee or consultant of a state or local government agency . . .” (Section 82048.) As an employee of the District, you are a public official within the meaning of the Act.

Step Two: Are you making, participating in making, or influencing a governmental decision?

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant intervening substantive review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.) You are making, participating in making, or influencing a governmental decision when taking part in District decisions regarding Vandenberg Air Force Base.

Step Three: What are your economic interests?

Of the economic interests recognized under the Act³, those interests that may be implicated by your account of the facts are the following:

Business Entity – A public official has an economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more, or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a) and (d); Regulation 18703.1(a) and (b).)

³ Our analysis is limited to the economic interests you have identified.

Source of Income – A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within the 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.) “Income” is defined to include a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest. (Section 82030(a).)

Personal Finances – A public official has an economic interest in his or her personal finances, including those of his or her immediate family. This is known as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

AECOM: From the facts you have provided, you currently own stock in AECOM valued at more than \$25,000. Because your investment in AECOM is \$2,000 or more, you have an economic interest in AECOM as a business entity pursuant to Section 87103(d).

In addition to your economic interest in AECOM as a business entity, you also potentially have an economic interest in AECOM as a source of income assuming you have received income from the business of \$500 or more in the 12 months prior to the governmental decision. (Section 87103(c).) However, pursuant to Regulation 18703.3(b) an official does not have an economic interest in a former employer as a source of income if:

“All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.”

Accordingly, while you have indicated an economic interest in AECOM as a business entity, it does not appear from the facts you have provided that you have a separate economic interest in AECOM as a source of income.

Personal Finances: A public official always has an economic interest in his or her personal finances. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. (Section 87103; Regulation 18703.5.)⁴

⁴ A financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which a public official has a direct or indirect investment interest, are not considered separate financial effects on the official’s personal finances and would not be analyzed separately under the “personal financial effects” rule. (Regulation 18705.5(a).) Based upon the facts provided, there is no indication that the personal financial effects rule applies to your circumstances and we will not discuss it further.

Step Four: Are your economic interests directly or indirectly involved in the decision?

Regulation 18704.1(a) states that a business entity or source of income is *directly* involved in a decision before the official's agency when that business entity or source of income, either directly or by an agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.”

A business entity or a source of income that is not directly involved in a governmental decision is regarded as *indirectly* involved. (Regulations 18704.1(b), 18705.1(a)(2), and Regulation 18705.3(b).)

Based upon the facts you have presented, the threshold question is whether AECOM should be regarded as directly or indirectly involved in decisions regarding Vandenberg Air Force Base in light of the fact that the Air Force will likely be consulting with the company regarding any particular decision before the District. Under similar circumstances, we have previously determined that a law firm providing legal counsel to a company regarding the company's purchase and development of a real estate project was indirectly involved in the city's decisions regarding the project. (*White Advice Letter*, No. I-07-106.) Accordingly, AECOM is not directly involved in a decision merely because the company will provide consultation services to the person who has initiated the decision or is the named party in, or subject of, the decision. To the extent that AECOM's involvement in any particular District decision regarding Vandenberg Air Force Base is limited to the consultation services provided to the Air Force, AECOM will be regarded as indirectly involved in the decision.

Steps Five and Six: Will there be a reasonably foreseeable material financial effect on your economic interests?*Materiality*

A conflict of interest may arise only when the reasonably foreseeable impact of a governmental decision on a public official's economic interests is material. (Regulation 18700(a).) Different standards apply to determine whether a reasonably foreseeable financial effect on an economic interest will be material, depending on the nature of the economic interest and whether that interest is directly or indirectly involved in the agency's decision.

For economic interests in business entities *indirectly* involved in a decision, including business entities that are a source of income to an official, the materiality standard is given at Regulation 18705.1(c). The thresholds for materiality under this regulation vary with the size of the business. However, you have indicated that AECOM is a Fortune 500 company. Accordingly, the materiality standard for your economic interest in this business entity is provided in Regulation 18705.1(c)(1), which states the following:

“If the business entity is listed in the Fortune 500 or, if not listed in the Fortune 500, has revenues that are no less than the revenues of the business entity that ranks 500th in the Fortune 500 list, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

“(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year of \$10,000,000 or more; or

“(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or

“(C) The governmental decision will result in an increase or decrease in the value of the business entity’s assets or liabilities of \$10,000,000 or more.”

Foreseeability

Once a public official has determined the materiality standard applicable to each of his or her economic interests, the next step is determining whether it is “reasonably foreseeable” that the standard will be met. A material financial effect on an economic interest is “reasonably foreseeable” if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) However, an effect need not be certain to be considered “reasonably foreseeable,” but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

Ultimately, whether a material financial effect is foreseeable at the time a decision is made depends on facts and circumstances peculiar to each case. (*In re Thorner, supra.*) Because the Commission does not act as a finder of fact in providing advice (*In re Oglesby, supra*), the foreseeability of a particular financial effect is a determination that must be left, in most instances, to the informed judgment of the public official.

Accordingly, the Commission cannot determine what financial effect a decision may have on your economic interest in AECOM. Because the Commission is not a finder of fact, the determination of whether a District decision regarding Vandenberg Air Force Base will have a reasonably foreseeable material financial effect on your economic interest in AECOM must be left up to your informed judgment. Although, to the extent that AECOM’s involvement in any particular District decision regarding Vandenberg Air Force Base is limited to the consultation

services provided to the Air Force and barring any additional facts, you may take part in the decision so long as the reasonable foreseeable financial effect on AECOM is less than the applicable materiality standard under Regulation 18705.3(c)(1).

Steps Seven and Eight: Does the governmental decision come within any exception to the conflict-of-interest rules?

Even if an official has a conflict of interest, disqualification is not required if the governmental decision affects the public official's economic interests in a manner that is indistinguishable from the manner in which the decision will affect the public generally. (Section 87103; Regulation 18707(a).)

Additionally, in certain rare circumstances, a public official may be called upon to take part in a decision despite the fact that the official may have a disqualifying conflict of interest under the "legally required participation" exception. This exception applies only in certain very specific circumstances where the government agency would be paralyzed from acting. (Section 87101; Regulation 18708.)

However, you have not presented any facts indicating that the "public generally" or the "legally required participation" exceptions are applicable to your circumstances, so we will not address them further.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl