

April 13, 2012

David A. Prentice
Partner
Cota Cole
730 North I Street, Suite 204
Madera, CA 93637

Re: Your Request for Advice
Our File No. A-12-050

Dear Mr. Prentice:

This letter responds to your request for advice regarding applicability of the provisions of the Political Reform Act (the “Act”)¹ if members or staff of the commission (the “Commission”) that governs the Fresno Kings Madera Regional Health Authority serve on the board of directors of the CalViva Foundation, (the “Foundation”). Please note that, since our jurisdiction is confined to the Act, we only advise on applicability of the Act. We therefore do not advise on the applicability, if any, of other ethics laws such as common law conflict of interest or Government Code Section 1090.

QUESTIONS

1. May members of the Commission, including any of the three elected officers that serve on the Commission, also serve on the Foundation’s board of directors?
2. May the Commission’s Chief Executive Officer or Chief Finance Officer also serve on the Foundation’s board of directors?

CONCLUSIONS

The Act does not prohibit the Commission members, including any elected officers who serve as members, or any individuals on the Commission’s executive staff from simultaneously serving on the Foundation’s board of directors.

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.

However, as discussed below, if any of the elected officers who serve on the Commission solicit donations that are made to the Foundation, those officers may be required to file a “Behested Payment Report” (FPPC Form 803) with the government agency to which they are elected.

FACTS

You are General Counsel for the Kings Madera Regional Health Authority (the “Authority”), a Joint Powers Authority. The Commission is the governing body of the Authority and consists of 17 members, three of whom are elected members of the Boards of Supervisors for, respectively, Fresno, Kings and Madera Counties. The other Commission members are appointed by the counties pursuant to the Joint Powers Authority agreement. None of the other Commissioners are elected officers. The Authority manages Medicare and Medi-Cal for the three counties through private business partners and under the supervision of the California Department of Managed Care. The executive staff of the Commission consists of a Chief Executive Officer, Medical Officer, Chief Finance Officer, Compliance Officer and Chief Clerk. The Authority operates in the community under the trade name of CalViva Health.

The Chief Executive Officer and Chief Finance Officer of the Commission desire to incorporate an organization as a 501(c)(3) non-profit corporation for the purpose of soliciting and obtaining donations from the public, and potentially from CalViva Health, for charitable public benefit purposes related to promoting good health in the three member counties. The non-profit corporation will be known as CalViva Foundation. No members of the Foundation’s board of directors will receive compensation or benefits and there will be no employees. The Foundation’s board of directors will consist of the Commission’s Chief Executive Officer and Chief Finance Officer, as well as three Commissioners of the Authority. The Foundation will be formed and operated without input or oversight by the Authority and will otherwise be a completely autonomous and independent organization.

ANALYSIS

The Fair Political Practices Commission’s jurisdiction under the Act generally extends to three areas: (1) conflicts of interest, “revolving door,” and other ethics matters relating to holding public office or employment (Chapter 7 (commencing with Section 87100) and Sections 89001 – 89506); (2) election campaign finance (Chapters 4 (commencing with Section 84100), 4.6 (commencing with Section 84600), 5 (commencing with Section 85100), and Sections 89510 – 89519); and (3) lobbying of legislative and state agency officials (Chapter 6 (commencing with Section 86100)).

Conflict of Interest

Your specific questions relate to the Act’s conflict-of-interest provisions. These provisions do not prohibit public officials from working or doing volunteer work for private

entities. Therefore, it is permissible under the Act for Commission members, including members who are elected officers, and Commission staff to simultaneously serve on or work for the Commission and serve on the Foundation's board of directors.

The Act's conflict-of-interest provisions do prohibit public officials such as members and staff of the Commission from making, participating in, or using their official positions to influence government decisions that will financially affect their own financial interests. (Sections 87100, 87103.) Under Section 87103, an official has a financial interest for purposes of this rule if the government decision in which he or she participates materially affects, among other things, a for-profit entity for which the official is a board member (Section 87103(a)) or a source of income to the official of \$500 or more during the 12-month period prior to the official's participation. (Section 87103(c).)

You indicate that the Foundation may sometimes seek funds from CalViva Health, which would then involve members or staff of the Commission making decisions that will have a financial impact on the Foundation. While this may implicate other conflict-of-interest laws, the Act's conflict-of-interest provisions would not apply here because the facts indicate that the Foundation will not be a for-profit entity as required under Section 87103(a) or a source of income to its board members as required under Section 87103(c). On that basis, the Foundation would not be a "financial interest" under the Act for the Commission members or staff who serve on its board, and these officials would not have a conflict of interest under the Act if they engage in Commission decisions financially affecting the Foundation.

Elected Officers - Behested Payment Reports

Your facts indicate that the Foundation will, among other things, solicit donations to help accomplish its purpose of promoting good health in Fresno, Kings and Madera Counties. While the Act does not regulate charitable fundraising, it does regulate certain conduct by elected officers relating to charitable fundraising.

Section 82015(b)(2)(B)(iii) of the Act states that if an individual or entity, at the behest of an elected officer, makes monetary or in-kind donations totaling \$5,000 or more in a calendar year for a legislative, governmental or charitable purpose, that officer has to file a report detailing those donations with his or her public agency within 30 days after reaching the \$5,000 threshold and each 30 days thereafter for additional donations by the same donor. The report is filed on FPPC Form 803, entitled "Behested Payment Report."²

Therefore, if any of the elected officers who serve on the Commission solicit or otherwise seek donations to the Foundation, they will be required to file this report if donations from an individual donor reaches \$5,000 or more in a calendar year.³

² The Form 803 can be obtained on the FPPC web site at: <http://www.fppc.ca.gov/forms/803/Form803.pdf>.

³ Regulation 18215.3 defines the term "at the behest" for purposes of this requirement (Regulation 18215.3(a)) and specifies exceptions to this requirement (see Regulation 18215.3(b) and (c)).

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

SH:jgl