

June 12, 2012

Stephen Snodgrass
1705 Covenant lane
Royal Oaks, CA 95076

Re: Your Request for Informal Assistance
Our file No. I-12-066

Dear Mr. Snodgrass:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Our advice is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Nothing in this letter should be construed to evaluate any conduct that has already taken place. Finally, our advice is limited to the provisions of the Act. Therefore, we do not offer advice on any restrictions that may exist in other bodies of such as Government Code Section 1090 or Common Law Conflict of Interest.

Because your question is general in nature and does not refer to any specific appearance before or communication with your former state administrative agency, we are treating your request as one for informal assistance.²

QUESTION

As President of the Pajaro Sunny Mesa Community Services District, will you have a conflict of interest if a company you work for bids on work for a new park in Monterey County?

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

Because you have not described any future governmental decisions you will be participating in as President of the Pajaro Sunny Mesa Community Services District, you will not have a conflict of interest.

FACTS

You are the President of Pajaro Sunny Mesa Community Services District (PSMCS D). PSMCS D is a loose collection of 11 water systems that provides water, park, sewer and lighting services in North Monterey County. You are also the CFO of Granite Rock Company, a privately held regional construction company. You do not have any ownership interest in Granite Rock Company. You also serve as the Chair of the Friends of Pajaro Park, which is a collection of community leaders whose goal is to build and provide an ongoing sustainable maintenance and operations source for a park to be constructed in 2013 using state grant funds secured by the former Monterey County RDA. The Friends do not have a 501(c)(3) designation. All of the positions that you hold are unpaid except for your position at Granite Rock Company.

In August 2011, the Monterey County RDA approached PSMCS D to operate and maintain a park to be built in Pajaro. The PSMCS D determined that it did not have a funding source to meet this request. PSMCS D, in conjunction with the Santa Cruz County United Way, formed a committee, The Friends of Pajaro Park. The Friends goal was to form a public/private partnership to raise funds sufficient to provide a secure source of maintenance and operations funding to PSMCD for 5 years. The goal has been achieved through significant community contributions. In January 2012, the PSMCS D Board of Directors voted to notify the RDA that it was committed to the operations and management of the Park.

On February 1, 2012, the Monterey County RDA was dissolved and Monterey County became the successor agency. An oversight committee was created as a successor agency to the RDA to which you were appointed but later resigned.

Monterey County plans to advertise and take bids for the construction of the park in June 2012. Granite Rock Company will likely bid on this project. You have no direct involvement in the bid process, and your compensation will not be affected should the bid be awarded to Granite Rock Company. The bid will be awarded by Monterey County as the successor agency to the RDA. You have no involvement in the award decision.

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.

Steps One and Two: Is the individual a public official making, participating in making, or influencing a governmental decision?

As President of the PSMCSD you are a “public official” within the meaning of the Act.³ (See Section 82048.) The only decision that you have identified that may potentially impact any of your economic interest is the decision by Monterey County to award the contract to one of the bidders, Because you will not be participating it that decision, and you have not identified a government decision that you will be making, participating in or influencing, you do not have a conflict of interest.⁴ Please note that this advice letter does not address past conduct involving governmental decisions you may have made regarding the park as part of another governmental agency such as the Oversight Committee that you have now resigned from.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Sukhi K. Brar
Counsel, Legal Division

SKB:jgl

³ If a public official’s office is listed in Section 87200, which specifically includes city council members, and the official has a conflict of interest in a decision noticed at a public meeting, the official must: (1) verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in Regulation 18702.5(b)(1)(B), on the record of the meeting and immediately prior to the discussion of the item; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. For closed sessions, consent calendars, absences, and speaking as a member of the public regarding personal interests, special rules found in Regulation 18702.5 subdivisions (c) and (d) apply. (Section 87105.)

⁴ A public official “makes a governmental decision” when the official, acting within the authority of his or her position, votes on a matter, obligates or commits his or her agency to a course of action, or enters into a contractual agreement on behalf of his or her agency. (Section 87100; Regulation 18702.1.) A public official “participates in making a governmental decision” when, acting within the authority of his or her position and without significant substantive review, the official negotiates, advises or makes recommendations to the decision maker regarding the governmental decision. (Section 87100; Regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision before his or her own agency if, for the purpose of influencing the decision, the official contacts or appears before a member, officer, employee, or consultant of his or her agency. (Section 87100; Regulation 18702.3.)