

May 9, 2012

Mark Arapostathis
City of La Mesa
8130 Allison Ave.
La Mesa, CA 91942

Re: Your Request for Advice
Our File No. A-12-070

Dear Mr. Arapostathis:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ 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.) Therefore, this letter is based solely on the facts presented

QUESTION

May you as a member of the city council take part in a city council decision whether to sign a petition to create a property based improvement district (“PBID”) when a representative from the school district where you are employed as a teacher appeared before the city council and requested that it refrain from signing the petition?

CONCLUSION

You may participate in the city council decision to determine whether it should sign the petition concerning the PBID if no additional facts establish a reasonably foreseeable material financial effect on any of your economic interests.

FACTS

A group of downtown property owners in the City of La Mesa has explored the possibility of creating a PBID to maintain various improvements scheduled for the downtown area. The PBID would assess parcels within its designated boundaries based on factors that include the size of the property, the street frontage and the existing development on the parcel.

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.

The assessments, collected as part of the property taxes, would be used for such things as maintenance, improvement, security and promotional activities within the proposed district. The group is currently gathering the signatures necessary to qualify the PBID for a vote by the affected property owners.

You are serving your second year of a four-year term as a member of the La Mesa City Council. In addition, you are a teacher for the La Mesa Spring Valley School District (“District”) where you have been employed since 1992. You do not own real property or have any business interests in the proposed PBID district.

Both the City of La Mesa and the District own property within the proposed PBID. City owned property represents approximately 16% of the assessed value within the PBID. The District has its administrative offices within the PBID. As owners of land within the proposed PBID, the City and the District have the option of signing the petition to qualify the PBID for a vote.

Aside from being a property owner within the proposed PBID, the City would provide budgetary oversight of the PBID, if passed, to insure that expenditures matched the budget approved by the independent Board made up of PBID property owners. In addition, the City would have the authority to adjust the PBID boundaries, assessments and use of the funds.

During the public comment period at a recent city council meeting, a representative of the District requested that the City refrain from signing the petition when it came before them. He stated that the District was opposed to the PBID primarily because of the added financial burden it would impose.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise 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 a given governmental decision.

Step One: Are you a “public official” within the meaning of the Act?

The Act's conflict-of-interest provisions apply to all “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 a member of the La Mesa City Council, you are a public official within the meaning of the Act.

Step Two: As a public official, 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(a).)

As a member of the La Mesa City Council, you will make, participate in making, or influence a governmental decision when the council determines whether to sign the PBID petition.

Step Three: What are your economic interests?

Of the economic interests recognized under the Act,² those interests 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) & (d); Regulation 18703.1(a) & (b).)

According to your letter, you are currently employed as a teacher by the District, a local government entity. Section 82005, however, limits the definition of “business entity” to organizations or enterprises operated for profit. Because a local government agency is not an organization or enterprise operated for profit, it is therefore not a “business entity” as defined by the Act. Accordingly, your employment with the District will not result in the District becoming a disqualifying economic interest. (See Sections 82005 & 87103(d); see also *Darcy Advice Letter*, No. I-87-296.)

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 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.) However, Section 82030(b)(2) provides that salary received from a state, local or federal agency is not considered income under the Act.

² Our analysis is limited to the economic interests you have identified.

Although you will presumably receive \$500 or more as a teacher for the District in the 12 months prior to the PBID decision, salary received from the District is not considered income under the Act. Accordingly, you will not have an economic interest in the District as a source of income.³

Personal Finances – You will always have an economic interest in your personal finances and those of your immediate family. A governmental decision will have an effect on an official's economic interest in his or her personal finances 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.) You have not provided any facts that would indicate that the governmental decision will have any financial effect on your personal finances.

Because you have no economic interest that may be reasonably foreseeably materially financially affected by the decision, our analysis ends at Step 3, and you do not have a conflict of interest under the Act

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Counsel, Legal Division

JCW:jgl

³ Since you do not have an economic interest in the District as a source of income or a business entity, the remaining analysis will not those issues into consideration.