

July 17, 2012

Joe Guzzetta, General Manager
Joshua Basin Water District
PO Box 675
Joshua Tree, California 92252

Re: Your Request for Advice
Our File No. A-12-109

Dear Mr. Guzzetta:

This letter responds to your request for advice 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 does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Additionally, please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application of other conflict-of-interest laws such as Government Code Section 1090 and common law conflict of interest, which may apply, or restrictions on incompatible activities your agency may impose. You should consult your agency's counsel regarding these provisions.

QUESTION

As the general manager of the Joshua Basin Water District (the "JBWD") may you take part in negotiating an agreement between the JBWD and the Joshua Tree Chamber of Commerce (the "JTCC") despite serving on the JTCC's board of directors?

CONCLUSION

As the general manager of a governmental entity, you do not have an economic interest in the JBWD. Moreover, you do not have an economic interest in the JTCC, a nonprofit organization, so long as you do not receive income from the organization. As long as there is no

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.

reasonably foreseeable material financial effect on an economic interest recognized under the Act, you are not prohibited from taking part in negotiations between the JBWD and the JTCC.

FACTS

You are the general manager of the Joshua Basin Water District, a governmental special district. Additionally, you serve on the Joshua Tree Chamber of Commerce Board of Directors. You receive a salary and benefits from the JBWD, but receive no remuneration, reimbursement of expenses, or other money of any nature from the JTCC. The JBWD is a paying member (\$100/year) of the JTCC and has been for many years. You stated in an email on July 11, 2012, that the JTCC is a nonprofit organization.

Prior to your election to the JTCC Board of Directors in 2010, you served as the liaison from the JBWD to the JTCC and observed board meetings for the purpose of informing the JBWD of business interests and concerns of the JTCC as they related to water policies, rates, and more. In 2008, during your term as liaison, the JTCC decided to undertake a beautification project on a downtown frontage road median. Known as the "Turtle Island Landscape Project," the project would also serve as a "low-water commercial demonstration garden" showing businesses how they can landscape their properties using less water. Additionally, the project would complement a "residential demonstration garden" that the JBWD has constructed at its offices, and an "educational demonstration garden" that the JBWD facilitated at the local community college. These gardens assist the JBWD in meeting its state-mandated goals for water conservation and conservation education.

In 2008, as the general manager for the JBWD and liaison to the JTCC, you were authorized by the JBWD Board of Directors to negotiate an agreement whereby the JBWD would provide water at no cost for the Turtle Island Landscape Project. However, the project was delayed due to a lack of construction funds and the negotiations never occurred.

At this time, the County of San Bernardino has allocated \$50,000 in Community Development Block Grant funds to the JTCC for the Turtle Island Landscape Project. Thus, there is a need to begin negotiations regarding the JBWD plan to provide water for the project. It is estimated that about \$100 worth of water will be needed each month, although during the initial establishment of the garden, water usage could exceed \$100 per month during the hotter months of the first two to three years.

The Turtle Island Landscape Project consists of the frontage road median situated between Highway 62 and a parking lot. This median consists of 17 separate parcels, which are privately owned. You state that you have no interest in any of the parcels or any of the owners of the parcels.

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 official has a disqualifying conflict of interest in a given governmental decision. However, your question involves only step three of the analysis, determining whether you have economic interests that may foreseeably be affected by the decision. Economic interests from which a conflict of interest may arise are defined in Section 87103 and Regulations 18703-18703.5 and include:

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

Based upon the facts provided, the only potential economic interests implicated by negotiations between the JBWD and the JTCC are potential economic interests in the JBWD and the JTCC as business entities or sources of income.³ However, only businesses operated for profit are defined by the Act as “business entities.” (Section 82005.) Neither nonprofit entities nor governmental entities are business entities. Moreover, salary received from a state, local, or

² We note that a public official’s income includes income that has been promised to the public official, but not yet received by him or her, if he or she has a legally enforceable right to the promised income. (Regulation 18703.3(a)(1).) Income does not, however, include reimbursement for travel expenses and per diem received from a 501(c)(3) nonprofit organization. (Section 82030(b)(2).)

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

federal government agency (such as the JBWD) is not considered income (Section 82030(b)(2)) and you have stated that you do not receive income from the JTCC of any kind.

Accordingly, you do not have an economic interest in the JBWD, a governmental entity, or the JTCC, a nonprofit organization, as either a business entity or a source of income. Barring a reasonably foreseeable material financial effect on an economic interest recognized under the Act, you are not prohibited from taking part in negotiations between the JBWD and the JTCC.

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

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