

September 11, 2012

Carl Sherrill
1132 Denise Drive
P O Box 945
Calistoga, CA 9415

Re: Your Request for Informal Assistance
Our File No. I-12-127

Dear Mr. Sherrill:

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 (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 purely hypothetical and 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. If elected to the city council, you should discuss any other conflict-of-interest laws (such as common law conflicts of interest) that may apply or any restrictions on incompatible activities the city may impose with the city’s counsel.

QUESTION

Should you be elected to the Calistoga City Council, does your support or opposition of ballot initiatives involving development projects potentially disqualify you from taking part in decisions related to the projects as an elected official?

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

Supporting or opposing a ballot measure regarding a development project does not give rise to a disqualifying conflict-of-interest under the Act. The Act's conflict-of-interest rules prohibit a public official from taking part in a governmental decision before his or her agency *only* if there is a reasonably foreseeable material financial effect on an economic interest recognized under the Act. A public official does not violate the Act's conflict-of-interest rules merely by communicating a position on a ballot measure.

FACTS

You are running for the Calistoga City Council for the first time. Also on the November 6 ballot is a citizen-initiated referendum that seeks to overturn a city council decision approving a large commercial development on the outskirts of town. Within your campaign literature, you have already voiced your opposition to this development. In the event that the project is defeated by voters and you win a seat on the city council, you anticipate the possibility that the developers will propose another plan for the same location.

Additionally, the city council is currently dealing with a second larger development that has been extremely controversial. If the city council approves this development, citizens plan to circulate a petition to put this project on future special election ballot. In addition to voicing your opposition to the first development project, you would also like to oppose this second project by helping circulate the petition and by voicing your opposition within your campaign literature.

ANALYSIS

Generally, the Act's conflict-of-interest provisions prohibit 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. (Section 87100.) 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).)

Economic interests from which conflicts of interests 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.)
- 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.)

As a candidate for the Calistoga City Council, merely supporting or opposing a ballot measure regarding a development project does not give rise to a disqualifying conflict-of-interest, should you be elected to the city council. If elected, you would be prohibited from making, participating in making, or influencing a city council decision *only* if the decision would have a reasonably foreseeable material *financial effect* on one or more of your economic interests as defined by the Act.

If you need additional assistance, once elected, in determining whether you are prohibited from making, participating in making, or influencing a governmental decision that may affect one or more of your economic interests, you should seek additional advice providing a description of the specific governmental decision. You can also find more information regarding the conflict-of-interest provisions in the Commission's fact sheet entitled "Can I Vote? Overview of Conflicts Laws" at <http://www.fppc.ca.gov/index.php?id=37>.

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