

September 13, 2012

Gregory Gillott, County Counsel
County Administration Center
810 Court Street
Jackson, CA 95642

Re: Your Request for Advice
Our File No. A-12-128

Dear Mr. Gillott:

This letter responds to your request for advice on behalf of Supervisor Brian Oneto regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ This advice is based on the facts provided in your request. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice.

QUESTION

Will Supervisor Brian Oneto have a conflict of interest if he participates in discussions, deliberations, and possible actions by the Board of Supervisors regarding the County’s position on a possible “Wild and Scenic” designation of the Mokelumne River by the federal government pursuant to the Wild and Scenic River Act (16 U.S.C. §§ 1271 – 1287)? If so, will Supervisor Oneto’s termination of the lease end the conflict?

CONCLUSION

1. With regard to his business entity, Supervisor Oneto would not have a conflict of interest within the meaning of the Act.
2. With regard to his BLM lease, since Supervisor Oneto’s payments on the lease are not \$1,000 or more annually, he does not have a leasehold interest in real property as defined in the Act, and therefore, does not have a conflict of interest within the meaning of the Act.

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.

FACTS

The County of Amador is currently considering whether portions of the Mokelumne River are eligible for designation by the federal government as a “Wild and Scenic” river. A “Wild and Scenic” designation of the river may have both positive and negative impacts on the County and its citizens. The Board of Supervisors is preparing to consider and discuss the various issues involved with a “Wild and Scenic” designation which will lead to the Board’s adoption of a formal position regarding whether to support or oppose such a designation for the Mokelumne River.

Supervisor Oneto runs cattle on owned and leased land within the County of Amador. The cattle operation is a personal business in which Supervisor Oneto has in excess of a \$2,000 investment. Supervisor Oneto currently leases land that allows him to graze cattle on portions of federal land in the County at an annual cost of \$95.85. A portion of this land leased for grazing abuts the Mokelumne River and it is possible that a “Wild and Scenic” designation for the river may exclude further grazing on the Supervisor’s leased land. If so, Supervisor Oneto must resort to alternative options which may or may not be more expensive than the cost of his current leasehold.

ANALYSIS

The Act’s conflict-of-interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) 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. The Commission has adopted an eight-step analysis for determining whether an official has a disqualifying conflict of interest. (Regulation 18700(b).)

Step 1: Is the Supervisor a public official?

Section 82048 of the Act defines a public official as “every member, officer, employee or consultant of a state or local government agency.” As a member of the Amador County Board of Supervisors, Supervisor Oneto is a public official. Consequently, he may not make, participate in making, or otherwise use his official position to influence any governmental decision that will have a reasonably foreseeable material financial effect on any economic interest he may have.

Step 2: Is the Supervisor making, participating in making, or influencing a governmental decision?

A public official “participates in making” a governmental decision when the official advises or makes recommendations to the decision-maker either directly or without significant intervening substantive review, by preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision. (Section 18702.2.)

As a member of the Board of Supervisors, Supervisor Oneto will be participating in discussions regarding the issues involved with a “Wild and Scenic” designation. As a participant in these discussions, Supervisor Oneto will be called upon to consider whether or not the County should support or oppose such a designation. Supervisor Oneto would therefore be making, participating in making, or using his official position to influence a governmental decision.

Step 3: The Supervisor’s relevant economic interests.

The Act’s conflict-of-interest provisions apply only to conflicts of interests arising from an official’s economic interests, as described in regulations 18703 – 18703.5. The economic interests relevant to Supervisor Oneto are:

1. An economic interest in a *business entity* in which the public official has a direct or indirect investment worth \$2,000 or more. (Regulation 18703.1(a).)
2. An economic interest in *real property* in which the public official has a direct or indirect investment worth \$2,000 or more in fair market value. (Regulation 18703.2(a).)

Leaseholds are considered to be an “interest in real property” for purposes of the Act. (Gov. Code § 82033.) Section 82033 defines an “interest in real property” to include any leasehold interest owned directly, indirectly or beneficially by the public official, if the fair market value of the interest is \$1,000 or more. Regulation 18729(b) provides that the value of a leasehold interest is the amount of rent owed during a 12-month period. As stated in your letter, Supervisor Oneto’s total annual cost of the lease is \$98.85. Thus, since Supervisor Oneto’s payments on the lease are not \$1,000 or more annually, he does not have a leasehold interest in real property as defined in the Act. As such, there is no need to reach a determination of what materiality standard applies and a determination as to reasonable foreseeability under Steps 5 and 6 of the conflicts analysis, since, if there is no real property interest, there is no conflict of interest within in the meaning of the Act. Likewise, absent such a conflict of interest, the public generally and legally required participation exceptions do not come into play, and there would be no need to proceed to the analysis under Steps 7 and 8, since there would be no conflict of interest to which the exceptions would be applied.

Step 4: Will the Supervisor’s relevant economic interests be directly or indirectly involved in the governmental decision?

In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official’s economic interest is directly or indirectly involved in the governmental decision. (Regulation 18704(a).)

For governmental decisions which affect business entities, the standards set forth in regulation 18704.1 apply. Regulations 18704.1 states:

- (a) A person, including business entities, sources of income . . . is directly involved in a decision before an official's agency when that person, either directly or by an agent:
 - (1) Initiates the proceeding in which the proceeding will be made by filing an application, claim, appeal, or similar request or;
 - (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Since Supervisor Oneto did not initiate the proceedings for the determination of the river's eligibility for "Wild and Scenic" designation, nor is he the subject of the proceedings regarding the river's eligibility, his business economic interest is indirectly involved.

Step 5: What materiality standard applies?

Once the degree of involvement is determined, Step 5 of the conflict of interest analysis addresses the applicable materiality standard. Regulation 18705 sets forth the materiality standards.

Under regulation 18705.1(c)(4), the financial effect of a governmental decision on a business entity is material if it is reasonably foreseeable that:

- (A) The governmental decision will result in an increase or decrease in the value of the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or,
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,
- (C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.

Your letter stated that if the river is designated as "Wild and Scenic" and the designation prohibits further grazing, Supervisor Oneto could likely find and lease another comparable property for grazing at approximately the same price range or he can purchase hay for those six cows. If there are other comparable means available by which Supervisor Oneto can feed his cows, it is likely that the governmental decision will not result in an increase or decrease in the

business entity's gross revenues, assets or liabilities in the amount of \$20,000 or more for a fiscal year.

If Supervisor Oneto is unable to lease property for grazing at a comparable cost to that of the BLM lease and he must purchase hay for the six cows, it is necessary to consider the additional expenses the business entity will incur for a fiscal year. Based on our research we have learned the following information: an average cow weighs 1,500 pounds and eats approximately 3% of its body weight per day. This amounts to the consumption of 45 pounds of hay per day for a total of 16,425 pounds (8.2 tons) of hay per year, per cow. Therefore, Supervisor Oneto's six cows will consume approximately 49.2 tons of hay per year. The average cost for one ton of hay is \$90, therefore, the total cost for hay for six cows per year would be \$4,428. Since this is less than \$5,000 for a fiscal year, the financial effect on Supervisor Oneto's business entity will be presumed not to be material.

With regards to the financial effect of the governmental decision on Supervisor Oneto's business entity, if there is not a material financial effect, it cannot be reasonably foreseeable that there will be a material financial effect, and, therefore, there is no conflict of interest within the meaning of the Act. As such, there is no need to reach a determination as to reasonable foreseeability under Step 6 of the conflicts analysis. Likewise, absent such a conflict of interest, the public generally and legally required participation exceptions do not come into play, and there is no need to proceed to the analysis under Steps 7 and 8, since there would be no conflict of interest to which the exceptions would be applied.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Harjeet Gidha
Intern, Legal Division

HG:jgl