

January 25, 2013

Larry Bergman
3124 Mermaid Dr.
Atwater Ca. 95301

Re: Your Request for Advice
Our File No. A-12-182

Dear Mr. Bergman:

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

Please note that the Commission does not provide advice on legal requirements imposed outside the confines of the Act. Thus, we offer no opinion on the application of other conflict-of-interest laws that may apply, such as common law conflict of interest and Government Code Section 1090.²

QUESTION

Does the Act prohibit you from making, participating in making, or influencing the outcome of a governmental decision before the Atwater City Council concerning any contracts between the City of Atwater and CAL FIRE?

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 Your letter requests advice regarding potential issues involving Government Code sections 1090 and 1091.5(a)(9). However, because these laws fall outside of the purview of the Act, we do not address them.

CONCLUSION

No. You may make, participate in making, or influence any decisions concerning contracts between the City of Atwater and CAL FIRE if no additional facts establish a reasonably foreseeable material financial effect on your economic interests.

FACTS

You were recently elected to the Atwater City Council, and you are currently a Fire Captain for CAL FIRE, a state agency, working in the Livingston station. You have worked for CAL FIRE since 1988, and prior to the election you worked in the Atwater station. The contract between CAL FIRE and the City of Atwater is up for renewal, and will come before the City Council in the next few months.

ANALYSIS

The Act's conflict-of-interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a "financial interest." (Section 87100.) Section 87103 provides that a public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the official's economic interests.

Under the Act, a conflict of interest exists only when a public official has a financial interest in a particular governmental decision. To determine whether a public official has a "conflict of interest" in a specific governmental decision, we employ a standard eight-step analysis outlined in Regulation 18700(b).

As a council member for the Atwater City Council who would be called upon to vote on a contract between the City of Atwater and CAL FIRE, you are a public official who would be making a governmental decision. You would therefore meet steps one and two.

Step Three: What are your economic interests?

Of the economic interests recognized under the Act,³ 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).)

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

According to your letter, you are currently employed as a Fire Captain by CAL FIRE, a state agency. Section 82005, however, limits the definition of “business entity” to organizations or enterprises operated for profit. Since a state 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 CAL FIRE will not result in that entity 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.

Although you will have presumably received \$500 or more as a Fire Captain for CAL FIRE in the 12 months prior to the upcoming contract decision, salary received from CAL FIRE is not considered income under the Act. Accordingly, you will not have an economic interest in the CAL FIRE as a source of income.

Personal Finances – A public official always has an economic interest in his or her personal finances. A governmental decision will have an effect on this economic interest 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.) Based on the facts provided, there is no indication that the personal financial effects rule applies to your circumstances.

Absent a specific economic interest, we do not find it necessary to apply the remaining steps of the conflict-of-interest analysis. To assist in analyzing your participation in future decisions we have enclosed a copy of the Commission's fact sheet entitled, “Can I Vote? Conflicts of Interest Overview.”

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

JW:jgl

Enclosure