



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

March 22, 2013

Richard A. Teaman
Teaman, Ramirez & Smith, Inc.
Certified Public Accountants
4201 Brockton Avenue, Suite 100
Riverside, CA 92501

Re: Your Request for Advice
Our File No. A-13-029

Dear Mr. Teaman:

This letter responds to your request for advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, we base this letter on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Are the shareholders and employees of Teaman, Ramirez & Smith, Inc., an accounting firm that contracts with entities in the County of Riverside to perform audits, deemed "consultants" as defined in the Political Reform Act?

CONCLUSION

Generally, where the shareholders and employees contract to perform independent audits of municipalities, this in itself will not result in these persons becoming "consultants."

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

You are a shareholder and employee in the firm Teaman, Ramirez & Smith, Inc. (a C Corporation) ("the Firm"). The Firm contracts with certain entities in the County of Riverside Economic Development agency ("the County") as an independent auditor for their annual financial audits. You do not contract with the County for other services.

In your role as an independent auditor, you do not make governmental decisions to approve rates, rules or regulations; you do not adopt or enforce laws; issue, deny, suspend or revoke permits; authorize contracts, and you do not serve in a staff capacity for a client. As independent accountants, you are prohibited by the professional standards of the State Board of Accountancy from performing such functions.

ANALYSIS

The Act requires that assets and income of public officials that may be materially affected by their official actions be fully disclosed and in appropriate circumstances the officials should be disqualified from acting to avoid conflicts of interest. (Section 81002(c).) Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. Regulation 18701(a)(2) defines "consultant" as any individual, who pursuant to a contract:

- "(A) Makes a governmental decision whether to:
- (i) Approve a rate, rule, or regulation;
 - (ii) Adopt or enforce a law;
 - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
 - (v) Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
 - (vi) Grant agency approval to a plan, design, report, study, or similar item;
 - (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the agency and in that capacity . . . performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code . . ."

In its role as an independent auditor, the Firm does not make any of the decisions set forth in subdivision (a)(2)(A) above. Pursuant to the information you provided, the scope of the Firm's services is to perform annual independent audits for certain entities. Thus, you would not qualify as consultants under Regulation 18700(a)(2)(a). (See *Maze* Advice Letter, No. I-95-296, copy enclosed.)

If the Firm undertakes any other tasks, other than the annual independent audit, filing obligations may apply.

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:vl



CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
ADVICE LETTERS

No. I-95-296

1995 Cal. Fair-Pract. LEXIS 338

October 16, 1995

[*1] Scott Maze
Maze and Associates
1670 Riviera Avenue, Suite 100
Walnut Creek, CA 94596

Re: Your Request for Informal Assistance

Dear Mr. Maze:

This is in response to your letter requesting advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act"). Since your advice request is general in nature and does not involve any specific contract with a specific city, we are treating your request as one for informal assistance.

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Are the partners and employees of Maze and Associates who contract with municipalities to perform independent audits, deemed "consultants" as defined in the Political Reform Act?

CONCLUSION

Generally, where the partners and employees contract to perform independent audits of municipalities, this in itself will not result in these persons becoming "consultants." However, other accounting services provided under contract [*2] to a public agency may require the partners and employees of Maze and Associates who perform these services to file statements of economic interests and comply with the conflict of interest disqualification rules of the Act.

FACTS

Maze and Associates (the "firm") is a professional accountancy corporation with four stockholders and fifteen employees. All the stockholders are certified public accountants and twelve of the employees are professional accountants.

Over eighty percent of your business involves performing independent audits of the annual financial statements of municipal governmental entities. The purpose of the audits is to provide an attestation from an objective third-party auditor that the entity's annual financial statements present its financial position fairly in accordance with generally accepted accounting principles. You stated that the Generally Accepted Auditing Standards require you to be completely independent, in fact and appearance, in performing the audits.

Pursuant to the sample materials you submitted, the scope of your services is to provide a report containing your opinion on the fair presentation of the client's general purpose financial statements [*3] in conformity with generally accepted accounting principles. This includes examining on a test basis evidence supporting the amounts and disclo-

tures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

You also stated that in your role as an independent auditor, you do not make governmental decisions to approve rates, rules or regulations, you do not adopt or enforce laws, issue, deny, suspend or revoke permits, authorize contracts and do not serve in a staff capacity for a client. As independent accountants, you are prohibited by the professional standards of the State Board of Accountancy from performing such functions.

Your firm also provides some consulting services to private and governmental clients.

You stated that consulting and miscellaneous accounting services constitute seven percent of the firm's revenue, in contrast to auditing which accounts for eighty-four percent of the firm's revenue.

ANALYSIS

The Act requires that assets and income of public officials which may be materially affected by their official actions [*4] should be fully disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

(Section 81002(c).)

Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. Regulation 18700(a)(2) defines "consultant" as any individual, who pursuant to a contract:

(A) Makes a governmental decision whether to:

- (i) Approve a rate, rule, or regulation;
- (ii) Adopt or enforce a law;
- (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
- (v) Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
- (vi) Grant agency approval to a plan, design, report, study, or similar item;
- (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency [*5] and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

You stated that in your role as an independent auditor, personnel of Maze and Associates do not make any of the decisions set forth in subdivision (a)(2)(A) above. Pursuant to the information you provided, the scope of Maze's services is to provide a report containing your opinion on the fair presentation of the client's general purpose financial statements in conformity with generally accepted accounting principles. Thus, you would not qualify as consultants under Regulation 18700(a)(2)(a).

However, you may still qualify as a "consultant" under the Act if Maze partners and employees serve in a staff capacity with the agency and in that capacity perform the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's conflict of interest code.

The test established in Regulation 18700(a)(2)(B) is a two- fold test (See, Randolph Advice Letter, No. I-95-045):

1. First, the persons must [*6] work on more than a single project or a limited range of projects for an agency. For example, in the Randolph Advice Letter, the employees of the firm in question attended all board meetings in which investments and issues relating to investments were to be discussed and attended meetings by standing committees of the agency at which advice and input is requested. In addition, the employees performed other services and provided reports on other investment issues that confronted the agency.

2. Second, even if you worked on more than a single project or more than a limited range of projects for an agency, your tasks must also be those of a quasi-staff member and must be substantially the same as one of the individuals whose position at the agency is described in the conflict of interest code.

With respect to the first qualifier, your facts indicate that your firm audits the municipality and delivers a finished product and that you are required to be completely independent, in fact and appearance, in performing the audits. In other words, your services concern a limited range of services for an agency.

Similarly, the second qualifier is not met with respect to performing independent [*7] audits for municipalities. While public agencies have auditors, we have advised in the past that, generally, an auditor under contract to perform a specific one-time audit to verify the receipts, assets, expenditures of a treasurer, without having the authority to recommend a course of action, is not the type to be covered by the conflict of interest code. (Marvel Advice Letter, No. I-89-287.) Except for the fact that your firm has a multi-year contract with jurisdictions, it appears the rationale in the Marvel Advice Letter applies to your services as well.

Thus, generally you would not qualify as consultants in performing independent audits of municipalities. Please note, however, that this is general advice and if your involvement under a specific contract with a municipality differs factually or in scope or substance from that provided here, you may qualify as consultants. Moreover, our advice is limited to your independent audit function. We have not been provided facts regarding contracts for general accounting services and advice.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell

General [*8] Counsel

By: John W. Wallace

Counsel, Legal Division

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***** Print Completed *****

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Send To: KORCHMAROS, ADRIANNE
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LEGAL DIVISION ASSIGNMENT SHEET

Tracking Number:	13029
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ITEM DESCRIPTION			
Advice Letter No.	13-029	Requestor	Teaman, Richard A.
Regulation Project No.			
Other (describe)			

Received By FPPC On:	02/28/13	Due Date:	03/27/13
Assigned To:	Heather	Date To Assignee:	03/04/13

REVIEWERS	Date To Review	1st Approval & Date (Including Regulation Notices)	Date To Review	Final Approval & Date (Incl. Regulation Adoption Memos)
Proofed			3/22/13	VLL 3/22/13
Senior	3/20	WJL		
TAD Chief (SEI, Campaign, Conflict of Interest Code letters)				
Assistant GC	3/21	JWW		
General Counsel				
Executive Director (discretion of GC)				
Chair (discretion of GC)				