

May 8, 2013

Richard Egan
Treasurer/Tax Collector
Lassen County
P O box 1432
Susanville, CA 96130

Re: Your Request for Advice
Our File No. A-13-052

Dear Mr. Egan:

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 only on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Furthermore, the Commission does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A).) Therefore, any conclusions contained herein apply only to prospective actions.

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

QUESTION

Do you have a conflict of interest under the Act if, acting in your official capacity as Lassen County Treasurer/Tax Collector, you provide opinions to the Honey Lake Valley Resource Conservation District (the "HLVRCD") on its financial structure, budget issues and compliance with government codes?

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.

CONCLUSION

Under the facts presented, it is not reasonably foreseeable that providing opinions in your official capacity to the HLVRCD on its financial structure, budget issues and compliance with government codes will have a material financial effect on your financial interests. Therefore, you have no conflict of interest under the Act when you engage in these actions.

FACTS

You are the elected Treasurer/Tax Collector for Lassen County and also, along with your spouse, own and operate a cattle and hay business consisting of a small ranch in Lassen County and of several property leases of land located in Lassen, Plumas, Shasta, and Yolo Counties on which you grow hay and graze cattle.

The ranch and three of the properties you lease receive deliveries of surface irrigation water from court decreed sources, which are monitored by the HLVRCD. The HLVRCD is an independent local government agency whose directors are appointed by the County Board of Supervisors. The charges for this water are assessed by the HLVRCD based on formulas and rates set in the Water Code, placed on the Tax Roll by the County Auditor, and collected by you (pursuant to Revenue and Taxation Code) as Tax Collector. As such, your ranch and the landlords from whom your business leases these properties are subject to these fees. While these fees have been assessed directly on the water used at your ranch, you indicate that none of the current or past amounts you pay to lease the other properties have been affected by changes in water charges and you do not expect them to be significantly (if at all) affected by changes in rates in the future. For example, you indicate that in the last three years, water charges assessed by the HLVRCD have doubled and then been cut to one-half of the original amount without having any effect on the amounts charged by the landlords for your lease of their properties.

Directors of the HLVRCD and their counsel have from time-to-time asked, and are currently asking, for your official opinion as Treasurer/Tax Collector concerning matters such as the financial structure of the HLVRCD, including budgeting issues, and its compliance with various government codes. These inquiries have mainly to do with the district generally and are not specific to the water master service fee. You have found the HLVRCD to be lacking in a few areas that you have outlined to it, including its failure to obtain annual audits. You have suggested that the HLVRCD review its financial structure to insure compliance with the applicable codes.

Several taxpayers have complained to you regarding the legal sufficiency of assessments made by the HLVRCD because of real or perceived failures by the HLVRCD to fulfill its obligations regarding notices and compliance with gift-of-public-funds laws, the Brown Act and the Public Records Act. You believe you are receiving these inquiries because the water master fee charged by HLVRCD appears on the county tax bill that is sent by your office. Since you have no control or authority over the HLVRCD, you have referred these taxpayers to the County Auditor, Grand Jury and the Superior Court.

One HLVRCD director has characterized your actions as “troublemaking”. You are unsure whether or not to continue to voice your concerns to this body, or whether you are precluded from doing so. You are also interested to know if it would be a conflict of interest for you to comment on the HLVRCD’s budgeting as a private citizen.²

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 financial interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (See Regulations 18700 – 18709.)

Step 1 – Are you a public official? (Section 87100; Regulation 18700(b)(1).)

As Lassen County Treasurer/Tax Collector, you are a public official (see Section 82048(a)) and thus subject to the Act’s conflict-of-interest provisions in Section 87100.

Step 2 – Will you be making, participating in making or using your official position to attempt to influence a governmental decision? (Section 87100; Regulation 18700(b)(2).)

As stated above, a public official is subject to the Act’s conflict-of-interest rule in Section 87100 if he or she makes, participates in making, or uses his or her official position to attempt to influence a governmental decision. Under the facts presented, you indicate you have been asked to provide your opinions to the HLVRCD in your capacity as County Treasurer/Tax Collector on its financial structure, budgeting issues and compliance with government codes.

Under Regulation 18702.1, an official “makes” a governmental decision when he or she, among other things, obligates or commits his or her agency to any course of action. (Regulation 18702.1(a)(3).) Furthermore, when a governmental decision is before an agency that is not the official’s own agency, the official is deemed to be attempting to influence the other agency’s decision when, for the purpose of influencing the decision, the official acts or purports to act on behalf of his or her own agency. (Regulation 18702.3(b).)

Under these regulations, it therefore appears that by taking action as Treasurer/Tax Collector to provide your opinions to the HLVRCD you would be either “making” a governmental decision or “attempting to influence” a governmental decision.

² Since we conclude that you do not have a conflict of interest under the Act when providing opinions to the HLVRCD on its budgeting and other general operational issues, we need not reach or address this issue.

Step 3 – Which of your financial interests may be affected by HLVRCO decisions? (Sections 87100 and 87103; Regulation 18700(b)(3).)

Section 87103 sets forth the types of financial interests held by a public official that, when affected by a governmental decision, may expose the official to a possible conflict of interest. As pertinent to the facts you present, these interests are:

(1) Any business entity (i.e., a for-profit entity, see Section 82005) in which you or your spouse own an interest valued at \$2,000 or more. (Section 87103(a) and Regulation 18703.1(a).) This would include the ranch business owned by you and your spouse, which is subject to HLVRCO water rates.

(2) Any interest in real property, including a leasehold interest of more than 30 days, held directly by you or your spouse or by any business entity in which you or your spouse own an interest of 10-percent or more, valued at \$2,000 or more. (Section 87103(b) and Regulation 18703.2.) This would include the three properties subject to HLVRCO water rates that your ranch business leases.

(3) Any effect on the personal expenses, income, assets or liabilities of the official or his or her spouse. This is the “personal financial effects” rule. (Section 87103; Regulation 18703.5.) This would include any direct financial effect on you or your spouse as a result of an increase or decrease in HLVRCO water rates.

Step 4 – Are your financial interests directly or indirectly involved in the governmental decision? (Regulation 18700(b)(4).)

As mentioned above, an official does not have a conflict of interest under the Act unless the governmental decision in which he or she participates has a “material” financial effect on his or her financial interests. (Sections 87100 and 87103.) The determination in this Step of whether an official’s financial interests are directly or indirectly involved in the governmental decision dictates which “materiality” test (see Step 5) will apply.

Under Regulation 18704.1, when the public official’s financial interest is a business entity, such as your ranch business, the entity is deemed “directly” involved in the government decision when the business entity either initiates a proceeding concerning that entity that triggers the decision or is a named party or the subject of the decision. (See Regulation 18704.1(a).) Under Regulation 18704.2, when the public official’s financial interest involves a real property interest, such as your ranch property or your leasehold interests, the interest is deemed “directly” involved in the decision when the property is within 500 feet or less of another property that is the subject of the decision or is otherwise the subject of a property decision such as zoning, entitlement for use, taxes, inclusion in a project area or providing new services. (See Regulation 18704.1(a).) Finally, under Regulation 18704.5, when a governmental decision affects the public official’s “personal finances,” such as your personal water rates, the official is always

considered to be “directly” involved in the decision. When an official’s financial interest is not “directly” involved in the decision it is deemed “indirectly” involved. (Regulation 18704(a).)

The only governmental decisions at issue here are decisions by you, as County Treasurer/Tax Collector, to provide opinions concerning matters such as the financial structure of the HLVRCD and its compliance with various government codes and by the HLVRCD in response to your opinions. None of these decisions would appear to “directly” involve any of the three financial interests of yours discussed above. Therefore, under Regulation 18704(a), we will analyze your interests as if they are “indirectly” involved in the governmental decisions.

Step 5 – What “materiality” standard applies to your financial interests? (Regulation 18700(b)(5).)

This Step determines the dollar threshold at which the effect of a governmental decision on a public official’s financial interest will be “material” and thus give rise to a possible conflict of interest. Since we have determined that the three financial interests identified would be “indirectly” involved in these government decisions, the following materiality thresholds apply:

(1) Business Entities. The materiality threshold for business entities fluctuates with the size of the entity, as measured by factors such as the entity’s net annual income or whether it is listed on a stock exchange. For instance, if the entity is not a Fortune 500 company and either its stock is traded on the New York Stock Exchange or it has a net annual income of \$2.5 million or more, the governmental decision will have a material financial effect (and thus create a possible conflict of interest issue) when the governmental decision essentially will result in a \$500,000 or more fiscal-year increase or decrease in the entity’s gross revenues, assets or liabilities, or will result in a \$200,000 or more fiscal-year gain or loss in expenses. (Regulation 18705.1(c)(2).) However, when the entity is not traded on a stock exchange and has a net annual income of less than \$750,000, the dollar thresholds described above are \$20,000 and \$5,000 respectively. (Regulation 18705.1(c)(4).) We are not aware of your ranch business’ net income or whether it is traded on a stock exchange, but, at a minimum, the annual financial effect of the governmental decisions at issue would have to meet the \$20,000/\$5,000 threshold to be material as to your ranch business and thus pose a potential conflict of interest for you.

(2) Real Property. When real property interests, such as your ranch property or the leaseholds, are “indirectly” involved in a government decision, the decision is presumed to not have a material financial effect on that interest. (Regulation 18705(b).) This presumption can be rebutted, however, if there is proof of special circumstances that shows that the decision will have a financial effect on the property interest. There are no facts indicating that any such special circumstances exist. Therefore, we will assume that these governmental decisions will not have a material financial effect on your ranch property or leasehold interests.

(3) Personal Finances. An official is materially affected by a governmental decision when, in your case, it will have an effect of \$250 or more on your or your spouse’s personal finances, apart from any effect on your business or property interests. (Regulation 18705.5(a).)

Step 6 – Is it “reasonably foreseeable” that the governmental decisions will have a material financial effect on any of your identified financial interests? (Regulation 18700(b)(6).)

For a governmental decision to have a “reasonably foreseeable” material financial effect on an official’s financial interest, the effect need not be certain or even substantially likely that it will happen. However, the financial effect must be more than a mere possibility. (Regulation 18706(a); *In re Thorner* (1975) 1 FPPC Ops. 198.)

Under the facts presented, it is nearly impossible to conceive of a situation in which your advice and recommendations to the HLVRCD on its financial structure, budget or compliance with government codes could actually or potentially have a financial effect on your ranch business, real property interests or personal finances. HLVRCD’s only apparent connection to your financial interests is through its setting of water rates either paid directly by your business or by landlords from whom your business leases property. However, none of the issues on which you would be providing opinions to the HLVRCD seems to remotely involve the setting of water rates and, even if they did, it appears that the HLVRCD’s decisions on how to assess water rates are predetermined by statute.³

Therefore, based on these facts, we do not think it is reasonably foreseeable that your actions in providing opinions to the HLVRCD on its financial structure, budget or compliance with government codes will have a material financial effect on your financial interests. Accordingly, we find that you do not have a conflict of interest under the Act in providing these opinions.

Steps 7 and 8 – “Public Generally” and “Legally Required Participation” (Regulation 18700(b)(7) and (8))

Since we have concluded that you do not have a conflict of interest, it is not necessary to discuss these further analytical Steps.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

SH:jgl

³ As mentioned in the Facts, a prior court ruling and not the HLVRCD determines water distribution.