

June 5, 2013

Brooke E. Jimenez
Atkinson, Loya, Ruud & Romo
3450 Fourteenth Street, Suite 420
Riverside, CA 92501-386

Re: Your Request for Advice
Our File No. A-13-054

Dear Ms. Jimenez:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)¹ and is based 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.) 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. Also, please note, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTIONS

1. Does the Act prohibit two members (the “Board Members”) of the Rio School District (the “School District”) from voting on whether to hire consultants to evaluate the feasibility of issuing Community Facilities District (“CFD”) bonds (the “Proposed Bonds”) under the Mello-Roos Community Facilities Act of 1982 where some of the bond proceeds could be used to build schools in the Riverpark Community Facilities District (the “Facilities District”) and the Board Members own homes in the Facilities District?

2. Does the Act prohibit the Board Members from voting on whether to issue the Proposed Bonds?

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.

3. Does the Act prohibit the Board Members from voting on whether to refinance existing bonds (the “Existing Bonds”), the proceeds of which were used for schools in the Facilities District, if the savings from refinancing would be used for construction and improvements of additional schools if the location of those schools would not yet be known at the time of the vote?

CONCLUSION

1 and 2 – No. The Board Members are not prohibited under the Act from voting on whether to hire consultants or to issue the Proposed Bonds. These decisions will not have a reasonably foreseeable material financial effect on the Board Members’ real property.

3 – No. Under the facts you have provided, a School Board decision to refinance the existing bonds will not have a reasonably foreseeable material financial effect on the Board Members’ real property.

FACTS

Issuing the Proposed Bonds

The School Board has been asked to enter into a contract with a team of consultants to evaluate the feasibility of issuing the Proposed Bonds. Bond proceeds would be used primarily to reimburse Riverpark Legacy, LLC (“RPL”) for costs incurred in building and improving schools located in the Facilities District. Each of the Board Members owns a residence in the Facilities District. Payments on the bond sale would be serviced by Mello Roos taxes paid entirely by the newly constructed and completed housing units. The consultants would assist the School District in evaluating the feasibility of the bond sale and prepare a report to the School Board. After receiving the report, the School Board would decide whether to issue the Proposed Bonds.

The project for which RPL would be reimbursed was financed with the proceeds of the Existing Bonds. The reimbursement would be made pursuant to a 2010 settlement agreement between RPL and the School District. The settlement agreement provides that the reimbursement will be funded by the issuance of “interim CFD bonds.” The Proposed Bonds would be the “interim CFD bonds” referred to in the settlement agreement. The settlement agreement states that the “second series of CFD bonds will have no additional effect on the financial burden to existing homeowners.” The settlement agreement does not specify the effects, if any, of the Proposed Bond sale on the Board Members’ residences.

In our conversation, you provided the additional fact that it is unlikely that there will be any funds remaining after the School District satisfies its obligation to RPL. At the time the School Board votes on the Proposed Bonds, the only proceeds that would be earmarked would be for reimbursement of RPL. If, however, there are any remaining funds, they would be used for future school construction. At the time the School Board votes on the Proposed Bonds, it will not yet be known whether there will be any remaining funds or the location of schools that might be built with such funds.

You state that residences within the Facilities District may benefit from development arising from new school construction. Also, the larger community as a whole would benefit from development of schools within the community including a likely increase in property values of existing homes.

Refinancing the Existing Bonds

In addition, the School Board will be considering whether to investigate the possibility of refinancing the remaining balance on the Existing Bonds. The savings generated by the refinancing would be retained by the School District and would not affect the taxes of existing homeowners. The savings could be used to fund the issuance of additional bonds, the proceeds of which would be used to finance additional schools. At the time the School Board votes on the refinancing of the Existing Bonds, the location of the additional schools would not yet be known.

ANALYSIS

Steps 1 & 2. Are the Board Members public officials making, participating in making, or using their official position to influence a governmental decision?

As members of the School Board, a local government agency, the Board Members are public officials under the Act. (Section 82048.) Consequently, they may not make, participate in making, or otherwise use their official position to influence any decision that will have a reasonably foreseeable material financial effect on any of their economic interests. In addition, the Board Members would be making, participating in making, or influencing a governmental decision when taking part in any of the subject School Board decisions. (Section 87100; Regulations 18702.1-18702.3.)

Step 3. What are the Board Members' economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests. These economic interests are described in Section 87103 and Regulations 18703-18703.5. Only two economic interests are implicated by the facts:

- An economic interest in real property in which the public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- The personal expenses, income, assets, or liabilities of the official, as well as those of his or her immediate family. This is commonly referred to as the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

A public official is considered to always have an economic interest in his or her personal finances. However, a financial effect on the value of real property owned directly or indirectly by a public official is not considered to be a separate financial effect on the official's personal finances and would not be analyzed separately under the "personal financial effects" rule.

(Regulation 18705.5(a).) Accordingly, the personal financial effects rule does not appear to apply to the Board Members' circumstances and we therefore limit our analysis to their economic interests in real property.

Step 4. Will the Board Members' economic interests be directly or indirectly involved in the School Board decisions?

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's economic interest is material. (Regulation 18700(a).) Different standards apply to determine whether a reasonably foreseeable financial effect on an economic interest will be material, depending on the nature of the economic interest and whether that interest is directly or indirectly involved in the agency's decision.

Regulation 18704.2 sets forth six criteria for determining whether a real property economic interest is directly involved in the agency's decision. With respect to the three decisions the School Board will be making, none of the criteria is met. Accordingly, the Board Members' real property will be indirectly involved in the subject School Board decisions.²

Steps 5 & 6. Is it reasonably foreseeable that the financial effect of the School Board decisions on the Board Members' real property will be material?

For properties indirectly involved in a governmental decision, Regulation 18705.2(b)(1) provides that the financial effect is presumed not to be material. This presumption may be rebutted only by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest that make it reasonably foreseeable the decision will have a material financial effect on the real property in which the official has an interest. Under the facts you have provided, the presumption of no material financial effect is not rebutted. Accordingly, the Board Members do not have a disqualifying conflict of interest in decisions relating to the issuance of the Proposed Bonds or to refinance the Existing Bonds.³

² If a public official's economic interest is not "directly involved" in a governmental decision, it is deemed to be "indirectly involved." (Regulation 18704(a).)

³ Please note that if there is future consideration by the School Board to use any remaining proceeds from the Proposed Bonds, or to apply the savings generated by refinancing the Existing Bonds, for a particular project, the Board Members will need to determine whether the School Board decisions will have a reasonably foreseeable material financial effect on their real property, using the analysis set forth herein.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl