



FAIR POLITICAL PRACTICES COMMISSION

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July 24, 2013

Maurilio Leon
District Director State Assembly
1609 Bridge Avenue
Oakland, CA 94601

Re: Your Request for Informal Assistance
Our File No. I-13-090

Dear Mr. Leon:

This letter responds to your request for advice regarding the honoraria provisions of the Political Reform Act (the "Act").¹ Because your question seeks general guidance, we are treating your request as one for informal assistance.² 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 laws or on any outside employment restrictions that may apply.

QUESTION

Does the Act prohibit you from accepting payments for your work as the sole proprietor of a consulting business while at the same time serving as the District Director for the State Assembly?

CONCLUSION

The Act does not prohibit you from serving as a District Director and also performing consulting services for your personal consulting business. Instead, the Act prohibits public officials, such as yourself, from making, participating in making or using their positions to

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 (the "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 Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; Regulation 18329(c)(3).)

influence a government decision which will have a reasonably foreseeable material financial effect on their financial interests.

FACTS

In February 2013, you began working for the State Assembly as a District Director. In that position, you are a designated employee under the Assembly's Conflict of Interest Code. In addition, since February of 2012, you have been the sole proprietor of a consulting business which requires that you engage in community economic development projects and services. You keep records of all expenses associated with your business.

ANALYSIS

The Act does not prohibit an official from holding a public position and also performing work for a private business or firm. The Act prohibits an official from making, participating in making or using his or her official position to influence a government decision in which the official has a financial interest. (Section 87100.) Section 87103 of the Act provides that an official has a financial interest in a decision within the meaning of Section 87100 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:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$440] or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

As a designated employee of the State Assembly, you are considered a "public official" under the Act, and are therefore subject to the disqualification provisions of the Act. (Section 82048; Regulation 18700.) If you do consulting work concerning community economic development projects and services, the organization(s) that pay you for your services would become sources of income to you under Section 87103(c). In addition, assuming you have an investment in your business of at least \$2,000, you would have an interest in your consulting business as a business entity. Therefore, you would be prohibited from making or participating

in a governmental decision that would have a material financial effect on these interests under the Act.³

In addition, because the Commission is authorized only to render advice on public officials' obligations under the Act, we do not address other laws outside the purview of the Act that may also bear on your situation. These include Section 1090, which bars public officials from acting in their governmental capacity to participate in making a contract in which they are financially interested, and Section 8314, which prohibits the use of government resources (including your paid Assembly time) for a private purpose. Also, policies of the Assembly may place restrictions on your outside employment activities that are incompatible with your Assembly employment. We recommend you contact your agency's legal counsel, or the Attorney General's office, for advice on these potential issues.

Further, as you may be aware, Section 89502(c) provides that no designated employee of a state agency shall accept any honorarium from any source if the employee would be required to report the receipt of income from that source on his or her statement of economic interests. The term "honorarium" is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501(a).) "Speech given," as used in Section 89501, means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. (Regulation 18931.1.) However, Section 89501(b)(1) provides that the term "honorarium" does not include: "[e]arned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business or profession is making speeches." Earned income differs from an honorarium because a payment characterized as "earned income" is based on the market value of services rendered, while an honorarium reflects values associated with the status of the speaker.

If the predominant activity of the work you plan to perform is consulting to businesses, not making speeches, the income you receive would not constitute an honorarium, as it is earned income for personal services customarily provided in connection with the practice of a bona fide business.

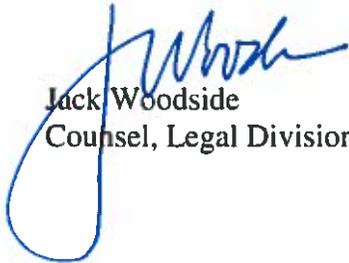
Finally, you should also be aware of the prohibition concerning influencing prospective employment contained in Section 87407 of the Act. That section provides that no public employee shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating prospective employment.

³ If you are called upon to make or participate in making any governmental decision in which you have an interest by reason of your outside employment, we suggest that you contact the Commission for guidance tailored to the specific circumstances of the decision before you.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By:  Jack Woodside
Counsel, Legal Division

JW:jgl