

August 11, 2014

Kris M. Becker  
Office of the City Attorney  
1275 Main Street  
El Centro, CA 92243

Re: Your Request for Advice  
**Our File No. A-14-147**

Dear Ms. Becker:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### **QUESTION**

May you participate in decisions concerning the proposed affiliation between the El Centro Regional Medical Center (hereafter ECRMC), a city-owned facility, with another private hospital despite your ownership of your residence that is within 500 feet of ECRMC property that will be the subject of the decision?

### **CONCLUSION**

Nothing in your facts suggests that the affiliation decisions will have any measurable effect on your property; therefore you will not have a conflict of interest.

### **FACTS**

The City of El Centro owns ECRMC, a municipal hospital. The City is currently considering an affiliation agreement between ECRMC and another local hospital. Once that affiliation agreement is complete, the resulting agency will seek to affiliate with a larger medical system from a different region. It is not certain what form the affiliation with the larger medical system from a different region will be, but at the moment it appears it will be a long-term lease. Both the affiliation with the local hospital and the affiliation with the larger medical system will need to be approved by the City Council in open session.

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<sup>1</sup> 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.

You stated that the governmental decisions to affiliate only affects how ECRMC will be managed, not the use of real property. ECRMC will continue its day-to-day operations as a licensed acute-care hospital exactly as it currently does post-affiliation; the affiliation only affects the management of the facility. You do not believe that a change in the management structure at ECRMC would measurably affect the market value of surrounding property.

You noted that while you are not the general counsel for ECRMC, ECRMC's general counsel does report to you. You also noted that you own your primary residence which is just over 600 feet from ECRMC's main campus and 500 feet from residential parcels owned by ECRMC. It is your understanding that these parcels will be a part of the affiliation agreement or lease.

### 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.<sup>2</sup> A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable<sup>3</sup> that the decision will have a material financial effect on one or more of the public official's interests as set forth in Section 87103.)

You have identified one interest related to the affiliation decision, your personal residence which is within 500 feet from property that will be subject to the affiliation agreement. Revised Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As relevant to your facts, the financial effect will be material if the decision:

- Regulation 18705.2(a)(10): "Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest."

You noted that the affiliation agreement ultimately may take the form of a long-term lease, but at this time only involves how ECRMC will be managed. Moreover, the ECRMC's

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<sup>2</sup> When a public official who holds an office specified in Section 87200 (including city attorneys) has a conflict of interest in a decision noticed at a public meeting, he or she must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in the decision as well as details of the interest as discussed in Regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

<sup>3</sup> A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.

main campus will continue its current day-to-day operations as a licensed acute-care hospital and there will be no apparent effect on the use of the property near your home. Thus, the facts do not support a finding of materiality under this test.

- Regulation 18705.2(a)(11): “Would consider any decision affecting real property value located within 500 feet of the property line of the official’s real property.... Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official’s property.”

You property is within 500 feet of residential parcels owned by ECRMC which will also be affected by the affiliation agreement. However, nothing currently suggests that the use of these properties (like the use of the ECRMC campus) will be changed at all. Consequently, this standard of materiality is also not met.

- Regulation 18705.2(a)(12): “Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

You noted that a change in the management structure at ECRMC would not cause a reasonably prudent person to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of your property. We agree that based on all the facts provided, this materiality standard is also not met.

Finally, please note that our advice is based on the facts presented. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) As the affiliation discussions progress and if the facts should change such that the uses of the ECRMC property becomes an issue in the affiliation discussions, our advice might be different. You should seek additional advice if the facts changed.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

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