

September 2, 2014

Steven M. Anderson  
General Counsel  
Cabazon Water District  
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Re: Your Request for Advice  
**Our File No. A-14-151**

Dear Mr. Anderson:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> You are General Counsel for the Cabazon Water District ("District") and seek advice on behalf of District Board President Kern Mariner. Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are complete and accurate. If this is not the case, our advice could be different.

### QUESTION

District Board President Mariner and District General Manager Louie and their families have a close personal relationship. Over the years, Mrs. Mariner occasionally babysits Mr. Louie's daughter for free, Mr. Louie provides Mrs. Mariner free boat storage on his residential property, and Mrs. Mariner and Mr. Louie split the costs of boarding a horse in which they own equal ¼ interests. Do these financial arrangements prohibit Mrs. Mariner from making, participating in making, or using her official position to influence future District decisions regarding District performance reviews of Mr. Louie?

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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.

## CONCLUSION

Based on the facts presented, Mrs. Mariner would not be prohibited under the Act from making, participating in making or using her official position to influence future District decisions regarding performance reviews of Mr. Louie.

## FACTS

Mr. Calvin Louie has served as the General Manager for the District since May 2004. In 2007, Mr. Louie obtained the sole custody of his daughter who was 7 years old at the time. His daughter is now 13 years old.

Kern Mariner is the current Board President of the District's Board of Directors. She has served on the Board since 2011. Board President Mariner has known Mr. Louie since 2009 and now both Mr. and Mrs. Mariner consider him a close personal friend. Prior to joining the Board, Mrs. Mariner worked as a Parent Liaison at Cabazon Elementary School and for the Family Service Association which oversaw the F.A.S.T. (Family and School Together) program. As part of her work with this program, Mrs. Mariner met and became a female role model and mentor in the life of Mr. Louie's daughter. This relationship with Mr. Louie's daughter dates back to 2008. Mrs. Mariner is also the mother of two daughters near the same age as Mr. Louie's daughter, which contributed to her taking an active interest in his daughter's well-being and success as a student.

Over the years, Mrs. Mariner has babysat and watched Mr. Louie's daughter overnight when Mr. Louie had emergency night calls related to the District. Over time, this mentorship and babysitting caused both families to become very close family friends that regularly socialize together.

In recent years, the Mariners decided to allow their older daughter to experience having a horse which was purchased by four separate individuals sharing the costs equally. Each partial owner contributed \$375, thus owning a ¼ interest in the horse. Mr. Louie is one of these owners. Given his background with horses, this shared horse is currently boarded at Mr. Louie's property where he owns two American quarter horses of his own. The Mariners cover the feed, hoof care, and any potential veterinary cost associated with this shared horse. Meanwhile, Mr. Louie boards the horse on his property without charging a fee. Mr. Louie covers water, manure removal (trash service), supplements as needed, and turns-out (exercises) the horse. The monthly cost of boarding a horse at a stable providing such services may cost between \$250 to \$450 per month with the owner providing feed (hay).

Finally, the Mariners recently purchased a party barge. It is occasionally stored on Mr. Louie's secured property. It is estimated that the barge will be stored 20% of the year on his property, mostly during the winter. The barge is stored without any charge.

## ANALYSIS

Section 87100 prohibits any state or local public 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 specified in Section 87103. A public official has a “financial interest” in a government 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 interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a conflict of interest under Section 87100.

### **Step One - Is the individual a public official? (Section 87100; Regulation 18700(b)(1).)**

In her capacity as board president of a public water district, Mrs. Mariner is a public official for purposes of Section 87100. (Sections 82003, 82041 and 82048(a).)

### **Step Two - Will the public official be making, participating in making, or using his or her official position to attempt to influence a government decision? (Section 87100; Regulation 18700(b)(2).)**

As stated above, a public official is subject to Section 87100 if he or she makes, participates in making, or uses his or her official position to attempt to influence a government decision.

Under Regulation 18702.1, an official “makes” a government decision when he or she, among other things, votes on a matter, enters into a contract on behalf of his or her agency, or obligates or commits his or her agency to any course of action. (Regulation 18702.1(a).) Under Regulation 18702.2, an official “participates” in a government decision when, generally, he or she negotiates, without significant substantive review, regarding a government decision, or advises or makes recommendations to the decisionmaker directly or without significant substantive review. (Regulation 18702.1(a) and (b).) Under Regulation 18702.3, an official “uses his or her official position to influence” a government decision when he or she contacts, appears before or otherwise attempts to influence a member, officer, employee or consultant of the official’s own agency or, when appearing before another government agency, the official acts or purports to act on behalf of his or her own agency. (Regulation 18702.3(a) and (b).)

Therefore, if Mrs. Mariner takes any of these described actions relating to performance reviews of District staff, including Mr. Louie, she would be making, participating in making, or using her official position to influence a government decision for purposes of Section 87100.

**Step Three – Identify the public official’s interests that may be affected by the government decision. (Sections 87100 and 87103; Regulation 18700(b)(3).)**

Section 87103 and Regulations 18703 through 18703.5 set forth the types of interests held by a public official that, when affected by a government decision, may expose the official to a possible conflict of interest under the Act. These interests are as follows:

- An interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- An interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- An interest in any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An interest in any source of gifts to him or her if the gifts aggregate to \$440 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- An interest in his or her personal finances, including those of his or her immediate family -- this is the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

You indicate that Mrs. Mariner and Mr. Louie are involved in three separate financial arrangements, those being the free babysitting provided by Mrs. Mariner to Mr. Louie for watching Mr. Louie’s 13-year-old daughter, the free barge storage that Mr. Louie provides to Mrs. Mariner, and the shared costs of boarding a horse.

Of these three arrangements, the free babysitting and split costs in boarding the horse would not appear to raise issues under the Act. Since Mrs. Mariner is the one providing the free babysitting services to Mr. Louie, this is not a financial interest of hers under the provisions above. Also, although it is possible that the share of costs that Mrs. Mariner and Mr. Louie assume for boarding the horse are not exactly equal, given their equal ownership shares in the horse, the individual costs they bear for the boarding expenses do not appear to unreasonably favor one over the other. Instead, this appears to be a contractual exchange of roughly equal consideration and no gift or income to Mrs. Mariner for purposes of the Act.

That leaves the issue of whether the free barge storage that Mr. Louie provides to Mrs. Mariner creates a financial interest for her under Section 87103. Section 82028 essentially provides that, unless an exception applies or the official pays equal or greater consideration,

when the official receives something of value there is a gift. To determine the value of a gift, Regulation 18946(a) provides that “a gift is valued at the fair market value as of the date of receipt.” Since there are commercial storage services for boat storage, there is presumably some value provided by Mr. Louie to Mrs. Mariner in the free storage of her barge on his property and, absent an exception, that value would be a gift to Mrs. Mariner. You have not provided information on a specific market value of the storage services provided by Mr. Louie. However, as described above, if no exception applies and the value of the storage is \$440 or more in any 12-month period prior to when Mrs. Mariner would participate in a performance review of Mr. Louie, he would be considered a financial interest of hers for purposes of this analysis.<sup>2</sup>

We next examine whether an exception applies to the classification of the free storage as a gift. Regulation 18942(a)(18)(C) provides one of the exceptions to when a thing of value provided to an official is not a gift under the Act. The general rule under this exception is that a thing of value received from “an individual with whom the official has a long term, close personal friendship unrelated to the official’s position with the agency” is not a gift. This exception includes several qualifications, stating generally that it is not applicable if the donor of the gift is subject to the Act’s rules regulating the lobbying of state agencies, the donor has a contract, license, permit or other entitlement for use before the official, or the person is involved in a licensing or enforcement action before the official (see Regulation 18942(a)(18)(C) and (D)). None of these qualifications apply here.

Therefore, we only must determine whether the relationship between Mrs. Mariner and Mr. Louie is “a long term, close personal friendship” unrelated to Mrs. Mariner’s position as a President of the District Board. The facts state that Mrs. Mariner established her relationship with Mr. Louie’s daughter while Mrs. Mariner worked in a non-District capacity in 2008. In 2009, two years before she joined the District Board, Mrs. Mariner got to know Mr. Louie. Thereafter, based on not only Mrs. Mariner’s mentor-like relationship with Mr. Louie’s daughter, but also the friendship between Mrs. Mariner’s daughters and Mr. Louie’s daughter, Mrs. Mariner and her husband became close friends with Mr. Louie and regularly socialize with him. Based on these facts, we think that the “close personal friendship” exception in Regulation 18942(a)(18)(C) applies and that the free barge storage Mr. Louie offers to Mrs. Mariner is more in the nature of an act of friendship than of a gift that would be regulated by the Act. Therefore, based on these facts, Mrs. Mariner does not have a financial interest in Mr. Louie for purposes of the Act’s conflict of interest provisions and no further analysis is necessary.

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<sup>2</sup> Depending on the provisions of the District’s conflict of interest code, Mrs. Mariner may also be required to report certain gifts valued at \$50 or more during the applicable reporting period on her Statement of Economic Interests (FPPC Form 700). (See Sections 87300 and 87302(b).) These gifts would also be subject to the Act’s annual \$440 gift limit set forth in Section 89503 and Regulation 18940.2. However, given our conclusion that, under these facts, there is no gift under the Act, Mrs. Mariner would not be required to treat this as a gift for purposes of the Form 700 or the \$440 gift limit.

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