STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
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April 29, 2015

John R. Vacek
Chief Deputy
The County of Yuba
915 8th Street, Suite 111
Marysville, CA 95901

Re: Your Request for Advice
Our File No. A-15-058

Dear Mr. Vacek:

This letter responds to your request for advice on behalf of Yuba County Supervisor Randy Fletcher regarding the conflict of interest provisions of the Political Reform Act (the "Act").[1] We are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. We also do not advise regarding past conduct; the advice below relates only to upcoming decisions.

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 or Section 1090.

QUESTION

Does Supervisor Fletcher have a disqualifying conflict of interest under the Act that prohibits him from participating in decisions related to the National Flood Insurance Program standards ordinance?

CONCLUSION

Yes. Supervisor Fletcher may not participate in decisions that are reasonably foreseeable to have a material financial effect on any of his financial interests.

FACTS

You are the Chief Deputy County Counsel for Yuba County and you request advice on behalf of Supervisor Fletcher. He owns an independent insurance brokerage firm, Fletcher & Associates, which offers home, auto, commercial, and flood insurance coverage (among others).

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[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.

Yuba County has opted in to the National Flood Insurance Program ("NFIP"), which provides flood insurance and disaster relief to property owners who live in participating communities. The Federal Emergency Management Agency requires communities that participate in the NFIP to adopt a floodplain management ordinance that includes minimum federal requirements. California offers participating communities a template for floodplain ordinances, but by adopting above-minimum standards and adding clarifying language, the communities can qualify for better ratings, which translates into larger premium discounts or a geographically smaller floodplain zone (the NFIP does not require property owners outside the designated zone to purchase flood insurance).

The Board of Supervisors will be voting on the Floodplain Management Ordinance that will adhere to above-minimum standards to both decrease floor insurance premiums and decrease designated floodplain areas.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a 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.) The only financial interest currently at issue is Supervisor Fletcher's interest in his insurance brokerage firm. A public official has 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).)

Reasonable Foreseeability

Because Supervisor Fletcher's business is not explicitly involved in (or the subject of) the decision, we apply the following standard: "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." (Regulation 18701(b).) To determine whether the financial effect is reasonably foreseeable, we consider various factors such as the presence of intervening events, whether the financial interest is of a type that the governmental decision would affect, or whether the governmental decision will provide or deny an opportunity or create an advantage or disadvantage for the official's financial interest. (See Regulation 18701(b), enclosed.)

Supervisor Fletcher's company sells flood insurance. The Board will decide whether to adopt a county ordinance that sets the standards for participating in the NFIP. The ordinance offers above-minimum standards that will decrease insurance premiums on flood insurance policies and will decrease the amount of properties for which flood insurance will be required. Both of these outcomes impact Supervisor Fletcher's company. First, he (and his agents) will receive less commission on insurance premiums because the premiums are lower. Second, if the ordinance passes, it will decrease the total amount of policies sold. Based on the factors in Regulation 18701(b), the reasonably foreseeability test is met.

Materiality

The financial effect of a governmental decision is material "if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of a privately-held business entity." (Regulation 18702.1(b), copy enclosed.) Examples of such impacts include a decision to authorize, prohibit, regulate, or otherwise establish conditions for an activity in which the business is engaged and a decision to increase or decrease the need for the products or services that the business entity supplies. (Regulation 18702.1(b)(1) and (b)(3).)

The governmental decision here will accomplish both. The decision whether to adopt the ordinance that will establish standards for flood control will "establish conditions for an activity in which the business is engaged" by impacting flood insurance premiums and changing geographical parameters for mandatory flood insurance. The decision could also decrease the overall amount of flood insurance policies required in the county, thereby decreasing the amount of insurance policies that Supervisor Fletcher's company might sell.

The facts do not suggest that either Supervisor Fletcher's participation is legally required (see Regulation 18705) or that the public generally exception might apply (Regulation 18703, copy enclosed).[2] Therefore, we do not address these exceptions.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/
By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl

Enclosure

[2] The Commission adopted Regulation 18703 at its April 16, 2015 hearing. By Commission policy, we now apply the regulation in our advice.