



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 1, 2015

Stephen P. Deitsch
Indian Wells City of Attorney
Best Best & Krieger
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

Re: Your Request for Informal Assistance
Our File No. I-15-107

Dear Mr. Deitsch:

This letter responds to your request for advice on behalf of Indian Wells Councilman Douglas Hanson regarding his duties under the conflict of interest provisions of the Political Reform Act (the "Act").¹ Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as the finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your questions are general in nature and not limited to specific governmental decisions, we are treating your request as one for informal assistance.²

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 or Section 1090.

QUESTION

May Councilmember Hansen take part in various decisions related to a city contract for the management of the city's golf course in light of his joint-ownership of a café with the general manager of the golf course?

CONCLUSION

Councilmember Hanson does not have a potentially disqualifying interest in the general manager of the Golf Course or the manager's private employer resulting from his separate business relationship with the general manager. Barring a reasonably foreseeable material effect on an

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

interest as enumerated in Section 87103, the Act does not prohibit Councilmember Hanson from taking part in the decisions you have identified notwithstanding any potential effect on the general manager or the manager's private employer.

FACTS

The City of Indian Wells (the "City") owns the Golf Resort at Indian Wells, which consists of two golf courses, a driving range, clubhouse complex, golf shop, maintenance facility and Callaway Golf Center (the "Golf Resort"). The City contracts with Troon Golf, L.L.C. ("Troon") for the management and operation of the Golf Resort. Troon is organized under the laws of Delaware and is headquartered in Arizona. Troon has approximately 15,000 employees and manages golf courses worldwide including other golf courses in Southern California and at least two other courses within the Coachella Valley, where the City is located. The City originally entered the agreement with Troon in 2009 and has since extended the term through fiscal year 2018/2019. The agreement requires the City to pay an annual base fee, in monthly installments, in exchange for Troon's services. The City pays all operating expenses of the Golf Resort.

Councilmember Hanson is a 1/3 owner in a café and wine bar located in the City of La Quinta (the "Café"). The Café is organized as a California Limited Liability Company. There are two other owners of the Café, each of whom also owns an equal 1/3 interest. All three owners share equally in managing the affairs of the LLC and each has an equal vote. The Café has a fair market value in excess of \$100,000 but less than \$1,000,000. One of the three members lives out of state. The other member is Steve Rosen, an employee of Troon Golf who manages the Golf Resort.

Under the City's agreement with Troon, Troon has the duty to "recruit, hire, train, discharge, promote and supervise" the general manager. Mr. Rosen is not a party to the agreement, nor is he named in the agreement. However, the City has the right to approve in advance any individual hired, and Troon may not change the general manager without the City's consent, except in certain circumstances. The City does not have a right to "re-approve" the general manager each year. Already approved, Mr. Rosen has been serving as the general manager for two years.

Compensation paid to the general manager by Troon Golf, is considered a "Golf Resort Expense." Troon must submit an "Annual Plan" containing an operating budget for the Golf Resort for the year. The Annual Plan must contain an estimate of all Golf Resort Expenses, and Troon cannot exceed the estimated Golf Resort Expenses without prior written consent of the City. The City's Finance Director must approve any changes to line items in the operating budget. The Annual Plan is approved each year by the City Council after a public hearing.

As the general manager, Mr. Rosen is responsible for preparing the operating budget within the Annual Plan. However, Mr. Rosen does not determine his own compensation nor does the City. Mr. Rosen's compensation is set by Troon Golf and is noted as a line item expense in the operating budget. The City has no authority to determine or set Mr. Rosen's compensation. Mr. Rosen is an employee of Troon, and his employment and compensation are not dependent upon the agreement with the City. The City has no reason to believe Mr. Rosen would lose his employment with Troon if the City did not reach subsequent agreements with Troon. The city understands that it is a common practice for Troon to transfer executive golf course employees to different resorts from

time to time, and that, if Mr. Rosen did not work at the Golf Resort, he may be reassigned to a different golf course in the same general location.

To effectuate the City's agreement with Troon and any subsequent agreements with Troon, the City anticipates the following governmental decisions:

- Annual Plan- As noted above, Troon submits the Annual Plan to the City Council each year for approval. In approving the Annual Plan, the City Council will be approving the estimated expenditures, which include Mr. Rosen's compensation. The City Council will not be approving Mr. Rosen's compensation (which is already set by Troon) but will be approving the total amount of expenditures. Any deviation from the approved amount must have the consent of the Council.
- Annual Budget - The City adopts a budget each fiscal year. The budget is presented by the City Manager. Troon and its employees have no participation in its preparation. The budget includes amounts appropriated for the Golf Resort expenses for the fiscal year. The amounts appropriated for Golf Resort expenses are based on the already-approved Annual Plan.
- Contract Amendments - The City's contract with Troon has been amended from time to time. The City has extended the term on previous occasions and may do so again. The City has also revised the amount of the fee and the method of determining the fee that Troon receives as compensation. It is possible the contract may be adjusted in the future.
- Golf Resort Services - The City regularly makes decisions related to the nature of services provided at the golf resort. For example, the City may choose to make capital improvements to the Golf Resort, such as redesigning holes, improving the club house, etc. The City may also expand services by offering different training tools, lessons, etc. These decisions impact the Golf Resort but have no bearing on the general manager's compensation.
- Finance Committee - Councilmember Hanson serves as one of two City Councilmembers on the Finance Committee, a standing committee that meets with the Finance Director to discuss the financial affairs of the City. The Finance Committee reports to the full Council but does not take action. It considers the City's financial affairs, including revenues and expenses related to the Golf Course and the City's budget, the Committee has no authority to make recommendations as to the compensation of the general manager of the Golf Resort.
- Golf Resort Advisory Committee - Councilmember Hanson serves as an ex officio member of the Golf Resort Advisory Committee. Mr. Rosen serves as a voting member of the Committee. The City Council Resolution establishing the Committee requires that the general manager of the Golf Resort serve as a member of the Committee. The Committee's primary responsibility is to make recommendations to the City Council as to the Golf Resort and its service levels, facility maintenance and operation, marketing, finance, and quality of guests' experiences. The Committee does not make recommendations as to the general manager's compensation. As an ex officio member, Councilmember Hanson's role is to facilitate communication between the City Council and the Committee. Ex officio members

have no voting privileges or other rights with respect to Committee business and are required to be “sensitive” to the fact that they are not voting members.

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. (Section 87103.) A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official’s interests is material. Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Interests from which a conflict of interest may arise are defined in Section 87103 and include the following:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in a source of gifts to the official if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- An interest in the official’s personal finances, including those of the official’s immediate family. This is known as the “personal financial effects” rule. (Section 87103.)

While Councilmember Hanson has interests in the Café as a business entity and source of income, and potential interest in customers of the Café, these interests do not appear to be implicated by the decisions you have identified. Accordingly, the pertinent question is whether Councilmember Hanson has an interest in Mr. Rosen or Troon resulting from his business relationship with Mr. Rosen.

As previously determined by the Commission, an official may have an economic interest in a business partner resulting from their business relationship only when the partner has a controlling interest in the business. In the opinion, *In re Nord* (1983) 8 FPPC Ops. 6, the Commission addressed the question of an official’s interest in a business partner and concluded that an investment by a limited partner in a partnership constituted an investment interest in each controlling general partner of the partnership. In reaching this conclusion, the Commission reasoned that when a limited partner invests money in a partnership, the limited partner is actually investing in the entrepreneurial skills of the general partner who ordinarily has the sole discretion and authority to manage the investment. The Commission further noted that the same investment concept would apply to two general partners in a regular partnership or in a limited partnership so long as the requisite level of investment existed. However, the *Nord* opinion has not been applied to

regular partnerships with more than two general partners where no single partner holds a controlling position or acts as a managing partner. (*Parham* Advice Letter, No. I-09-164.)

In this case, the Café is owned by three partners each with a 1/3 ownership interest. Because Mr. Rosen does not have a controlling ownership interest in the Café, Councilmember Hanson does not have a potentially disqualifying interest in Mr. Rosen or Troon resulting from his business relationship with Mr. Rosen. Barring a reasonably foreseeable material effect on an interest as enumerated in Section 87103, the Act does not prohibit Councilmember Hanson from taking part in the decisions you have identified notwithstanding any potential effect on Mr. Rosen and Troon.³

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Brian G. Lau
Senior Counsel, Legal Division

BGL:jgl

³ We note that this conclusion is limited to the facts provided. To the extent that Councilmember Hansen has received income from Mr. Rosen other than his pro rata share of the Café's income as a 1/3 owner, Councilmember Hansen may have a potentially disqualifying interest in Mr. Rosen as a source of income. Furthermore, if Mr. Rosen is the source of any gift to Councilmember Hanson, including an investment in the Café by Mr. Rosen exceeding his 1/3 share in the Café or a payment by Mr. Rosen of the Café's shared expenses exceeding his pro rata share of the expenses, Councilmember Rosen may have a potentially disqualifying interest in Mr. Rosen as a source of gift.