STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

September 15, 2015

Commissioner Craig Geyer
Santa Barbara LAFCO
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101

Re: Your Request for Advice
Our File No. A-15-132

Dear Mr. Geyer:

This letter responds to your request for advice regarding 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.)

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

As a commissioner on the Santa Barbara County Local Agency Formation Commission ("LAFCO"), do the Act's conflict of interest provisions prohibit you from participating in LAFCO decisions required under AB 3 concerning the proposed formation of the Isla Vista Community Services District ("CSD") where you own real property?[2]

CONCLUSION

You have a disqualifying conflict of interest under the Act prohibiting you from participating in the LAFCO recommendation concerning the proposed formation of the Isla Vista CSD. The public generally exception applies, however, to allow your participation in the LAFCO decision concerning the appropriate rate of taxation for a utility user tax.

---

[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] We limit the scope of this letter to the specific governmental decisions required under AB 3 in your position as a LAFCO commissioner. If the voters ultimately pass AB 3, you should request advice for specific governmental decisions that may affect your interests as they arise.

FACTS[3]

You are a commissioner on the Santa Barbara County Local Agency Formation Commission ("LAFCO") whose jurisdiction is coterminous with the boundaries of the County. You are also a District Board member of the Goleta West Sanitary District whose jurisdiction is limited to an unincorporated area of the County.

Pending Assembly Bill 3 ("AB 3") would result in a local ballot measure for voters to determine whether to form the Isla Vista CSD and the imposition of a utility user tax. As amended in the Senate on September 4, 2015, AB 3 provides, in pertinent part:

> (b)(1) On or before January 5, 2016, the Board of Supervisors of the County of Santa Barbara shall file a resolution of application with the Santa Barbara County Local Agency Formation Commission, pursuant to subdivision (a) of Section 56654, to initiate a comprehensive review and recommendation of the formation of the district by the Santa Barbara County Local Agency Formation Commission. The board of supervisors shall pay any fees associated with the resolution of application.
> (2) The Santa Barbara County Local Agency Formation Commission shall complete the review no later than 150 days following receipt of the completed resolution of application. Notwithstanding any other law, the Santa Barbara County Local Agency Formation Commission shall not have the power to disapprove the resolution of application.
> (3) Notwithstanding any other law, the resolution of application filed by the board of supervisors pursuant to this subdivision shall not be subject to any protest proceedings.
> (c)(1) The Santa Barbara County Local Agency Formation Commission shall order the formation of the district subject to a vote of the registered voters residing within the boundaries of the district, as those boundaries are set forth in subdivision (f), at an election following the completion of the review pursuant to subdivision (b). If a majority of voters within the boundaries of the district, as specified in subdivision (f), vote in favor of the district, the district shall be formed in accordance with this part.
> (2)(A) The Santa Barbara Local Agency Formation Commission shall determine the appropriate rate of taxation for a utility user tax, applicable utilities to be taxed, and which services the district will be initially authorized to provide, pursuant to subdivision (d) and paragraph (5) of subdivision (g). The rate shall be no lower than 5 percent and no higher than 8 percent of the total cost of an individual's service charge for the utility being taxed.
> (B) The utility user tax shall only be applied to electricity, garbage disposal, gas, sewage, or water services.

[3] AB 3 passed through the Senate on September 11, 2015, and was last amended on September 9, 2015. Our facts reflect the latest amendements. (See http://leginfo.legislature.ca.gov.)

In sum, the "bill would authorize the establishment of the Isla Vista Community Services District by requiring the Board of Supervisors of the County of Santa Barbara to submit a resolution of application to the Santa Barbara County Local Agency Formation Commission, and, upon direction by the commission, place the questions of whether the district should be established and whether a utility user tax should be imposed on the ballot at the next countywide election following the completion of the review by the commission." (AB 3, Legislative Counsel's Digest.)

The proposed Isla Vista CSD would have a population of approximately 15,000 residents. You own real property within the boundaries of the proposed CSD. Your real property includes 10 one-bedroom and 10 two-bedroom apartments. The Goleta West Sanitary District's jurisdiction includes approximately 35,540 individuals.

ANALYSIS

Section 87100 prohibits public officials from participating in governmental decisions in which they have a financial interest. Section 87103 provides that a public official has a financial interest in a decision 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 any of the following:

> (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, except gifts or loans by a commercial lending institution made 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 or promised to, received by, 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 [$460] 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. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

You have an interest in your real property (Section 87103(b)), an interest in your rental business (Section 87103(a) and (d)) and an interest in any tenant as a source of income from whom you received at least $500.00 within 12 months prior to the decision (Section 87103(c)).

Foreseeability and Materiality

The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. Under Regulation 18701(a), an interest is explicitly involved in a decision, and presumed to be reasonably foreseeable, when it involves "any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6)," which determines whether the reasonably foreseeable financial effect on real property is material. Relevant to the current matter, Regulation 18702.2(a)(2) provides the financial effect on real property is material whenever the decision "determines the parcel's . . . inclusion in or exclusion from any city, county, district . . .."

Here, AB 3 requires that the Santa Barbara County LAFCO provide a review and recommendation on the formation of a proposed CSD within the County. Because you own rental properties that would be included within the proposed CSD, your real property interest would be explicitly involved in the decision pursuant to Regulation 18701(a).[4] Accordingly, the LAFCO decision will have a reasonably foreseeable material financial effect on your real property.[5] Unless an exception applies, the Act requires that you recuse yourself from participating in these decisions.

Public Generally

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 conflict of interest may arise only when it is reasonably foreseeable that the decision will have a material financial effect on the official or his or her immediate family "distinguishable from its effect on the public generally." (Section 87103.)

Regulation 18703 states the financial effect is indistinguishable if "a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment." With respect to real property, a "significant segment of the public" consists of at least 25% of all real property, commercial real property, or residential real property within the official's jurisdiction (Regulation 18703(b)(2)), and a "unique effect" includes a disproportionate effect on, among other things:

> (3) An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in

[4] We recognize that in instances where the official's interest is *not* explicitly involved in a decision, Regulation 18701(b) provides that the determination of a reasonably foreseeable financial effect depends on whether such effect is contingent upon intervening events . . . .." Here, regardless of what decision LAFCO makes concerning its review and recommendation, actual approval of the proposed CSD is contingent on the outcome of the election. Despite the presence of this intervening event, we have advised in a similar situation that "despite the fact that the decisions of LAFCO must be reviewed and approved by the Napa County Board of Supervisors and then submitted to the voters for approval, LAFCO Commissioners are still influencing the final decision on the matter." (*Zaltsman* Advice Letter, No. A-90-150.)

[5] Because we conclude you have a conflict of interest based on your property, we do not analyze your other interests.

> similar entities or properties that is substantially greater than the effect on a single interest.
>
> (4) An official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

(Regulation 18703(c)(3)-(4).) Finally, the relevant jurisdiction is the entire County because LAFCO's jurisdiction is coterminous with the boundaries of the County. (See Regulation 18703(d).)

You have not provided specific facts about the number of real properties in any of the relevant jurisdictions. Your facts state, however, that the population of the proposed Isla Vista CSD is approximately 15,000 residents. The estimated population of Santa Barbara County, which is coterminous with LAFCO's jurisdiction, is 440,668 residents.[6] Based on this fact, the 25% threshold would not appear to be satisfied. In addition, you own 10 1-bedroom apartments and 10 2-bedroom residential apartments. Even assuming the significant segment prong were satisfied, AB 3 would likely have a disproportionate effect on your real property holdings when looking to the cumulative effect on your multiple apartment units.

Accordingly, you may not participate in the LAFCO decision concerning whether the proposed Isla Vista CSD should be established.

However, that does not end our analysis because under AB 3, LAFCO is required to determine the appropriate rate of taxation for a utility user tax. (See proposed Section 61250(b)(C)(2)(A).) And under the public generally exception, the financial effect on a public official's economic interest is indistinguishable from the effect on the public generally, if the official can establish:

> (1) Public Services and Utilities. The decision establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate.

As mentioned, AB 3 requires that LAFCO determine the appropriate rate of taxation for a utility user tax and the applicable utilities to be taxed for all properties in the Isla Vista CSD. The utility user tax would only be applied to electricity, garbage disposal, gas, sewage, or water services. Because this decision by LAFCO concerns the establishment of taxes or "rates for water, utility, or other broadly provided public services" that will be applied proportionally to all properties, including yours, in the new Isla Vista CSD, the exception would apply.

---

[6] (See http://quickfacts.census.gov/qfd/states/06/06083.html.)

Accordingly, you may participate in the LAFCO decision concerning the appropriate rate of taxation for a utility user tax.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Jack Woodside
Senior Counsel, Legal Division

JW:jgl