



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

March 8, 2016

Brian A. Pierik
Burke Williams & Sorensen, LLP
2310 East Ponderosa Drive, Suite 25
Camarillo, CA 93010-4747

Re: Your Request for Advice
Our File No. A-16-016

Dear Mr. Pierik:

This letter responds to your request for advice on behalf of Thomas O'Malley, the mayor of the City of Atascadero, regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ 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. Moreover, this letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. May Mayor O'Malley appoint himself to the Visit San Luis Obispo County Advisory Committee (the "Advisory Committee") which advises the San Luis Obispo County Tourism Marketing District (the "District")?
2. May Mayor O'Malley serve on the District's Board?

CONCLUSIONS

1. Yes. Mayor O'Malley does not have a financial interest in the appointment decision.
2. Yes. A position on the District's Board does not, in and of itself, create a potentially disqualifying conflict of interest under the Act.

Notwithstanding the conclusions that the Act does not prohibit Mayor O'Malley from appointing himself to the Advisory Committee or serving on the District Board, we strongly caution that the Mayor may be disqualified from taking part in many, if not most, of the decisions before

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.

the Advisory Committee or District Board considering his interest in his business and the nature of the committee and board because actions taken as a member of the advisory committee or board would likely be using his official position to influence a governmental decision. If Mayor O'Malley serves on either the committee or the board, he will need to determine whether each decision before the committee or board will have a foreseeable and material effect on his interests including his interest in his business prior to taking part in the decision. If in the future Mayor O'Malley needs further assistance determining whether he is disqualified from any particular decision, he may wish to seek additional advice to determine whether the decision may affect a financial interest recognized under the Act.

FACTS

Mayor O'Malley, who serves as a member of the Atascadero City Council, and his wife own a business called "Portola." The business operates a bed-and-breakfast establishment and also provides event-planning services in Atascadero.

The "District" is an assessment district that provides benefits to lodging businesses throughout the County by engaging in joint marketing, advertising, sales and promotional efforts. The purpose of the District is to increase room night sales and revenue. The District imposes on each lodging business an assessment equal to one percent of the gross short-term stays room rental revenue for a period of five years from 2015 to 2019. Mayor O'Malley's bed-and-breakfast business is subject to this assessment.

The Advisory Committee was formed to make recommendations to the District. Members of the Advisory Committee are not paid for their service. As a city council member, Mayor O'Malley has the authority to make appointments to the Advisory Committee.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his or her financial interests. (Regulation 18700(a).) As a city council member, Mayor O'Malley is a public official under the Act. (Sections 87200 and 82048.)

Interests from which conflicts of interests may arise are defined in Section 87103 as follows:

- 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 economic 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.)

Question 1. Decision to appoint himself to the Advisory Board.

Generally, a public official may appoint members to a board or commission so long as the official has no financial interest in the appointment decision.

Mayor O'Malley's personal finances (personal expenses, income, assets, or liabilities, as well as those of his immediate family, Section 87103; Regulation 18703.5) may be implicated in a decision to appoint himself to the Advisory Board. However, you have indicated that members of the Advisory Board do not receive any compensation for their service. Therefore, a decision to appoint himself will have no effect on Mayor O'Malley's personal finances, and he is not prohibited from making the decision.

Question 2. Serving on the Board of the County Tourism Marketing District.

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a *governmental decision* in which the official has a financial interest and only those interests identified in Section 87103, above, are potentially disqualifying. In itself, holding two offices simultaneously with the city council and the District does not create a potentially disqualifying conflict of interest under the Act.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl