



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 11, 2020

William Dillon  
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Re: Your Request for Advice  
**Our File No. A-20-049**

Dear Mr. Dillon:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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.

Also note that 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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Under the Act, may Santa Barbara Local Agency Formation Commission member Craig Geyer take part in a municipal service review of the Isla Vista Community Services District and determine which of the District’s authorized powers are being exercised (or should be deemed latent), given that Commissioner Geyer owns multiple rental properties within the District?

### CONCLUSION

Yes, the Act does not prohibit Commissioner Geyer from taking part in the Commission determinations regarding the powers exercised by the Community Services District, as those decisions would not have any reasonably foreseeable, material financial effect on Commissioner Geyer’s economic interests.

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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.

## FACTS AS PRESENTED BY REQUESTER

Craig Geyer is a member of the Santa Barbara Local Agency Formation Commission (“LAFCO”). In *Geyer* Advice Letter, No. A-15-132, we advised that Commissioner Geyer was prohibited from taking part in a governmental decision involving the formation of the Isla Vista Community Services District (“CSD”), given that the decision would have a reasonably foreseeable, material financial effect on his economic interests—10 one-bedroom and 10 two-bedroom apartment rental properties located within the proposed district.

The formation of the CSD was subsequently approved by LAFCO Resolution No. 16-10 on April 7, 2016. LAFCO authorized all nine powers (including taxation) sought by the petitioners. Because the CSD’s source of funding was uncertain at the time, LAFCO was uncertain as to whether the newly formed CSD would be able to provide all services approved. Therefore, LAFCO imposed Condition 11, requiring a municipal service review one year after passage of the CSD-funding tax in order to determine “what powers are being exercised by the District and what powers are not exercised. Any powers not being exercised by the District as determined by [LAFCO] shall become latent powers.” After a power has been deemed “latent,” it may not be activated without subsequent LAFCO approval. The CSD’s authorized powers include:

- Financing the operations of municipal advisory councils formed pursuant to Section 31010;
- Creating a tenant mediation program;
- Financing the operations of area planning commissions formed pursuant to Section 65101;
- Exercising the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code);
- Contracting with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services to supplement the level of police protection services already provided by either the County or Regents within the area of the District;
- Acquiring, constructing, improving, and maintaining sidewalks, lighting, gutters, and trees to supplement the level of service already provided by the County of Santa Barbara or County Service Area 31;
- Abating graffiti; and
- Levying a utility user tax.

In a follow-up email, you clarified that LAFCO has no budgetary control or appointment powers over the CSD. Additionally, according to the 2019-2020 CSD Budget, which you provided a copy of, the utility user tax has been fully implemented and is being collected, with projected revenue of approximately \$851,000 for the 2019-2020 fiscal year.

## ANALYSIS

Section 87100 of the Act provides, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Section 87103 further specifies that “[a] public official has a financial interest in a decision within the meaning of Section 87100 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 certain enumerated economic interests, including:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any source of income aggregating five hundred dollars (\$500) or more in value provided, promised to, or received by the public official within 12 months prior to the time when the decision is made.

Trustee Geyer has economic interests in his apartments as a business entity, as real property, and as a source of income. He may also have source of income interest in his tenants.

Generally, a financial effect is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).) Unlike *Geyer* Advice Letter No. A-15-132, which involved decisions pertaining to the creation of the CSD and would have determined whether Commissioner Geyer's real property interests were included within the boundaries of the CSD (Regulation 18702.2(a)(2)), none of the provisions of Regulation 18702.2(a)(1)-(6) are implicated by the governmental decisions at issue here.<sup>2</sup>

Based on the decisions at issue, Commissioner Geyer's economic interests are not explicitly involved in any of the decisions before LAFCO. Regulation 18701(b) provides the standard for determining whether a financial effect on a public official's economic interest is reasonably foreseeable where the economic interest is not explicitly involved. Under that 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.” The standard further instructs that in determining whether a financial effect is reasonably foreseeable, certain factors should be considered, including “[t]he extent to which the occurrence of a financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.” (Regulation 18701(b)(1).)

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<sup>2</sup> We note that Regulation 18702.2(a)(3) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision “[w]ould impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel.” However, you have stated the tax has already been implemented and collected. Thus, there is no indication that the decision regarding “latent” powers would impose, repeal, or modify the tax based on the facts presented.

Based on the facts provided, the CSD has already implemented and begun collecting the utility user tax, accordingly the tax is not at issue when the LAFCO considers the CSD's exercised powers. In regard to the remaining governmental decisions, it is not reasonably foreseeable that the decisions before LAFCO would have a financial effect on Commissioner Geyer's economic interests. The decisions require LAFCO to review and determine which of the CSD's authorized powers are being exercised. The decisions would potentially affect the CSD's ability to exercise a given authorized power, should it choose to do so at some point in the future, but would not have any direct financial effect on Commissioner Geyer's economic interests and would not change the status quo. A determination by LAFCO that a power is not being exercised would not inherently prohibit the CSD from exercising an authorized power in the future. Rather, the CSD could seek subsequent approval from LAFCO for activation of a latent power. Moreover, a decision that a power is already being exercised will not result in any incremental effect on the councilmember's interest. Any implementation decision that may affect Commissioner Geyer's economic interest has already been made by the CSD or will require further action by the CSD.

Based on the facts provided and the above analysis, the Act does not prohibit Commissioner Geyer from taking part in LAFCO's determinations as to which of the CSD's authorized powers have been exercised and which will be deemed "latent." However, we caution that this advice is based only on the present facts and circumstances. This letter should not be interpreted as necessarily advising that Commissioner Geyer may also take part in a decision concerning a subsequent application by the CSD for LAFCO's activation of a latent power. In such a scenario, where the CSD is actively attempting to exercise an authorized, but latent power, but cannot do so without LAFCO activating the power, the facts and circumstances may be such that the decision before LAFCO *would* have a reasonably foreseeable, material financial effect on Commissioner Geyer's economic interests. Under such circumstances, Commissioner Geyer should seek additional advice regarding potential conflicts of interest.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Kevin Cornwall*  
By: Kevin Cornwall  
Counsel, Legal Division

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