



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 13, 2020

Heather L. Stroud
City Attorney
City of South Lake Tahoe
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Re: Your Request for Advice
Our File No. A-20-081

Dear Ms. Stroud:

This letter responds to your request for advice on behalf of City of South Lake Tahoe Councilmember Devin Middlebrook 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.

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

Would Councilmember Middlebrook’s employment with the Tahoe Regional Planning Agency (“TRPA”), a bi-state governmental agency, give rise to a disqualifying financial interest in the City Council’s forthcoming adoption of the City of South Lake Tahoe’s Climate Action Plan?

CONCLUSION

No. Under the Act, Councilmember Middlebrook does not have a conflict of interest in the proposed Climate Action Plan and may participate in decisions concerning its adoption.

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.

FACTS AS PRESENTED BY REQUESTER

The Climate Action Plan

The City is in the process of developing its first Climate Action Plan. The Climate Action Plan will serve as a long-term plan to reduce greenhouse gas emissions from community activities as well as prepare for the impacts of climate change. The Climate Action Plan will include strategies for reducing greenhouse gas emissions from various community activities organized into sectors, which include transportation, energy, land use, carbon sequestration, water, and solid waste. Many of the greenhouse gas reduction strategies will require coordination with TRPA. TRPA is listed as a stakeholder agency for 34 of the 84 greenhouse gas reduction strategies. These strategies include goals for collaboration with regional transportation agencies, promoting carpooling and biking, promoting energy efficiency, reducing natural gas consumption, and encouraging high density and mixed-use neighborhoods. The Climate Action Plan is intended to be brought to City Council for approval in Fall 2020.

Councilmember Middlebrook's Role at the TRPA

The TRPA is a bi-state regional environmental planning agency created in 1969 by a Bi-State Compact between California and Nevada, which was ratified by the U.S. Congress. The TRPA is charged with regional planning and development oversight, regulatory enforcement, and implementation of environmental protection and restoration programs in the Lake Tahoe basin, which includes the City of South Lake Tahoe. The Compact, as revised in 1980, gave TRPA authority to adopt environmental quality standards, called thresholds, and to enforce ordinances designed to achieve the thresholds. The TRPA Governing Board adopted the thresholds in 1982. In 2013, California and Nevada passed legislation to update the Bi-State Compact.²

Councilmember Middlebrook has worked for the TRPA since 2014, first as an environmental education specialist from 2014-2016, and he currently serves as TRPA's Sustainability Program Manager. Councilmember Middlebrook is in the Long Range and Transportation Planning Division. His duties include managing the Tahoe Sustainable Communities Program, which addresses climate change adaptation and mitigation. He works on projects including electric vehicle charging stations, sustainable recreation, and promoting renewable energy. As the Sustainability Program Manager, he would be the lead employee at TRPA in coordinating with the City on its Climate Action Plan.

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 public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a)).

² <https://www.trpa.org/about-trpa/>

Pertinent to these facts, Section 87103 defines financial interests to include:

- Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 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. (Section 87103(c).)
- Any business entity³ in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- A public official has an economic interest in his or her personal finances, including those of his or her immediate family (Section 87103.)

Under the Act, “income” does not include “[s]alary and reimbursement ... or similar benefit payments received from a state, local, or federal government agency.” (Section 82030(b)(2).)

You note that the TRPA is a bi-state regional environmental planning agency created in 1969 by a Bi-State Compact between California and Nevada, which was ratified by the U.S. Congress. The TRPA is therefore a governmental agency. Thus, salary received by Councilmember Middlebrook from the TRPA does not qualify as income under the Act and the Councilmember does not have an interest in the TRPA as a source of income. Additionally, Councilmember Middlebrook does not have a business entity interest in the TRPA, due to its status as a public agency that does not operate for profit.

However, a personal financial effect on government salary may still be disqualifying as an effect on personal finances. Because this is the only interest that may be affected by the governmental decision, our analysis continues with respect to the personal financial effects of the decision.

Foreseeability

A financial effect on a public official’s economic interest is reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. (Regulation 18701(a).) An economic 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 economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

Where a public official’s economic interest is not explicitly involved in the decision, a different standard for determining the reasonable foreseeability of a financial effect is applicable. Under Regulation 18701(b), “[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

³ Section 82005 defines a “business entity” as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association

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) also provides factors that should be considered in determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest not explicitly involved in a decision. Among those factors, under Regulation 18701(b)(1), is "[t]he extent to which the occurrence of the 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."

Here, it is not reasonably foreseeable that the City's consideration and adoption of the proposed Climate Action Plan, which sets long-term goals to reduce greenhouse gas emissions from community activities, would have an effect on Councilmember Middlebrook's personal finances. Based on the facts provided, there is no indication that the City's Climate Action Plan may affect Councilmember Middlebrook's personal finances, including government salary received from the TRPA, which operates as a bi-state regional environmental planning agency. Accordingly, Councilmember Middlebrook does not have a financial interest in the proposed Climate Action Plan under the Act.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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