



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 6, 2020

Seth Steiner  
Santa Barbara County  
PO Box 396  
Los Alamos, CA 93440

Re: Your Request for Advice  
**Our File No. A-20-108**

Dear Mr. Steiner:

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

As a member of the Los Alamos Planning Advisory Committee (“LAPAC”), does the Act require you to recuse yourself from a decision concerning a proposal to develop a vacant parcel of land located within 500 feet of your residence?

### CONCLUSION

If the LAPAC is purely advisory, the members would not be “public officials” as defined by the Act. Consequently, the members are not subject to the disclosure and disqualification requirements of the Act. However, we note that we are not making a determination of whether LAPAC is purely advisory and do not have the necessary information to make this determination at this time. This conclusion is based on the premise that the county has correctly determined that the LAPAC is advisory.

### FACTS AS PRESENTED BY REQUESTER

You are a resident of Los Alamos, an unincorporated town in Santa Barbara County with a population of about 1,500. Appointed by your county supervisor, you are one of seven members of

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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.

the Los Alamos Planning Advisory Committee (“LAPAC”). The LAPAC serves as an advisory body for the County and receives community input and provides recommendations on the Los Alamos Community Plan and Bell Street Design Guidelines.

The LAPAC will be convening over a proposal to develop, with dwelling units, a 1.5-acre lot on Main Street. One of the issues is traffic which will largely depend on the access road chosen for the new homes. The developer has proposed Shaw Street, on the opposite side, as the sole access for ingress/egress to the lot. You and your wife reside on Shaw street, and your residence is located within 500 feet of the southern end of the subject parcel.

### 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 interests or the 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 an interest.

In furtherance of this prohibition, the Act requires every state and local government agency to adopt a conflict of interest code. (Section 87300.) A conflict of interest code enumerates the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial interest. (Section 87302(a).) A “designated employee” includes any “officer, employee, member, or consultant” of an agency whose position involves making or participating in making decisions which may have a foreseeable material effect on any financial interest. (Section 82019(a)(3).) A “designated employee” does not include an unsalaried member of any board or commission that serves a solely advisory function. (Section 82019(b)(1).)

Section 82048 defines “public official” as every member, officer, employee or consultant of a state or local government agency. For the purpose of further defining “public official,” Regulation 18700(c)(2) defines “member” as follows:

“(2) “Member” does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.

“(A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:

“(i) It may make a final governmental decision;

“(ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

“(iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without

significant amendment or modification by another public official or governmental agency.

“(B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).”

You state that the County has determined that the members of the LAPAC are not members of a decisionmaking board or commission. Because the County has determined that members of the LAPAC do not have decision making authority and therefore are not included in the County’s conflict of interest code, its members are not currently considered public officials under the Act. So long as the County correctly determined the position need not be designated then the conflict of interest provisions do not apply. Therefore, they are not covered by the Act’s conflict-of-interest disqualification provisions.

### **Local Rules**

A government agency, however, is not prohibited from adopting requirements which go beyond those contained in the Act, so long as it does so under its own authority and so long as those requirements do not prevent a person from complying with the Act. (Section 81013; *In re Alperin* (1977) 3 FPPC Ops. 77.) Thus, the Act does not prevent the County from adopting its own requirements regarding commissions and committees if the County does not base those requirements on the Act or any conflict-of-interest code adopted pursuant to the Act. As we do not offer advice beyond the confines of the Act, we must refer you to your agency’s counsel and statement of incompatible activities to ensure that your activities do not violate conflict-of-interest laws outside the Act or are otherwise incompatible with your responsibilities to the agency.

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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