



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 13, 2020

Christopher J. Diaz  
BEST BEST & KRIEGER LLP  
City Attorney  
Town of Hillsborough  
2001 N. Main Street, Suite 390  
Walnut Creek, CA 94596

Re: Your Request for Informal Assistance  
**Our File No. I-20-056**

Dear Mr. Diaz:

This letter responds to your request for advice on behalf of the Town of Hillsborough (“the Town”) 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 Statement of Economic Interest reporting provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Because your inquiry is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

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

You have asked for general clarification of an official’s duty to determine whether an interest in a business entity is a reportable interest under the Act, including whether an official should assume large scale providers, such as Fortune 500 companies, do business in the jurisdiction and whether an official has a duty to send a written inquiry to the company.

### CONCLUSION

The Act requires an official to use “reasonable diligence” when reporting sources of income. If an official has reason to believe a business entity is doing business in the jurisdiction, the official

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

should report that investment. Otherwise, the determination of reasonable diligence will depend on the nature of the interests and other facts specific to the situation. If an official needs assistance determining whether to report any particular interest, the official should seek further advice identifying the company, describing any activity the official knows or has reason to know occurs within the jurisdiction, and all efforts made to ascertain whether the business has activity with within the jurisdiction.

### **FACTS AS PRESENTED BY REQUESTER**

Your firm serves as City Attorney to the Town. As previously noted in the *Diaz* Advice Letter (I-19-210), the Town does not have commercial zoning or places of business; it is strictly a residential community consisting of single-family homes, four public schools, two private schools, and two private clubs. The Town is governed by a City Council, which is assisted in carrying out its governance functions by about twenty resident volunteers, who sit on various boards and committees. The Town has enacted a conflict of interest code requiring certain public officials and employees in designated positions to report their financial interests on a Statement of Economic Interests (Form 700).

### **ANALYSIS**

Officials are required to report both sources of income and investments that are located in or doing business in the jurisdiction of the official's agency. Section 82030 provides that "[i]ncome, other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title." (Section 82030(a).)

Section 82034 defines the term "investment" in relevant part, as "any financial interest ... if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title."

Regulation 18230 defines "doing business in the jurisdiction and provides:

A person is "doing business in the jurisdiction" if that person has business contacts on a regular or substantial basis with a person who maintains a physical presence in the jurisdiction of a public official. "Business contacts" include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. "Business contacts" do not include marketing via the Internet, telephone, television, radio, or printed media.

The Act requires that the Form 700 be "signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete." (Section 81004). Where a Form 700 filer has some basis to suspect that a company has done business within the jurisdiction within the past two years, then he or she has an obligation to inquire further. By signing the verification, the

filer is stating that he or she has used all reasonable diligence in preparation of the statement, and to the best of the filer's knowledge, it is true and complete. Accordingly, the Act requires an official to use "reasonable diligence" to determine if a business is "doing business in the jurisdiction."

As previously stated, in the *Knudson* Advice Letter, No. 99-A-067, what constitutes "reasonable diligence" in any particular factual situation requires an exercise of commonsense judgment. There is no single interpretation which will fit all circumstances. It will depend on:

- The nature of the company in which the official has an investment, and the nature of its products and services;
- What, if any, actual knowledge the official may have which puts him or her on notice that further inquiry is needed;
- What, if any, knowledge the filer should have (based on the general awareness the official should reasonably be expected to have of his or her jurisdiction, employment, and investments) which puts the official on notice that further inquiry is needed.

You have asked whether an official should assume large scale providers are doing business in the jurisdiction and whether an official should send a written inquiry to companies to satisfy the "reasonable diligence" requirement. However, these are not determinations we can make without the regard to the factual circumstances. The actual identity and any information known to the official cannot simply be disregarded when examining a large-scale provider. Moreover, as stated in the *Knudson* Advice Letter, even if the official does not receive a response to an inquiry regarding activity in the jurisdiction, it is impossible for us to say in the abstract whether the official has any further duty to inquire.

Ultimately, the determination of whether an official has satisfied the reasonable diligence standard will depend on the nature of the interests and other facts specific to the situation. If an official needs additional assistance determining whether to report any particular interest, the official should seek further advice identifying the company, describing any activity the official knows or has reason to know occurs within the jurisdiction, and all efforts made to ascertain whether the business has activity within the jurisdiction.

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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