



FAIR POLITICAL PRACTICES COMMISSION

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February 23, 2015

✓ Mr. Mark Buell

[REDACTED]

RE: FPPC No. 13/469; Mark Buell, Phil Ginsburg, Kyri McClellan

Dear Mr. Buell:

The Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”) found in Government Code Section 81000, and following. As you may be aware, the Commission opened an investigation into potential conflicts of interest involving San Francisco public officials and the America’s Cup Organizing Committee. Specifically, we examined a potential conflict of interest surrounding the Memorandum of Understanding between the City and County of San Francisco and the America’s Cup Organizing Committee, executed on August 15, 2012. The Commission has decided to close the case without further action.

The Commission has completed its investigation of the facts in this case. Specifically, the Commission did not find evidence that you had an economic interest in the America’s Cup Organizing Committee, as you held a volunteer position for a short time, and received no compensation. As such, it appears that there was no conflict of interest when you participated in negotiating and signed the Memorandum of Understanding on behalf of the America’s Cup Organizing Committee. No financial interest would be created by serving as an unpaid director of a nonprofit corporation. In addition, you were not found to have failed to disclose the San Francisco Parks Alliance, the Parks Trust, or the America’s Cup Organizing Committee as sources of income on your Statements of Economic Interest, since we found no evidence that you received income from these sources.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a disqualifying conflict of interest. (Section 87100.)

To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official’s economic

interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.¹ (See Regulation 18700.)

Under Section 87100, a conflict of interest exists when you, as a public official, make, participate in making, or attempt to use your official position to influence a governmental decision in which you know or have reason to know you have a "financial interest." You have 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 you, a member of your immediate family, or, among other things, on any source of income aggregating \$500 or more which you received within 12 months of the decision, or hold a business position with a for profit entity. (Section 87103, subdivision (a) and (d).)

We examined a potential conflict of interest, and the America's Cup Organizing Committee and the San Francisco Parks Alliance and the Parks Trust as potential economic interests. No conflict of interest was found, and neither the America's Cup Organizing Committee nor the Parks Trust was a source of income. The investigation found that you were an uncompensated volunteer with the America's Cup Organizing Committee and the Parks Trust. There was no evidence that you held a position with the San Francisco Parks Alliance. The Commission has completed a review of the forgoing allegations and closed this case without finding a violation.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act, so if you need forms or manuals, or guidance regarding your obligations, please call the Commission's Technical Assistance Division at 1-866-275-3772. Please also visit our website at www.fppc.ca.gov.

Sincerely,



Zachary W. Norton
Commission Counsel
Enforcement Division

¹ The additional two steps of the analysis - whether the public generally exception applies and whether the individual is legally required to participate in the governmental decision - are inapplicable to this matter.