



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

April 24, 2012

Greg V. Moser, Esq.  
o/b/o Robert Deutsch, M.D.  
Procopio, Cory, Hargreaves & Savitch LLP

# REDACTED

**Re: Advisory Letter - FPPC No. 11/001, Robert Deutsch**

Dear Mr. Moser:

The Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”)<sup>1</sup>. As you are aware, the Commission received a complaint against your client alleging violations of the conflict of interest provisions of the Act. Specifically, the complaint alleges that your client made governmental decisions that had a reasonably foreseeable material financial effect on a source of income to him while serving as a member of the Board of Directors for the Alameda Health Care District. The Commission has decided to close this case without further action.

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 her official position to influence a governmental decision in which she knows or has reason to know 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. (See Regulation 18700.)

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that on or about June 2, 2008, July 6, 2009, and July 12, 2010: 1) you were a member of the Alameda Health Care District (AHCD) Board of Directors; 2) you voted to approve the

---

<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.

annual AHCD Parcel Tax for fiscal years 2008-2009, 2009-2010, and 2010-2011, respectively; 3) you were the 100% owner of Robert Deutsch, M.D., Inc. (RDMDI), RDMDI was a 33 1/3% owner of East Bay Pulmonary Medical Group (EBPMG), and EBPMG received \$500 or more from AHCD within 12 months of each of the above decisions; 4) AHCD was directly involved in the AHCD Parcel Tax decisions as a named party, and RDMDI and EBPMG were indirectly involved in the Parcel Tax decisions; 5) the financial effect of the decision on AHCD was material, and the financial effect of the decision on RDMDI and EBPMG was not material; and 6) the material financial effect on AHCD was reasonably foreseeable.

However, pursuant to section 87103 and Regulation 18707, notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in a governmental decision if the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally. Specifically relevant to this case, Regulation 18707.1 subdivision (b)(1)(D) states in part:

The governmental decision will affect a "significant segment" of the public generally if ... [f]or decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity.

The evidence obtained during our investigation shows that the Parcel Tax in each of the above decisions was to be levied on every parcel and possessory interest within the AHCD's boundaries in the identical amount for each, exempting parcels or possessory interests with a value of less than \$30,000. Thus, all members of the public under the jurisdiction of AHCD were affected by the Parcel Tax decisions. Because of the exception enumerated in Regulation 18707.1 subdivision (b)(1)(D), the effect of Dr. Deutsch's vote is deemed indistinguishable from that of the public generally. Therefore, we have decided to close this case without further action.

Even though we are closing our file on this matter, please be advised of the conflict of interest provisions of the Act (Sections 87100 and following) in future decisions that you may make as a public official, keeping in mind your economic interests in RDMDI, EBPMG and AHCD. The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act. 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](http://www.fppc.ca.gov). If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

**REDACTED**

Angela J. Brereton  
Senior Commission Counsel  
Enforcement Division