



FAIR POLITICAL PRACTICES COMMISSION

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June 10, 2013

Supervisor Ray Nutting
c/o Rebecca J. Olson
Attorney at Law
Miller & Olson, LLP

REDACTED

Advisory Letter Re: FPCC Case No. 13/290, Ray Nutting

Dear Mr. Nutting:

The Fair Political Practices Commission (the "FPCC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code Section 81000, et seq. As you are aware, the Commission was investigating whether, as a Supervisor for the County of El Dorado, you were in violation of both the Statement of Economic Interests disclosure provisions as well as the conflict of interest prohibitions of the Act with regard to payments you received from the California Forest Improvement Program.

The portion of this case pertaining to the required disclosure of the payments is pending a proposed resolution at the June 2013 Commission meeting. As regards the other aspects of the case, although there is no evidence to find that you violated the Act with respect to conflict of interest, we are issuing this Advisory Letter to guide your future conduct.

You have applied for, and received grant money from the California Forest Improvement Program (CFIP), a reimbursement program for forest improvement and fuel reduction. In order to receive the CFIP grant, a landowner contacts the local California Department of Forestry and Fire Protection (Cal FIRE) Forester to determine eligibility for funding. In 2009, you received \$22,423 for a completed project initiated in 2007. Currently, you have an ongoing CFIP project with a maximum reimbursement of \$49,348 that is redeemable in October of 2013.

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.

CFIP grants are awarded jointly by Cal FIRE and Sierra Coordinated Resources Management Council (SCRMC). SCRMC is a Joint Powers Authority that includes El Dorado County Resource Conservation District and the Georgetown Divide Resource Conservation District, both of which receive partial funding annually from the El Dorado Board of Supervisors. You voted to approve the consent calendars before the El Dorado Board of Supervisors from 2009 – 2012 on which this funding was an item. In addition to voting, you personally signed the annual agreements in 2010 and 2011.

“Income” under the Act is defined in Section 82030(a) as “a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.” (Emphasis added.) Absent an exception, the grant payment falls under the rubric of reimbursement income. Included in the definition of income in Section 82030 is the exception that applies to governmental salary, which is expanded in Regulation 18232 to include any and all payments made by a government agency to a public official as consideration for the public official’s services to the government agency. As a county supervisor, you are a public official. However, you have not provided services to the governmental agencies awarding the grants money in your public official capacity. Nor have you provided services to the agencies awarding the grants; rather, you have received incentivizing payments to manage your property. So, the grant money is income to you under the Act.

For disqualification purposes, Regulation § 18703.3(a)(1) states that

a public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars (\$500) or more within 12 months prior to the time when the relevant governmental decision is made. A public official’s income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income. (Emphasis added.)

From 2009 to the present, with the inclusion of the income promised at the end of the projects, you have had a potentially disqualifying interest in the agencies, both Cal FIRE and SCRMC, from which you have received or been promised the grant money. SCRMC was indirectly involved in the Board of Supervisors’ decisions to partially fund two of its member agencies. A material financial effect on SCRMC from this attenuated decision is not in evidence from the facts of the situation. Nor is there any evidence that funding the two member agencies would have a material financial effect on your personal finances since the funding for the grants you have received and continue to receive comes from Proposition 40’s Resources Bond Act rather from the budgets of the member agencies of SCRMC. However, even without addressing the question of whether or not your vote to approve funding to two members agencies of SCRMC would have a reasonably foreseeable material financial effect on SCRMC, application of the Act’s “public generally” exception demonstrates that there was no conflict of interest involved in your making these decisions.

According to Reg. 18707.1(b)(1)(D), decisions affecting a federal, state or local government entity in which the public official has an economic interest "will affect all members of the public under the jurisdiction of that governmental entity." The comment appended to Regulation 18707.1 explains that the term "affect all members of the public" is intended to cover decisions affecting the public in general but to exclude decisions that uniquely benefit a public official."

Because the decision by the Board of Supervisors to partially fund El Dorado County Resource Conservation District and the Georgetown Divide Resource Conservation District will flow to the public generally and does not uniquely benefit you, the conflict of interest prohibitions of the Act will not apply. We hope that the above explanation of our findings in these matters assists you in future. If you have questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

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Adrienne Korchmaros
Political Reform Consultant
Enforcement Division