



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

July 11, 2014

✓ Anthony Hodge

REDACTED

Re: Advisory Letter
FPPC No. 14/588: Anthony Hodge; Rodeo Municipal Advisory Council Member

Dear Mr. Hodge:

The FPPC enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code Section 81000, et seq. As you may know, the Enforcement Division of the Fair Political Practices Commission (the "FPPC") has received a sworn complaint against you alleging you violated the Act's conflict prohibitions and disclosure provisions. After review of the complaint, the Enforcement Division has decided to close its file on this matter without initiating an enforcement action. The basis for this decision follows.

Section 87300 of the Act requires every state and local agency to develop a Conflict-of-Interest Code. This code must require persons involved in the making, or participating in the making, of decisions which may foreseeably have a material financial effect on any financial interest belonging to that person to disclose reportable interests. The Rodeo Municipal Advisory Council ("RMAC") has developed a Conflict-of-Interest Code enumerating your position. As a designated employee, you are obligated to disclose certain reportable interests by filing the Form 700. According to your disclosure categories you must report 1) all interests in real property located wholly or fully within the boundaries of the Rodeo Community Area in Contra Costa County, and 2) all investments, income, and any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position of management. Financial interests are reportable only if located within the Rodeo Community Area in Contra Costa County, or if the business entity is doing business or planning to do business in the Rodeo Community Area in Contra Costa County (and such plans are known by the designated employee) or has done business within the Rodeo Community Area in Contra Costa County at any time during the two years prior to the filing of the statement.

One of the allegations in the complaint was your failure to disclose income from New Horizons on your Form 700. If New Horizons fell within Disclosure Category 2, then you were required to disclose New Horizons on your Form 700. And, if true, then you must file an amendment(s) to your Form(s) 700 to disclose the amount of income received from New Horizons.

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 18109 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.

Another allegation in the complaint was the alleged recommendations you made to the Board of Supervisors regarding the Phillips 66 refinery projects. According to the complaint, you were prohibited from making any recommendations regarding Phillips 66 due to the fact that New Horizons has received income from Phillips 66, therefore creating a conflict.

The Act prohibits public officials, including designated employees, from making or participating in making governmental decision in which the official knows or has reason to know he has a financial interest. (Section 87100.) The term “designated employee” means any officer, employee, member, or consultant of any agency who makes or participates in the making of agency decisions which may foreseeably have a material effect on any financial interest. (Section 82019.) For purposes of Section 82019, which defines designated employee, a designated employee shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decision making authority. (Regulation 18701(a)(1).)

Under RMAC’s code, the council members do not possess decision making authority, and therefore are not subject to the conflict of interest prohibitions of the Act.² However, if RMAC makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency, then the council members would be subject to the conflict prohibitions of the Act. (Regulation 18701(a)(1)(A)(iii).)

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

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. If you have any questions regarding this matter, please feel free to contact Teri Rindahl at 916.327.2018.

Sincerely,

REDACTED

 Gary S. Winuk, Chief
Enforcement Division

GSW/tr

cc: David Black

² The designation of employees under an agency’s conflict-of-interest code is left to the discretion of each individual agency and its respective code reviewing body. In this case, the Contra Costa County Board of Supervisors is the RMAC’s code reviewing body. Under Section 87307, you may appeal the conflict-of-interest code, established under Section 87300, directly to RMAC. If your appeal is denied, you may petition the County Board of Supervisors, the code reviewing body, within 30 days after the denial.