



FAIR POLITICAL PRACTICES COMMISSION

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October 23, 2013

Brian Hopper, Esq.
Senior Assistant District Counsel
Office of the District Counsel
Santa Clara Valley Water District
o/b/o Richard Santos

REDACTED

Re: Warning Letter
FPPC No. 10/732: Richard Santos

Dear Mr. Hopper:

The Fair Political Practices Commission (the "Commission") enforces the provisions of the Political Reform Act (the "Act")¹ found in California Government Code Section 81000 and following. This case was opened by the Commission proactively based upon the Santa Clara County 2009-2010 Civil Grand Jury Report which alleged that Mr. Santos made, participated in making, and influenced various decisions impacting Alviso and his economic interests. The specific SCVWD projects identified were the Alviso Slough Restoration Project and the Gold Street Education Center. At all relevant times, Mr. Santos allegedly held an ownership interest in parcels of real property which were within 500 feet of the project boundaries at issue in these governmental decisions.

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 official position to influence a governmental decision in which he knows or has reason to know he 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

¹The 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.

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.)

Gold Street Education Center

The Commission has completed its investigation of the facts in this case. Regarding the Gold Street Education Center, the Commission found that on or about May 26, 2009, Mr. Santos: 1) was a member of the Board of Directors for the Santa Clara Valley Water District (SCVWD); 2) made a governmental decision when he voted to approve the 2009-2014 Draft Capital Improvement Program (CIP), which included the Gold Street Education Center; 3) held a 1/3 beneficial interest in real property owned by the Santos Family Trust; 4) at least one parcel of real property was within 500 feet of the Gold Street Education Center, and therefore was directly involved in the decision; 5) the financial effect of the decision on the real property was material; and 6) the material financial effect was reasonably foreseeable. Thus, Mr. Santos had a disqualifying conflict of interest under the Act and should have refrained from voting on May 26, 2009 as to the Gold Street Education Center in the 2009-2014 Draft CIP.

However, upon review of the evidence available, it appears there are several mitigating factors. At all relevant times, Mr. Santos fully disclosed his real property interests in his statements of economic interests. Additionally, Mr. Santos regularly recused himself from decisions and discussions involving the Gold Street Education Center, and only failed to recuse himself on one occasion that the Enforcement Division found during this investigation. Further, on May 26, 2009, the SCVWD Board was not considering whether the Gold Street Education Center should be approved or funded. Rather, the Draft CIP at issue on May 26, 2009, was on the Agenda for Board approval to send the Draft CIP to local jurisdictions for a determination that the projects were consistent with their local General Plans. Also, the CIP included 102 separate SCVWD projects, only two of which were specifically called out and discussed by Board Members, and the Gold Street Education Center was not one of them. Lastly, the SCVWD Board Members knew of Mr. Santos' conflict with the Gold Street Education Center because he had several times previously disclosed his conflict and recused himself regarding matters involving the Gold Street Education Center, and he continued to recuse himself after this particular instance. Thus, the public harm in this instance was minimal.

This letter serves as a written warning. You are advised that your failure to comply with the provisions of the Political Reform Act in the future could result in an enforcement action. Additionally, the information in this case will be retained, and may be used against you should an enforcement action later become necessary based on future conduct and/or newly discovered information. Please be advised that your failure to comply with the provisions of the Act in the future may result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon your notification, the FPPC will rescind this warning letter and proceed

with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Alviso Slough Restoration Project

Regarding the Alviso Slough Restoration Project, in 2006, Mr. Santos, through counsel for the SCVWD, requested and received written advice from the Commission regarding whether he could vote on the Alviso Slough Restoration Project. The advice letter concluded that Mr. Santos had an economic interest in real property that was located within 500 feet of the Alviso Slough Restoration Project, but because the Alviso Slough Restoration Project's "primary purpose" was to "clear the slough of choking roots and vegetation," and that this activity was "repair or maintenance activity" of the SCVWD, the real property was "indirectly involved" in the decision pursuant to Regulation 18704.2(b)(2), despite the secondary purpose of the community to use the widened channel for boating and recreation. Thus, the Commission's advice letter concluded that the effect of the governmental decisions on Mr. Santos' real property was presumed not material, and Mr. Santos could make and/or participate in making decisions regarding the Alviso Slough Restoration Project absent affirmative evidence that the effect was material.

Upon review by the Enforcement Division of the Alviso Slough Restoration Project Project Plan, SCVWD Board minutes, and videos of SCVWD Board Meetings, it appears that Mr. Santos relied upon the Commission's advice letter, and thus did not recuse himself from matters involving the Alviso Slough Restoration Project.

Please be advised that due to your economic interests, you may have a conflict of interests regarding other projects that might occur in the future in the Alviso Slough area. Your failure to comply with the provisions of the Political Reform Act in the future could result in an enforcement action, and may result in monetary penalties of up to \$5,000 for each violation.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

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Angela M Brereton
Senior Commission Counsel
Enforcement Division