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

August 6, 2009

Dennis Nelson

REDACTED

Re: Advisory Letter
FPPC No. 05/375; Dennis Nelson

Dear Mr. Nelson:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act")[1]. As you may be aware, the Commission received a complaint against you alleging a violation of the conflict of interest provisions of the Act. Specifically, the complaint alleges that you made a governmental decision that had a reasonably foreseeable material financial effect on your economic interest while you were serving as a member of the Sutter County Board of Supervisors. The Commission has decided to close this case with this advisory letter.

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.[2] (See Regulation 18700.)

---

[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.

[2] 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.

As a member of the Board of Supervisors, you were a public official under the Act. (Sections 82019 and 82048.) In June 2003, while you were a member, the Board had before it an application to rezone a piece of property owned by Roy Lanza to allow development of agricultural land, through his agent, Tom Applegarth. Mr. Applegarth was one of three owners of Applegarth Estrada, Inc., your employer. Therefore, analysis of the allegation in the complaint turns on whether Mr. Applegarth was acting on his own behalf or as a representative of Applegarth Estrada, Inc. and, if acting on his own, whether Mr. Applegarth himself is an economic interest of yours.

We have found insufficient evidence to establish that Mr. Applegarth was acting on behalf of Applegarth Estrada, Inc. In addition, the evidence does not support piercing through the corporation in order to find Mr. Applegarth as a source of income to you in addition to the corporation itself.[3] As a result, we are closing this case with this advisory letter.

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

Sincerely,

REDACTED

Galena West
Senior Commission Counsel
Enforcement Division

[3] The Commission has previously determined that in closed corporations if the majority shareholder is the primary decision-maker for the corporation, then piercing to find that the majority shareholder is also a source of income to the public official is appropriate. (See *Hentschke* Advice Letter, No. A-80-069.)