



## FAIR POLITICAL PRACTICES COMMISSION

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September 25, 2012

Larry Byrd  
2100 Tim Bell Road  
Waterford, CA 95386

Re: Your Request for Advice  
**Our File No. A-12-140**

Dear Mr. Byrd:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Nothing in this letter should be construed to evaluate any conduct that may have already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

### QUESTION

As a member of the Modesto Irrigation District Board of Directors, may you take part in decisions regarding a collective bargaining agreement between the district and a union, which is representing district employees including your adult son?

### CONCLUSION

Generally, a public official does not have a conflict of interest under the Act solely because the official takes part in a governmental decision that has a financial effect on his or her adult child. You may take part in decisions regarding the collective bargaining agreement so long as there is no reasonably foreseeable material financial effect on an economic interest recognized under the Act.

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<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.

## FACTS

Last fall, you were elected to the Board of Directors of the Modesto Irrigation District (the "MID"), a publicly owned utility that provides electricity and irrigation and drinking water in portions of Stanislaus County. Currently, the MID is negotiating a collective bargaining agreement with the International Brotherhood of Electrical Workers 1245 (the "IBEW 1245"). While the MID Board of Directors has already voted twice on this matter, you have not taken part in either these previous decisions. However, the matter is likely to come back before the board in the near future.

Prior to being elected to the MID Board of Directors, you were an employee of the MID and had retired after 35 years of service. While neither your pension nor benefits will be affected by the collective bargaining agreement, the agreement will affect your adult son who has been an employee of the MID for 21 years. Your son, William Byrd, is currently the supervisor of the Overhead Department and is also a member of the IBEW 1245. Additionally, you and your son, as well as both of your spouses, each have equal 25% ownership interests in an almond ranch as tenants in common. You and your son reside in separate homes located on the ranch. While you pay for all costs relating to the home in which you and your wife reside, your son pays for all costs relating to the home in which he and his wife reside. All expenses and income relating to the almond ranch/business are split equally.

## ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest in a given governmental decision.

As an elected member of the MID Board of Directors, you are subject to the Act's conflict-of-interest provisions. However, your question involves only step three of the analysis, determining whether you have economic interests that may be implicated by the decision. Economic interests from which a conflict of interest may arise are defined in Section 87103 and Regulations 18703-18703.5 and include:

- An economic interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d); Regulation 18703.1(b)).
- An economic interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)

- An economic interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An economic interest in a source of gifts to the official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- An economic interest in the official's personal finances, including those of the official's immediate family. This is known as the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

While it appears that you have economic interests in your almond ranch as both a business entity and source of income, your almond ranch/home as real property, and customers of your almond ranch as sources of income, the facts provided do not indicate that any of these economic interests may be affected by decisions regarding the collective bargaining agreement. Moreover, you have stated that the decisions will not affect your pension or benefits, and you are only subject to disqualification based upon a financial effect on your child's personal finances if the child is a "dependent child," which is defined as a child "under the age of 18 and whom the official is entitled to claim as a dependent on his or her federal tax return." (See Section 82029 and Regulation 18229.1.) Accordingly, there is also no indication that your personal finances may be affected by decisions regarding the collective bargaining agreement.<sup>2</sup>

Barring a reasonably foreseeable material financial effect on an economic interest recognized under the Act, the Act does not prohibit you from taking part in decisions regarding the collective bargaining agreement merely because of your son's employment with the MID. We do however emphasize that this conclusion is limited to the provisions of the Act. Your participation in the negotiations may be prohibited by other provisions of law including common law conflict-of-interest laws and Government Code Section 1090. We suggest you consult with your agency's counsel regarding any other laws that may apply.<sup>3</sup>

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<sup>2</sup> Governmental entities are not considered business entities (see Section 82005), and salary received from a governmental agency is not considered income (Section 82030(b)(2)). Accordingly, you do not have an economic interest in the MID as either a business entity or a source of income despite serving on the MID Board of Directors and any salary you may receive.

<sup>3</sup> While you have not provided any indication that you have received income from your son in the previous 12 months, we caution that you are subject to disqualification from a decision if you have an economic interest in your son as a source of income. (Section 87103(c); Regulation 18703.3.) However, for purposes of the Act, the term "gift" does not include payments from an individual's child. (Section 82028(b)(3).) Therefore, you do not have an economic interest in your son as a source of gifts regardless of any actual gifts he may have giving you in the previous 12 months.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

A handwritten signature in black ink, appearing to read "B. Lau", with a long horizontal flourish extending to the right.

By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl