



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

November 13, 2020

Santiago M. Escruceria
Guadualito Binding Tours
P.O. Box 224
Lee Vining, CA 93541

Re: Your Request for Advice
Our File No. A-20-135

Dear Mr. Escruceria:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. May you submit comments on behalf of the Lee Vining Fire Protection District (a local special district) to the Mono County Board of Supervisors regarding a specific plan amendment, given that your non-profit employer has also submitted comments to the Board of Supervisors opposing elements of the specific plan amendment?
2. May you take part in the Lee Vining Fire Protection District’s decision on whether to provide a “will-serve letter” to the specific plan amendment applicant with respect to residential units to be built at sites within the Fire Protection District’s service area?

CONCLUSIONS

1. Yes, you may provide comments on behalf of the Lee Vining Fire Protection District, as there are no facts indicating the Board of Supervisors’ decision would have a financial effect on your employer, who constitutes a source of income.

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. Yes, you may take part in the Lee Vining Fire Protection District's decision on whether to provide "will-serve letters" with respect to residential units built by the specific plan amendment applicant, as there are no facts indicating such decisions would have a financial effect on your employer.

FACTS AS PRESENTED BY REQUESTER

You are a volunteer commissioner for the Lee Vining Fire Protection District (LVFPD), a local special district which provides fire protection and basic emergency services to your community. LVFPD Commissioners are elected positions. You have also been elected by your fellow commissioners as President of the Commission. Commissioners do not receive compensation.

You are also employed by the Mono Lake Committee (MLC), a 501(c)(3) nonprofit organization dedicated to protecting and restoring Mono Lake in California's Eastern Sierra, which has historically been impacted by excessive water diversions to the City of Los Angeles. Your position with MLC is as Outdoor Education Center Manager. In that capacity, you provide educational programs for children and adults about the Mono Basin environment, water conservation, and the history of water diversion by the City of Los Angeles. Your MLC position is a paid position.

The Mono County Board of Supervisors is currently considering an application for a proposed specific plan amendment ("Tioga Inn SPA #3") that would allow a significant increase in development (approximately 100 new housing units) at a site within the area served by the LVFPD. If the Tioga Inn SPA #3 is approved, the applicant could subsequently apply for building and other permits to construct those residential units, at which time the applicant would be required to obtain a "will-serve letter" from the LVFPD.

The LVFPD has not yet been asked for a "will-serve letter." However, the LVFPD has significant concerns about its ability to safely and effectively respond to calls at the site if the proposed additional development is approved and built. Pursuant to LVFPD Bylaws, you are the person authorized to express those concerns in letters and comments to the Board of Supervisors. According to Article III, Section 4 of the LVFPD Bylaws, "[e]xcept as otherwise officially and expressly authorized by the Board of Commissioners, only the President of the Board is authorized to act as the District's spokesperson and in that capacity to speak on behalf of the District."

Your employer, MLC, has submitted comments opposing elements of the specific plan amendment for public policy reasons. In your position with MLC, you have no authority or involvement in the development of the MLC position and comments. Along with your request for advice, you attached recent communications from MLC and its legal counsel to the Mono County Board of Supervisors regarding the project.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c).)

A public official uses or attempts to use their official position to influence a governmental decision when they contact or appear before any official in their agency or in an agency subject to the authority or budgetary control of their agency for the purpose of affecting a decision. (Regulation 18704(c)(1).) A public official also uses or attempts to use their official position to influence a governmental decision when they contact or appear before any official in any other governmental agency for the purpose of affecting a decision, and the public official acts or purports to act within their authority or on behalf of their agency in making the contact. (Regulation 18704(c)(2).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.”

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a source of income is material if the source is a nonprofit organization and the decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).)

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a nonprofit source of income is also material if the decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000, or one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500. (Regulation 18702.2(a)(3)(B).)

Given that you are a volunteer, non-compensated member of the LVFPD Commission, you do not have an economic interest in the LVFPD. You have an economic interest in MLC as a source of income. Although MLC has submitted comments to the Mono County Board of Supervisors opposing elements of the specific plan amendment for public policy reasons, MLC is not explicitly involved in any governmental decision at issue.

Based on the facts provided, it does not appear that the Board of Supervisors' decision regarding Tioga Inn SPA #3 will financially affect MLC or your position within MLC. MLC is a nonprofit organization dedicated to protecting and restoring Mono Lake in California's Eastern Sierra. There are no facts indicating that the approval or rejection of a specific plan that would allow the development of 100 new housing units would have a financial effect on MLC, much less an effect that would be considered material under Regulation 18702.2(a)(3)(A) or (B), as discussed above. Similarly, there are no facts indicating that the LVFPD's decision of whether to provide "will-serve letters" to the specific plan amendment applicant(s) would have any financial effect on your employer. Accordingly, the Act does not prohibit you from providing comments regarding Tioga Inn SPA #3 to the Mono County Board of Supervisors on behalf of the LVFPD, nor does it prohibit you from taking part in the decision of whether the LVFPD will provide a "will-serve letter" to the Tioga Inn SPA #3 applicant.

You have also inquired more generally about whether you have a conflict of interest with respect to future LVFPD Commission decisions related to development within the specific plan amendment. Whether the Act prohibits an official from taking part in a governmental decision based on a conflict of interest is a fact-specific inquiry made on a decision-by-decision basis. Accordingly, we can only generally advise that where the decision would have no reasonably foreseeable, material financial effect on MLC (or any other economic interest you may have), the Act would not prohibit you from taking part in the decision. However, if you are faced with a specific governmental decision and are unsure of how the Act may apply, you should seek additional advice.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:aja