



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 3, 2021

Erik Neandross
Chief Executive Officer
Gladstein, Neandross & Associates
2525 Ocean Park Blvd
Santa Monica, CA 90405

Re: Your Request for Advice
Our File No. A-21-039

Dear Mr. Neandross:

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.

QUESTION

Does the Act prohibit your participation in the Santa Monica Task Force on the Environment (“Task Force”) decision to take a symbolic position to close the SoCal Gas Playa del Rey natural gas storage facility where SoCal Gas is a client of your firm?

CONCLUSION

No. Based on the information provided, you do not meet the definition of a “public official.” Members of advisory bodies are excluded from the definition of “public official” and the City’s Task Force meets the definition of an advisory body. (Regulation 18701(c)(2).) Therefore, as a member of the Task Force you are not subject to the conflict of interest requirements and prohibitions so long as the body remains advisory.²

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.

FACTS AS PRESENTED BY REQUESTER

You serve on the Santa Monica Task Force on the Environment. This is a volunteer position. The Task Force meets monthly (during non-COVID times) to discuss issues and make recommendations to the City of Santa Monica Council. An environmental advocacy group, Food & Water Watch, is asking the Task Force to take a position to close the SoCal Gas Playa del Rey natural gas storage facility.

If the Task Force were to vote in favor of the request, it would be recommending to the City Council to take their own vote to support the effort to close the facility. The City Council's decision would not have a direct impact on the operation of the facility; it would be more symbolic as part of a regional effort to close the facility. You are not certain which state level organization would be the authority to require the closure of the facility. However, closure is well beyond the scope of the request being made of the Task Force at this time, and likely well beyond whatever action the Santa Monica City Council may take on the issue.

You seek formal advice on participating in this item at your upcoming meeting. SoCal Gas is a client of your firm, Gladstein, Neandross & Associates, a clean transportation and energy consultant firm. You own more than 10-percent of the firm. SoCal Gas is a client of your firm, and you state we may assume that your pro rata share of income from SoCal Gas as a firm client will meet or exceed \$500 in the 12 months prior to the Task Force's decision. Your firm does not perform any work for SoCal Gas related to the Playa del Rey storage facility or on any issues related in any way to SoCal Gas' natural gas storage fields. Your firm's work for SoCal Gas is on a number of natural gas transportation fuel issues (i.e., work trucks), and the volume of business for SoCal Gas is well less than 1-percent of the firm's annual revenue. You do not personally work on any projects with SoCal Gas.

Aside from SoCal Gas, your firm also maintains large contracts with several of California's electric utilities (PG&E, SCE, SDG&E). You work on these contracts and they represent a much more significant portion of the firm's annual revenue. And beyond this work, you estimate that approximately 80-percent of your firm's annual revenue is focused on efforts to electrify society in different ways. While none of this is directly related to the SoCal Gas Playa del Rey storage facility, you note that one may perceive that a vote in favor of shutting down this natural gas storage facility could have impacts (positive and negative) on these other utilities and ongoing efforts to electrify society.

City Staff Liaison, Amanda Grossman, a Sustainability Analyst with the City Office of Sustainability and the Environment stated by email that, to her knowledge, the Task Force is considered an advisory body to the City Council, and noted that the Task Force members were not among the designated positions in the City's November 2020 update to its Conflict of Interest Code. She provided the City's list of designated positions to confirm this. She notes that most motions by the Task Force relate to a review, and support, of staff recommendations.

² Our conclusion is based on the facts provided and premised on the City correctly identifying the Task Force as an advisory body. While we generally defer to the local agency in making this determination, you may wish to seek further advice if there is any indication that the Task Force has been incorrectly identified as an advisory body.

By phone, you confirmed that the Task Force, to your knowledge and experience, is advisory only. You state that the Task Force usually presents general concepts to the City Council, for its further consideration. You stated that you were not aware of a history of the City Council “rubber-stamping” its recommendations. You were never asked to file an SEI by the City related to your role as a Task Force member.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or otherwise using the official position to influence a governmental decision in which the official has a financial interest.³ The conflict of interest provisions of the Act apply only to “public officials,” as defined under the Act. The threshold issue is whether you meet the definition of a “public official” as a member of the City’s Task Force.

Section 82048 defines “public official” as every member, officer, employee or consultant of a state or local government agency. An individual serving on a committee or board that does not have decisionmaking authority is specifically excluded from the definition of “member.” Regulation 18701(c)(2) defines “member” and when a body has decisionmaking authority as follows:

(2) “Member” does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.

(A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:

(i) It may make a final governmental decision;

(ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.

³ Relevant to these facts, Section 87103 defines financial interests to include a business interest in which the public official holds a position of management and any source of income aggregating \$500 or more to the public official within 12 months prior to the decision being made. Under Section 82030, “income” to an official “also includes a pro rata share of any income of any business entity ... in which the individual or spouse owns ... a 10-percent interest or greater.”

(B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).”

Under this definition, a committee, board, or commission may be deemed to have decisionmaking authority whenever it can (1) make a final decision, (2) compel or prevent a decision, or (3) make substantive recommendations that are, over an extended period, regularly approved without significant amendment or modification. The Act requires every state and local government agency to adopt a conflict of interest code enumerating the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial interest. (Section 87302(a).) Section 87302(a) requires the conflict of interest code to specify the economic interests a designated employee must report a Statement of Economic Interest (“SEI”), also referred to as a “Form 700.” And Section 87302(b) requires a designated employee to file SEIs at times and under circumstances as specified. If the Task Force has decisionmaking authority under any of these tests, its volunteer members would be considered public officials who must be designated in the agency’s conflict of interest code, would be required to file SEIs, and subject to the prohibition on participating in a decision in which the official has a financial interest.

Whether an advisory body has decisionmaking authority under the Act based on its history of recommendations is a fact-based determination that also takes into consideration the circumstances and characteristics of the advisory body. Factors that have been considered to indicate it did not have decisionmaking authority include: (1) an advisory body reporting recommendations to an intermediary (such as city staff) that in turn presented the recommendations as the intermediary saw fit to the decisionmaking body (such as a city council), (2) the decisionmaking body deciding an issue in opposition to the advisory body’s recommendation, and (3) the characteristics of the advisory body and its members being more akin to those interested in decisions of the decisionmaking body rather than involved in making them (e.g., advisory body members did not have special expertise in the subject matter of the advisory body). (See *De Berry* Advice Letter, No. A-99-221.)

Based on the information provided, the Task Force appears to be solely an advisory committee without decisionmaking authority at this time. And you do not meet the definition of a public official in regard to your membership on the City’s Task Force. As a result, the Act’s conflict of interest provisions do not apply to you so long as the Task Force is solely an advisory body. However, we caution that the Task Force’s volunteer members will be subject to the Act’s provisions, and will be required to file SEIs, if it gains decisionmaking authority in the future. If this were to occur, we recommend that you contact our office for additional advice regarding any potential financial interest in a decision.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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