



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

July 9, 2021

Margaret Long
Interim County Counsel
Colusa County
2240 Court St
Redding, CA 96001

Re: Your Request for Advice
Our File No. I-21-089

Dear Ms. Long:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because you do not seek advice regarding a specific governmental decision, we can provide you only informal assistance.²

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

In serving as Colusa County Counsel, would Richard Stout have a conflict of interest due to his wife’s employment with the Department of Water Resources (“DWR”)?

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

There is nothing in the Act that prohibits Mr. Stout from holding the position of Colusa County Counsel while his wife is employed by DWR. Moreover, Mr. Stout does not have a financial interest in his wife's government agency employer and is not generally disqualified from decisions implicating the agency, so long as there is no potential effect on his or his wife's personal finances. Nonetheless, the finding of a conflict of interest under the Act is a determination that is factually dependent on the specific nature of the decision and could only be made on a case-by-case basis. If you need assistance determining if a specific decision may affect Mr. Stout's personal finances, you should seek additional assistance identifying the decision in question.

FACTS AS PRESENTED BY REQUESTER

Colusa County is in the process of hiring a County Counsel. Following interviews, the Board of Supervisors has selected attorney Richard Stout, who is currently Tehama County Counsel.

In her employment with DWR, Mr. Stout's wife was involved in the drafting of language for Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014. Proposition 1 authorized \$510 million in Integrated Regional Water Management funding. Mr. Stout's wife is not involved in the selection or distribution of any Proposition 1 funding.

Colusa County is a member of a Sites Project Authority ("Authority") which was formed on August 26, 2010, and has a primary purpose to pursue the development and construction of the Sites Reservoir Project. The Sites Reservoirs Project does receive funding through Proposition 1.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. Section 82048 defines "public official" as every member, officer, employee, or consultant of a state or local government agency, including a county counsel.

Financial interests from which conflicts of interests may arise are defined in Section 87103 and the financial interests implicated by your facts are the following:

- An 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).) "Income" is defined to include any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest. (Section 82030(a).)
- An 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.)

Though the Act generally defines "income" to include "any community property interest in the income of a spouse," (Section 82030(a),) it excludes from the definition of "income" any

“salary and reimbursement for expenses or per diem, and social security, or other similar benefit payments received from a state, local, or federal government agency . . .” (Section 82030(b)(2).) The salary paid by a state, local or federal government agency are generally not considered “income” under Section 82030(b)(2) and Regulation 18232(a). Therefore, Mr. Stout does not have a source of income interest in DWR because his wife’s salary and other similar benefits from DWR are not “income” under the Act.

While we note that an official also has a financial interest in his or her personal finances (Section 87103; Regulation 18702.5), there is no indication of any decision that will foreseeably affect Mr. Stout’s personal finances. The finding of a conflict of interest under the Act is a determination that is factually dependent on the specific nature of the decision and could only be made on a case-by-case basis. If you need additional assistance determining if a specific decision may affect Mr. Stout’s personal finances, you should seek additional assistance identifying the decision in question.

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

Sincerely,

Dave Bainbridge
General Counsel

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:dkv