



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

March 29, 2022

Brian Hebert
Executive Director
California Law Revision Commission
400 Mrak Hall Drive
Davis, CA 95616

Re: Your Request for Advice
Our File No. A-22-019

Dear Mr. Hebert:

This letter responds to your request for advice on behalf of California Law Revision Commission member David Carrillo 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

Under the Act, may Commissioner Carrillo have UC law school staff he supervises submit an advisory report to the Commission regarding recommended legislative amendments to the California Emergency Services Act (CESA)?

CONCLUSION

Based on the facts provided, it does not appear the Act would prohibit the submission of such a report because the Commission’s decisions regarding recommendations to the Legislature regarding CESA would not have a reasonably foreseeable, material financial effect on Commissioner Carrillo’s personal finances.

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 18104 through 18998 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

The California Law Revision Commission (“Commission”) is an independent state agency that studies legal problems on topics that have been authorized by the Legislature and makes statutory reform recommendations to the Governor and Legislature. The Commission is a purely advisory body, but its recommendations are routinely adopted.

The Commission is made up of seven gubernatorial appointees, who serve without compensation other than statutory per diem, one member of the Assembly, one Senator, and the Legislative Counsel. One of the Governor-appointed Commissioners, David Carrillo, is also faculty at UC Berkeley Law School, where he serves as Director of the Law School’s California Constitution Center (“Center”).

Commissioner Carrillo would like to have Center staff prepare an informational report regarding a topic that the Law Revision Commission is currently studying—the California Emergency Services Act (CESA) (Section 8650 et seq), with particular focus on Sections 8565-8574 (Powers of the Governor) and 8625-8629 (State of Emergency). The report would include a discussion of existing legal problems and advice on how those problems might be addressed. The report would be prepared at no cost to the Commission. The Commission accepts input from anyone during its studies. It considers that input but is not bound by it.

Commissioner Carrillo would like formal advice on whether there is any legal conflict between his role as a member of the Commission and his role as Director of the Center, if Center staff were to provide an advisory report to the Commission.

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 [their] official position to influence a governmental decision in which [the official] 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.) These economic interests include the official’s personal finances, as well as “[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.

Under the facts provided, the submission of the Center’s advisory report to the Commission would potentially be prohibited under the Act only if Commissioner Carrillo was disqualified from taking part in the Commission decision. A disqualified official is not only prohibited from making the decision itself (e.g., voting), but is also prohibited from participating in making the decision or in any way attempting to use the official’s position to influence the decision. (Section 87100.) A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s

agency for the purpose of affecting a decision. (Regulation 18704(c).) Accordingly, if Commissioner Carrillo had a disqualifying conflict that prohibited him from taking part in the Commission's decision, he would potentially be prohibited from attempting to participate or influence the decision by submitting an advisory report via the Center.

However, the only economic interest Commissioner Carrillo has in a decision before the Commission, based on the facts provides, is his interest in his personal finances. (Regulation 18700(c)(6).) Although UC Berkeley is Commissioner Carrillo's employer, "income" under the Act does not include "[s]alary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency" (Section 82030(b)(2).) Consequently, UC Berkeley does not constitute a "source of income," for purposes of the Act, based on Commissioner Carrillo's employment with the school.

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, as here, 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." A reasonably foreseeable financial effect on a public official's personal finances is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period. (Regulation 18702.5(a).)

Here, the Commission's recommendations, even if adopted by the Legislature and signed into law by the Governor, concern CESA, an area of law unlikely to have any direct or indirect effect on Commissioner Carrillo's personal finances beyond merely hypothetical or theoretical effects. Moreover, there is no indication that using law school staff to prepare and submit the report would result in a financial benefit or loss to Commissioner Carrillo.

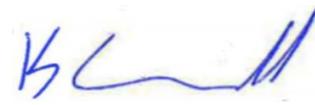
Accordingly, it is not reasonably foreseeable that the submission of a report prepared by law school staff would have a material financial effect on Commissioner Carrillo's personal finances. Based on the given information, the Act would not prohibit Commissioner Carrillo from taking part in a decision regarding the Commission's recommendations to the Legislature and Governor regarding CESA. Relatedly, the Act does not prohibit Commissioner Carrillo from overseeing the Center's submission of an advisory report regarding CESA to the Commission.

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

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