



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

May 24, 2022

Michael Ng  
Senior Staff Attorney  
SF Bay Conservation & Development Commission  
375 Beale St., Suite 510  
San Francisco, CA 94105

Re: Your Request for Advice  
**Our File No. A-22-047**

Dear Mr. Ng:

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

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

May Bay Area Conservation and Development Commissioner Sean Randolph take part in decisions relating to the development of a proposed baseball stadium, given: (1) his employer’s general purposes and goals include promoting economic development in the Bay Area and generating revenue from and promoting the interests of dues-paying members; (2) the applicant is a dues-paying member of his employer organization; and (3) his employer has published three studies, commissioned by the applicant, detailing the local economic benefits of the proposed ballpark?

### CONCLUSION

No. Under the nexus test, a foreseeable financial effect on a source of income is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source of income to the

---

<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 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.

official and the official has received promised income for achieving the purpose or goal. Here, the purpose and goal of Commissioner Randolph's employer is economic development in the Bay Area including the goals of its client, the Oakland Athletics, who have commissioned three studies by the employer relating to the development of a new ball park. Thus, the Act's nexus test prohibits Commissioner Randolph from taking part in the decisions, as his work is very closely tied to advancing the interests of dues paying members of his employer and promoting his employer's general purposes and goals and decisions relating to the development of the ballpark would help achieve those interests.

### **FACTS AS PRESENTED BY REQUESTER**

The San Francisco Bay Conservation and Development Commission ("BCDC") is a state agency. The Commission exercises both land use permitting and planning functions. Any person or governmental agency wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure within the area of the Commission's jurisdiction must secure a permit from the Commission. The Commission is also empowered to amend, or repeal and adopt a new form of, all or any part of the Bay Plan but any Bay Plan Amendment ("BPA") must be consistent with the findings and declarations of policy within the McAteer-Petris Act (the law administered by BCDC). If the BPA pertains to a policy or standard in the Bay Plan, the BPA requires the affirmative vote of two-thirds of the Commission members. Any agency, organization, or individual may propose a BPA by submitting the requisite application form.

On January 17, 2019, the Commission voted to initiate BPA No. 2-19, which was submitted by the Oakland Athletics Investment Group, LLC ("Oakland Athletics"). BPA No. 2-19 proposes to remove an existing planning designation (Port Priority Use Area) from a piece of property situated at the Port of Oakland (Howard Terminal). If the Commission approves BPA No. 2-19 it can reasonably be expected that the Oakland Athletics will then submit a permit application to the Commission for the development of a ballpark and mixed-use development on the Howard Terminal site (the "Ballpark Project").

The Port Priority Use Area designation at Howard Terminal must be removed prior to any Commission approval of a permit for the Ballpark Project for permit approval to be found consistent with BCDC's laws and policies. While BPA No. 2-19 is a necessary "precondition" for the Ballpark Project to be realized at Howard Terminal, BPA No. 2-19 is a quasi-legislative action which is independent of and does not then compel the Commission to approve a (as-yet unsubmitted) permit application for the Ballpark Project (which constitutes a quasi-adjudicative action).

The Bay Area Council ("Council") is a 501(c)(4) nonprofit organization, whereas the Council's Economic Institute ("Institute") is a 501(c)(3) nonprofit organization housed within the Council. The Council's and Institute's general purposes and goals include promoting economic development in the Bay Area.

The Institute's website—linked to in your request for advice—describes the Institute as "the leading think tank focused on the economic and policy issues facing the San Francisco/Silicon Valley Bay Area." It further states, "[t]hrough its economic and policy research and its many partnerships, the Institute addresses major factors impacting the competitiveness, economic development and quality of life of the region and the state, including infrastructure, globalization,

science and technology, and health policy.” Additionally, “[t]he Institute is housed at and supported by the Bay Area Council, a public policy organization that includes hundreds of the region’s largest employers and is committed to keeping the Bay Area the world’s most competitive economy and best place to live.”

The Institute’s operating budget (a close approximation to annual gross receipts) is around \$1.4 million and the Council’s operating budget is around \$7 million, not counting revenue sources such as its capital campaign. The Institute is self-supported in the sense that all of its activities are supported by the revenue it generates, revenue which for the most part is generated from commissioned studies. The Institute otherwise generates revenue through speaking fees, service subscriptions, etc., but revenue against budget is almost entirely measured by commissioned studies. If the Institute falls short of meeting its budgetary targets, because the Institute is part of the Council, the Council can serve as a financial backup and cover any budgetary shortfall for the Institute as needed.

The Institute prepared three studies commissioned (paid) by the Athletics for a total cost of approximately \$110,000. The first study was prepared in 2017, while the second and third studies were prepared in 2019. The approximately \$110,000 combined cost for the three studies likely covered staff time and overhead. Generally speaking, the cost of a study commissioned of the Institute is fixed upfront without allowance for reimbursement. Without having specific information as to the actual cost for each of the three studies, for present purposes of discussion the average cost per study is \$36,666.67.

The summary findings of Institute’s first study states, “[w]e estimate that a new baseball stadium for the Athletics would generate \$3.05 billion of economic impact for the residents and businesses of the City of Oakland over the first 10 years of operation.” The second study describes the planned new stadium as a potential “transformational investment for the City of Oakland.” The third study describes its key finding as, “[t]he proposed gondola system, which will connect the [Athletics’] planned stadium to downtown Oakland, will generate \$685 million in total economic benefit for the City of Oakland over its first 10 years of operation.”

BCDC Commissioner Sean Randolph is employed by the Council as Senior Director of the Institute. He was the President and CEO of the Institute from 1998 to 2015. His job duties include economic policy research, organization of related forums and events, development of public policy positions, and public speaking on topics in his field. Other than being asked for advice, he does not play an active role in the Institute’s management or its finance or personnel decisions. The field he primarily focuses on concerns technology, innovation, and global business. He does not have an immediate supervisor, but a recommendation regarding his pay is made to the Council’s CEO by the Institute’s Executive Director based on a combination of how much revenue he generates by bringing in new projects as well as overall performance in meeting mutually agreed upon goals (e.g., research reports, speaking engagements, moving initiatives, publications, and management of the Bay Area Science and Innovation Consortium).

Commissioner Randolph did not work on any of the three studies prepared by the Institute and commissioned by the Athletics, nor does he recall ever communicating with the Athletics. Commissioner Randolph does not believe that the Athletics will have a need to commission additional studies by the Institute in the future. Furthermore, besides the three studies that the Institute prepared in relation to Howard Terminal for the Athletics, Commissioner Randolph does

not believe that the Athletics have ever commissioned the Institute to prepare any other studies on the Athletics' behalf.

Commissioner Randolph has never had contact with the Athletics or worked on anything commissioned by the Athletics while employed at the Institute—or at least he cannot remember ever having done so. He also represents that he has not talked to anyone at the Council or the Institute about BPA No. 2-19 or the Ballpark Project. At one point he once overheard Institute staff talking about the third study (*Oakland A's Gondola Economic Impact*), but nothing substantive (e.g., methodology of the study). He was not previously aware of the first or second studies before preparing for this request for advice by the FPPC.

According to Commissioner Randolph, apart from the three studies commissioned of the Institute, the Athletics have not otherwise directly contributed monetarily to the Institute, though the Athletics do pay annual dues to the Council in the amount of \$27,500. According to Commissioner Randolph, the Athletics have been dues-paying members of the Council for many years preceding 2017 (the year of the first study commissioned by the Athletics relating to Howard Terminal). According to Commissioner Randolph, dues paid are general purpose funds and are not earmarked for anything in particular, but rather are used to generally fund Council staff and operating support, including staff salaries. All member dues, collectively and in the aggregate, at some level contribute to staff salaries and costs.

The Executive Director of the Port of Oakland (the owner of Howard Terminal) and the CEO of the Athletics (the sponsor of BPA No. 2-19) are both on the Board of Directors for the Council. Commissioner Randolph stated that in theory the Executive Director of the Port and the CEO of the Athletics could hypothetically affect his job status at the Institute because if they are unhappy with Commissioner Randolph they could express themselves to the Council and Institute leadership. However, Commissioner Randolph represents that the Council and Institute leadership are aware of his role as BCDC Commissioner, so he does not talk to them about matters of interest to the Council or the Institute for which he acts as a BCDC Commissioner, and they do not talk to him about such matters either.

## 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.) Among those specified economic interests is “[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.” (Section 87103(a).) A public official also has an economic interest in “[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).)

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.”

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a nonprofit source of income is material if 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: (A) \$1,000,000; or (B) five percent of the organization’s annual gross receipts and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(3)(A).)

The reasonably foreseeable financial effect on a nonprofit source of income is also material if the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the organization’s annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.3(a)(3)(B).)

The Oakland Athletics are dues-paying members of the Council, paying \$27,500 annually. However, the Oakland Athletics do not contribute directly to the Institute aside from the prior studies it has commissioned. Further, the Institute is largely self-supported, relying on the Council only in the event of a budgetary shortfall. Accordingly, it does not appear that even if the BCDC decision were to result in the Oakland Athletics ending their membership with the Council that such a financial impact would meet the materiality standards specified above. However, these are not the only materiality standards applicable.

Under the “nexus test,” the reasonably foreseeable financial effect on a source of income to a public official or the official’s spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official’s spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

Commissioner Randolph is the Senior Director of the Institute, housed within the Council (his employer). Commissioner Randolph has stated that his express job duties include economic policy research, organization of related forums and events, development of public policy positions, and public speaking on topics in his field. However, the very nature of the Council and Institute, which depend on member dues for sustainability, suggests that another implicit, if not express job duty includes promoting the Council’s and Institute’s purposes and goals. A general purpose and goal of the Council and Institute is not just the promotion of economic development in the Bay

Area, but “keeping the Bay Area the world’s most competitive economy.” Another goal of the Council, as evidenced by Commissioner Randolph’s pay structure, is the generation of revenue, including member dues, which pay for staff salaries and costs. Additionally, in light of the studies commissioned by the Oakland Athletics, it appears that the Council and Institute share the goal of furthering the Oakland Athletics’ interest as a client of the of the Council and Institute.

Approval of BPA No. 2-19 would not only aid the Council’s and Institute’s shared goal of promoting economic development in the Bay Area, but would also appear to aid the Council and Institute in generating revenue by giving the Oakland Athletics a reason to continue paying dues to the Council and to consider the Institute for future commissioned studies. A high-profile client achieving its desired results after commissioning three studies from the Institute would also help demonstrate value to current and potential clients and dues-paying members. Finally, it must be noted that the Executive Director of the Port of Oakland (owner of Howard Terminal) and the CEO of the Athletics (sponsor of BPA No. 2-19) are both on the Board of Directors for the Council.

For these reasons, we conclude there is a nexus between the work Commissioner Randolph is paid to perform for the Council and Institute and the decisions coming before him in his capacity as a BCDC Commissioner. (See *Winuk* Advice Letter, No. A-22-016 [finding nexus where official’s spouse paid to assist employer in promoting and defending interests of union members and their families and decisions before official would aid in that goal by permitting agency to contract with union labor]; see also *Montoy* Advice Letter, No. I-19-209 [finding likely nexus in decisions involving project labor agreements where the “very nature” of official’s work for labor council “appears to be closely tied to advancing the interests of affiliated unions and achieving beneficial working conditions for them”].) Accordingly, the Act prohibits Commissioner Randolph from taking part in the BPA No. 2-19 decision and other BCDC decisions related to the development of the proposed ballpark.

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