



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
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June 13, 2022

Michael Donahue  
SSCSD Director

Re: Your Request for Advice  
**Our File No. A-22-063**

Dear Mr. Donahue:

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

As a member of the San Simeon Community Services District Board of Directors, may you take part in the Board’s decision on whether to purchase real property located near property you lease for your mobile home?

### CONCLUSION

Yes, the Act permits you to take part in such a decision because it would not impact your personal finances. The same may not be true of subsequent Board decisions regarding the use of the purchased property, however, and you may wish to seek additional advice once those decisions are known.

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<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.

## FACTS AS PRESENTED BY REQUESTER

You recently became a member of the San Simeon Community Services District (SSCSD) Board of Directors. Before you became a Director, SSCSD built a reverse osmosis or water desalination unit, as well as an office, on a right of way on Pico Avenue, just at the end of the road where trucks need to turn around. To enable vehicles to turn around, SSCSD dumped a significant amount of road base onto a lot owned by a private citizen. SSCSD is now considering whether to purchase the lot to avoid a costly lawsuit based on SSCSD's encroachment. The decision of whether to purchase the citizen's property would not affect the operation of the reverse-osmosis unit or office. The reverse-osmosis unit has only been operated 65 or 66 days since 2016 when needed to address severe droughts, but the office is used approximately three times per week.

You own a mobile home currently located on property you rent on a month-to-month basis. Your mobile home is approximately 410 feet from the citizen's property line and you have indicated that if, for some reason, you decided to move, you could relocate your mobile home and two vehicles to a different property. In a follow-up phone call, you explained that it would not be difficult for you to move your mobile home but you do not have any intention of selling or moving your mobile home at this time. In a subsequent email, you also explained that if the citizen sought to develop his real property into condominiums, which he previously expressed a desire to do prior to negotiations for SSCSD's purchase of the property, SSCSD would have discretion over whether to provide water to the developed property.

## 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.) An official has an economic interest in their own personal finances, as well as any real property, including a “leasehold interest,” in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).) You have an economic interest in your personal finances. However, a periodic tenancy of one month or less does not qualify as a “leasehold interest” for purposes of the Act. (Regulation 18233.) Because you rent the property your mobile home is located at on a month-to-month basis, you do not have a leasehold or real property interest for purposes of the Act.

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 governmental decision's reasonably foreseeable financial effect on a public official's financial interest in his or her personal finances or those of immediate family, also referred to as a "personal financial effect," 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 due to the decision. (Regulation 18702.5(a).) The decision could theoretically have an effect on your personal finances if it raised or lowered the value of your mobile home by at least \$500 or if the decision caused you to relocate your mobile home and incur \$500 or more in moving expenses. However, based on the facts provided, such an effect is not reasonably foreseeable, but merely theoretical.

Based on the facts provided, it does not appear that the decision of whether to purchase the citizen's property will have any effect on the value of your mobile home. The reverse-osmosis unit has only been operated 65 or 66 days since 2016 when needed to address severe droughts, and the office is used only three times per week. Although certain vehicles use the encroachment to help turn around at the end of the street near the reverse-osmosis unit, SSCSD's decision would not affect the unit or office's continued operation. In other words, regardless of who owns the encroached-upon land, the status quo with respect to your mobile home will be preserved.

It also does not appear that the decision to purchase the vacant lot will affect the likelihood of the property being developed in the future. While the current owner has previously expressed a desire to develop the property, there are no current proposals to develop the property and any future development would require subsequent decisions by SSCSD for an allocation of water. Accordingly, considering the current use of the property and the fact that there is no indication that the decision will affect the likelihood of developing the vacant land, it is not foreseeable that the decisions will change the value of your mobile home or the use and enjoyment of your mobile home. Given the limited nature of the decision, it is also unlikely that the purchase of the vacant lot to maintain the status quo will significantly change the desirability of the location or influence owners of mobile home in the vicinity of the vacant property, including yourself, to sell or move their mobile homes.

Because the potential impacts on your personal finances are merely theoretical and it is not reasonably foreseeable that the decisions will have a material financial effect on your personal finances, the Act does not prohibit you from taking part in this decision.

However, we caution that this conclusion is limited only to the purchase of the vacant property as described in the facts provided. It is possible that subsequent decisions, such as those relating to the citizen's use and development of his real property or SSCSD's use of the purchased land, could impact your personal finances. If there are questions regarding any decision other than the purchase of the property, you may wish to seek further 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

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