



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

April 2, 2024

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. I-24-024

Dear Mr. Sutton:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Formal advice is prohibited when the request for advice relates to past conduct. (Regulation 18329(b)(6)(A).) Informal assistance is permitted where the request regards past conduct but relates to corrective action to satisfy the requirements of the Act, such as filing an amended statement of economic interests. (Regulation 18329(c)(4)(A).) We are therefore treating your request as one for 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

Does the Act require Susan Lowenberg to disclose her real property interests held within the state due to her role as a member of the California Coastal Commission?

CONCLUSION

Yes, as a public official expressly identified in Section 87200 and member of a state agency, Commissioner Lowenberg is required to disclose her real property interests in her jurisdiction. Because she is a member of a state agency, her relevant jurisdiction is the state, not the coastal

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.

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).)

zone. Consequently, she should amend her statement of economic interests to include real property interests in the state.

FACTS AS PRESENTED BY REQUESTER

Susan Lowenberg is a member of the California Coastal Commission (“Coastal Commission”). Commissioner Lowenberg is also owner and president of a real estate company that owns several commercial properties. Most of these properties are located in counties that do not abut the coast. The properties Commissioner Lowenberg personally owns that are located in a county with a coastline are located over 25 miles away from the coast, with the exception of one San Francisco property located approximately eight miles from the coast. You state that Commissioner Lowenberg believes that no action of the Coastal Commission could ever have a financial impact of any kind on any of these properties.

Commissioner Lowenberg was sworn into office on February 1, 2024, and has already filed her Assuming Office Form 700, which did not disclose her real property interests.

ANALYSIS

An express purpose of the Act is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed in order to avoid conflicts of interest. (Section 81001(b)) The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) To that end, the Act specifically requires that certain officials must file a statement of economic interest disclosing reportable investments, business positions, interests in real property, and source of income upon assuming office, each year thereafter, and upon leaving office. (Sections 87200-87204.) These offices are specified in Section 87200 and include the members of the California Coastal Commission. Section 87202 of the Act provides:

Every person who is elected to an office specified in Section 87200 shall, within 30 days after assuming the office, file a statement disclosing the person's investments and the person's interests in real property held on the date of assuming office, and income received during the 12 months before assuming office. Every person who is appointed or nominated to an office specified in Section 87200 shall file such a statement not more than 30 days after assuming office

(Section 87202(a).)

As a member of the California Coastal Commission, Commissioner Lowenberg must disclose her interests in real property held by her personally or by her business within the jurisdiction of her state agency. Section 82033 of the Act defines “interest in real property” to include “any leasehold, beneficial or ownership interest, or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly, or beneficially by the public official . . . if the fair market value of the interest is two thousand dollars (\$2,000) or more.” The Act defines the term “jurisdiction” to mean “the state with respect to a state agency and, with respect to a local government agency, the region, county, city, district or other geographical area in which it has jurisdiction.” (Section 82035.) “‘State agency’ means every state office, department,

division, bureau, board and commission, and the Legislature.” (Section 82049.) The California Coastal Commission is a state agency, as stated in the facts. (See also Cal. Pub. Resources Code Section 30300.) The Act does not contain a statutory exception to the filing requirements for members of the California Coastal Commission.³

Given the clear statutory language requiring Commissioner Lowenberg, as a member of the California Coastal Commission, to disclose her real property interests within her jurisdiction—the state of California—our advice is that she amend her Statement of Economic Interests (Form 700) to do so.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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³ Where the Legislature intends to restrict the jurisdiction of a government body, it has expressly done so. For example, until 1993, the Act’s definition of “jurisdiction” additionally provided “[t]he jurisdiction of a member of a regional coastal zone conservation commission shall be the permit area in which the regional commission has jurisdiction.” (Former Section 82035.) The Legislature could have included similar language for the California Coastal Commission but declined to do so.