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

January 25, 2022

Ms. Susan Anzilotti
anzilots@co.mendocino.ca.us

Warning Letter re: FPPC Case No. 17/1399; Susan Anzilotti

Dear Ms. Anzilotti:

The Enforcement Division of the Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act.[1] In November 2017, we received a sworn complaint against you, with respect to your official position as a Staff Assistant III / Public Records Act Clerk with the Mendocino County Sheriff's Office. The complaint was received from your neighbor, Chris Gurr. We opened this case to determine if you violated the Act's conflict of interest provisions by using, or attempting to use, your official position and email account to influence decisions by other government agencies, for the purpose of preventing Gurr from moving forward with commercial cannabis cultivation in your neighborhood. Please be advised that we are closing this case with this warning letter, as discussed below.

Summary of the Law

The primary purpose of the conflict of interest provisions of the Act is to ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001, subd. (b).)

In furtherance of this goal, the Act prohibits a public official from making, participating in making, or in any way attempting to use her official position to influence a governmental decision in which she knows, or has reason to know, that she has a financial interest. (Section 87100.) This prohibition applies to various public officials, including employees of county agencies. (Section 82048, subd. (a).)

Conflicts of interest may arise from various types of financial interests. For example, a public official has a financial interest with respect to any real property in which she has a direct or indirect interest worth $2,000 or more. (Section 87103, subd. (b).)

Even if a public official does not make or participate in making a governmental decision, her actions may amount to a conflict of interest if she uses or attempts to use her official position to influence the decision. (See Section 87100 and Regulations 18700, et seq.)

Generally, an official uses or attempts to use her official position to influence a governmental decision if she contacts or appears before: (1) any official within her own agency (or within an agency that is subject to the authority or budgetary control of her own agency) for the

[1] The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in California Code of Regulations, title 2, sections 18110 through 18998. Unless otherwise noted, all statutory references are to the Government Code, and all regulatory references are to Title 2, Division 6 of the California Code of Regulations—as they were in effect in 2017.

purpose of affecting the decision; or (2) any official with another agency for the purpose of affecting a decision—and she acts or purports to act within her authority or on behalf of her own agency in making the contact. (See Regulation 18704, subd. (c).)

However, certain exceptions may apply. For example, there is an exception that allows an official to appear before an agency in the course of its prescribed governmental function, if the official appears on a matter solely related to her personal interests, including real property owned entirely by the official and/or members of her immediate family. For this exception to apply, the official must make the appearance as a member of the general public—not in her capacity as a public official. (See Regulation 18704, subd. (d)(2)(A).)

In order to establish a conflict of interest violation, it must be shown that it was reasonably foreseeable to the public official that the governmental decision in question would have a material financial effect on the official's financial interest. (Section 87103, first paragraph.)

A financial effect need not be likely to be considered reasonably foreseeable. In general, if the effect can be recognized as a realistic possibility—and more than hypothetical or theoretical—then it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the official's control, then it is not reasonably foreseeable. (See Regulation 18701, subd. (b).)

There are various situations where a reasonably foreseeable financial effect may be considered material, including decisions: (1) affecting real property value located within 500 feet of the property line of the official's own real property; (2) that would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest; or (3) that would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property. (Regulation 18702.2.)

Violation Summary

Based on information provided by the complainant—and the results of our own investigation, including information that you provided during your interview—we found that you own and live on real property that is located less than 500 feet from your neighbor, Chris Gurr. During the summer of 2017, you sent emails to various agency officials, including officials with the State Water Resources Control Board, the California Department of Fish and Wildlife, and the County of Mendocino Department of Agriculture. These emails included complaints about what you described as a large-scale commercial cannabis cultivation on the Gurr property. In particular, you expressed concerns about water rights and depletion of the water table due to the commercial cultivation. Also, you raised environmental concerns with respect to endangered and threatened species. In one email, you stated: "Can you please help us understand the restrictions or regulations that this commercial level cannabis production site must comply with? Our community is very concerned that the amount of water used will negatively impact other residential well levels in the area, as well as the sensitive spawning habitat of salmonid species that utilize this water course." These emails were an attempt to influence governmental decisions so as to prevent commercial cannabis cultivation on your neighbor's property.

You used your official email account with the Mendocino County Sheriff's Office to send the emails. Also, your email signature block included your contact information with the Sheriff's Office—and identified you as an employee of that office. In this way, you violated Government Code section 87100. Later, when you were interviewed by the Enforcement Division, you stated that the Mendocino County Board of Supervisors implemented an opt-out clause in your neighborhood, so there is no marijuana grow on the Gurr property.

Conclusion

As a member of the public, you do have the right to send emails like the ones described above, but they must be sent from your personal account, and you cannot act—or purport to act—in your official capacity. At this time, we are closing this matter without further action. This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

If you need guidance regarding your obligations in the future, please visit our website at www.fppc.ca.gov/advice.html or call the Commission's Toll-Free Advice Line at 1-866-ASK-FPPC (1-866-275-3772).

Thank you for your attention to this matter. Please do not hesitate to call if you have any questions.

Very truly yours,

Neal P. Bucknell

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