

State of California

A-77-298



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

May 2, 1977

Jeffrey F. Bordelon
Program Director
1230 E. Main Street
Grass Valley, California 95945

Dear Mr. Bordelon:

Please excuse the delay in responding to your question regarding whether or not members of Resource Conservation Districts will be required to disclose interests in real property.

A brief discussion of the Political Reform Act's objectives may be appropriate here.

Government Code Section 81001 provides:

"The people find and declare as follows:

...(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

and Section 81002:

"The people enact this title to accomplish the following purposes:

...(d) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interests may be avoided;"

These two sections read together embody the spirit of the Act in seeking to insure unbiased public decisions through the mechanisms of disclosure and disqualification.

In order to decide whether or not interests in real property should be disclosed by Resource Conservation Directors, it will be necessary to briefly examine the duties of the Directors as set out in the Resource Conservation Code.

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The purposes of the Public Resources Act of 1975 are stated in Section 9001(b):

"(b) To provide for the organization and operation of resource conservation districts for the purpose of soil and water conservation, the control of runoff, the prevention and control of soil erosion, and erosion stabilization, including, but not limited to, these purposes in open areas, agricultural areas, urban development, wildlife areas, recreational developments, watershed management, the protection of water quality and water reclamation, the development of storage and distribution of water, and the treatment of each acre of land according to its needs. Such districts, in addition to their other powers, shall have legal authority."

It thus appears that the Public Resources Act clearly contains objectives aimed at improving or preserving the value of a variety of real property interests. To this end, the Act further empowers Districts to "(2) With the consent of the owner, to construct on privately or publicly owned lands necessary works for the prevention and control of soil erosion and stabilization." Section 9001(b)(2).

Section 9002 restates this policy as follows:

"9002. It is hereby declared as a matter of legislative determination:

(a) That the construction and maintenance on privately or publicly owned land of works for resource conservation is in the general public interest and for the general public benefit.

(b) That the expenditure of state, county, city, district, or other public funds that are available or may become available for planning, designing, or implementing the above and for the construction or maintenance of such control or preventative works on privately or publicly owned lands constitutes expenditure for the general public benefit."

Article 9, which outlines the powers of the Directors, clearly empowers the Directors with authority to purchase or otherwise affect real property interests. Sections 9405 and 9406 empower the Directors with authority to enter into contracts, leases, and to hold and convey real property interests for the Districts.

Section 9409 permits Directors to make improvements or conduct operations on public or private lands that, depending upon the nature of the improvements or operations, could have a material financial effect upon an interest in real property.

"9409. The directors may make improvements or conduct operations on public lands, with the cooperation of the agency administering and having jurisdiction thereof, and on private lands, with the consent of the owners thereof, in furtherance of the prevention or control of soil erosion, water conservation and distribution, agricultural enhancement, wildlife enhancement, and erosion stabilization, including, but not limited to, terraces, ditches, levees, and dams or other structures, and the planting of trees, shrub, grasses, or other vegetation."

Section 9411 permits Directors to affect real property interests located outside of the district through the use of demonstrational projects on lands adjacent to the District.

"9411. The directors may disseminate information relating to soil and water conservation and erosion stabilization, and may conduct demonstrational projects within or adjacent to, the district on public land, with the consent of the agency administering or having jurisdiction thereof, or on private lands, with the consent of the owners thereof, independently or in cooperation with the United States, this state or any political subdivision or public district thereof, or any person."

Finally, Section 9412 empowers Directors to affect real property interests through the rendering of direct assistance in the form of seeds, plants, materials, labor, machinery and equipment.

Further, such assistance to Directors is not prohibited, in fact, it is expressly allowed. (See Section 9412)

"9412. When in the judgment of the directors it is for the benefit of the district to do so, they may give assistance to private landowners or land or land occupants within the district in seeds, plants, materials and labor, and may loan or rent to any such private landowner or land occupant agricultural machinery or other equipment. No such assistance shall be given or any such loans made unless the landowner or land occupant receiving such aid or assistance agrees to devote and use same on his lands within the district in furtherance of objectives of the district and in accordance with district plans or regulations. Notwithstanding the fact that he is also a director any landowner is qualified to and may receive assistance or lands under this section."

From the above discussion and specifically from Section 9409 which appears to permit longterm improvements and Section 9412 which provides for short term assistance, it is readily apparent that District Directors have the power to make decisions which could foreseeably have a material financial effect upon real property interests. Therefore, disclosure of real property

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should properly be required within a Conflict of Interest Code.

Finally, Government Code Section 87309 states:

"87309. Requirements for Approval. No Conflict of Interest Code or amendment shall be approved by the code reviewing body or upheld by a court if it:

(a) Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;.."

Based upon the above discussion, it is the staff's conclusion that a Code for a Resource Conservation District which failed to provide that real property interests be disclosed would be deficient pursuant to Government Code Section 87309(a) and could not be approved.

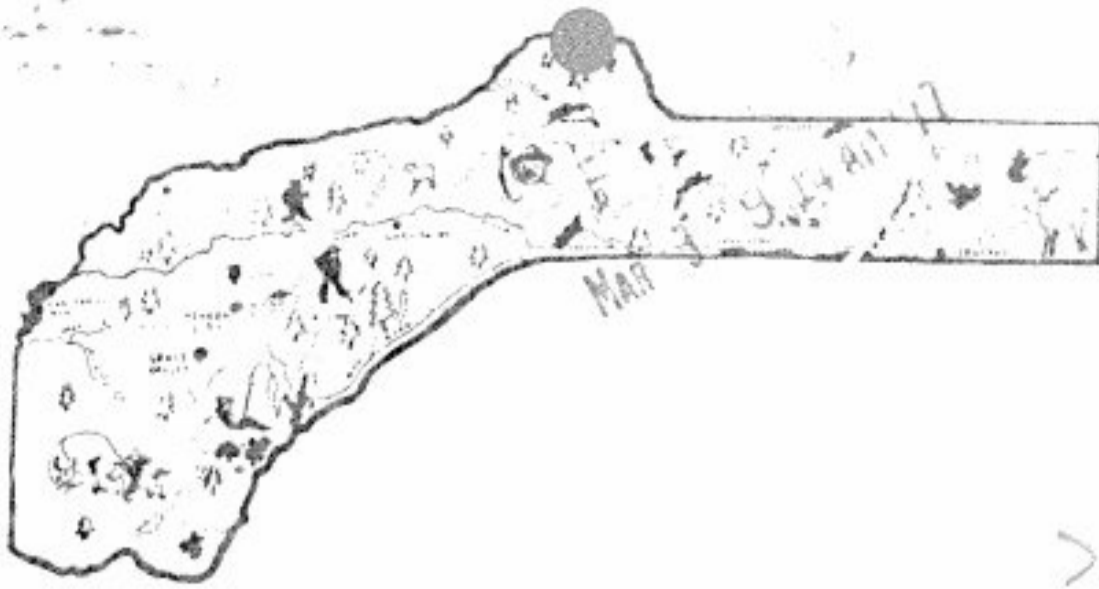
Accordingly, the staff will recommend to the Fair Political Practices Commission, which is the code reviewing body for multi-county resource conservation districts, that interests in real property be disclosed by resource conservation district directors and other designated employees where appropriate.

If I can be of further assistance, please call me at 916/322-6444.

Sincerely,

Alfredo Flores
Research Specialist
Conflicts of Interest Division

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**Nevada County
Resource Conservation
District**

March 3, 1977

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Mr. Delbert L. Spurlock, Jr.
Chief, Conflicts of Interest Division
State of California, Fair Political
Practices Commission
Enforcement/Conflict of Interest
P.O. Box 807
Sacramento, CA 95814

Dear Mr. Spurlock:

Recent notification of the upcoming FPPC hearing on Conflict of Interest Code indicates that the material submitted by the Nevada County Resource Conservation District shall be reviewed. To date, we have not received a response to our letter dated July 9, 1976 and Conflict of Interest Code submitted that raised issues with respect to the disclosure of interests in real property. If the FPPC staff has reviewed our submittal and is prepared to recommend action by the Commission, we have not been informed of your staff position.

If Commission staff is prepared to recommend acceptance of our Code, we would appreciate some indication of the need for participation in the upcoming hearing. In the alternative, if our submittal is unsatisfactory, we need guidance concerning the proper procedure to prepare a revised Code.

Sincerely,

Jeffrey F. Bordelon
Program Director