

State of California



Fair Political Practices Commission

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

February 24, 1977

77-02-220

Mr. John B. Rudquist
Cavalero, Bray, Shumway & Geiger
404 Bank of Stockton Building
311 East Main Street
Stockton, California 95202

Re: Conflict of Interest Code
Rindge Land Reclamation District No. 2036

Dear Mr. Rudquist:

This is in reply to your letter of January 29, 1977. I would agree with you that Government Code §§87100 and 87300, et seq., intend to regulate the conduct of certain public officials in their public life only, and are not intended to in any way proscribe the activities of these persons in their private financial dealings. Support for this is found in Government Code §81001(b), which provides:

The people find and declare as follows:

... Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests

On the other hand, the word "governmental" may prove troublesome and difficult to define. Many Codes approved by the FPPC have inserted language, either in their disqualification provisions or by way of definition, to the effect that the designated employees "shall not make or participate in the making of any decision of the agency in which he or she has a financial interest". The Codes are intended to codify the prohibitions of Government Code §87100 at the local or agency level.

It is my personal view that the controversy between you and the Board of Supervisors may be more imagined than real. I doubt anyone interprets the Political Reform Act as creating a prohibition on purely private conduct of a public official.

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John B. Rudquist
February 24, 1977
Page Two

Thank you for writing. If I can be of further assistance, please feel free to call on me at (916) 322-6444.

Sincerely,

Kenneth W. Goshorn
Research Specialist
Conflicts of Interest Division

KWG:glb

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LAW OFFICES

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D. R. JACOBS (1892-1970)
STEPHEN DIETRICH (1908-1971)

January 29, 1977

Kenneth W. Goshorn
Conflict of Interest Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: Rindge Land Reclamation District No. 2036
Conflict of Interest Code

Dear Mr. Goshorn:

Enclosed please find the following documents:

1. Memo dated January 20, 1977, from John B. Clausen, County Counsel, by Arthur W. Walenta, Assistant County Counsel, to the Clerk of the Board of Supervisors of Contra Costa County.
2. Letter dated January 26, 1977, from the undersigned to the Board of Supervisors.
3. Memo dated January 28, 1977, from John B. Clausen, by Arthur W. Walenta to the Board of Supervisors.
4. A photocopy of the section of the District's Code which is in question.

This letter is a follow-up to a telephone conversation I had with you on January 26. I would appreciate an opinion from you or Delbert Spurlock on this matter before I argue my case before the Board of Supervisors of Contra Costa County. I believe that the enclosed documents are self-explanatory and accurately and completely present our controversy. Should you need any additional information I shall be most willing to provide the same.

Sincerely yours,

CAVALERO, BRAY, SHUMWAY &
GEIGER

By John B. Rudquist
John B. Rudquist

JBR/jr

COUNTY COUNSEL'S OFFICE
CONTRA COSTA COUNTY
MARTINEZ, CALIFORNIA

Date: January 20, 1977

To: Clerk of ~~the~~ Board of Supervisors

From: John B. Clausen, County Counsel
By: Arthur W. Walenta, Assistant County Counsel

Re: Rindge Land Reclamation District, No. 2036
Conflict of Interest Code

This office approves as to form the Conflict of Interest Code of the above-named agency, subject to the following recommended revisions:

1. Strike the word "governmental" in Section D1.

The Code documents are returned herewith, and a proposed Board Order revising the Code and approving it as revised is attached for action on January 25, 1977.

AWW:s

Enc.

✓ cc: Rindge Land Reclamation District No. 2036

COPY

January 26, 1977

Honorable Board of Supervisors
County of Contra Costa
Courthouse
Martinez, California

Re: Rindge Land Reclamation District No. 2036
Conflict of Interest Code

Gentlemen:

Our offices represent the above Reclamation District which has recently submitted to you its conflict of interest code. We were informed by a copy of a memo to you from County Counsel that the District's proposed code would be adopted by the Board of Supervisors on January 25, 1976, subject only to one revision, to wit, striking the word "governmental" in Section D1, page 6.

We respectfully request that the Board of Supervisors reconsider its position and adopt the code as submitted for the following reasons:

1. Government Code Section 87302(c), which addresses itself to specific provisions of Conflict of Interest Codes for local agencies setting forth circumstances under which designated employees must disqualify themselves from making or participating in the making of any decision, states in part:

"Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be affected materially by the decision."

Government Code Section 87103 states in part:

"An 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: . . ."

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Government Code Section 87100 states in full:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

From the above, it is readily apparent that the "decisions" referred to in Article 3 of Chapter 7, Sections 87300, et seq. are "governmental decisions," not simply any decisions.

2. To buttress this point, we suggest that you consult 2 Cal. Adm. Code Section 18700 which states in part:

"The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100 - 87312."

Subsections (b) and (c) both refer to "governmental decisions," not just "decisions," when each, respectively, refer to making or participating in the making of a governmental decision. Subparagraph (5) of subsection (b) above specifically makes reference to a Chapter 7 Conflict of Interest Code (Section 87300) disqualification situation:

"(b) A public official 'makes a governmental decision,' . . . (5) . . . When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300."

3. The Fair Political Practices Commission, In the Matter of: Opinion requested by Tom Thorner, on behalf of the Board of Directors, Marin Municipal Water District, No. 75-089, December 4, 1975, 1 FPPC 198, discussed circumstances requiring disqualification of an Article 3 (local agency) filer and, in its "ANALYSIS" section, clearly spoke in terms of "Governmental" decisions.

4. In addition, the Fair Political Practices Commission after extensive scrutiny by its legal staff and hearings before the Commission approved the exact language of Section D1 in the Conflict of Interest Code of the Metropolitan Water District of Southern California, which, I hastened to add, has been the model code for numerous member agencies of the Association of California Water Agencies.

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Honorable Board of supervisors
January 26, 1977
Page 3

If our offices can be of any further assistance in resolving this matter, please contact the undersigned.

Sincerely yours,

CAVALERO, BRAY, SHUMWAY & GEIGER

BY

JOHN B. RUDQUIST

JBR/jac

cc: Hugh Hayes

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COUNTY COUNSEL'S OFFICE
CONTRA COSTA COUNTY
MARTINEZ, CALIFORNIA

Date: January 28, 1977

To: Board of Supervisors

From: John B. Clausen, County Counsel
By: Arthur W. Walenta, Assistant County Counsel

Re: Rindge Land Reclamation District No. 2036,
Conflict of Interest Code

Rindge Land Reclamation District has requested that the Board modify its approval of the subject Conflict Code to permit qualification of the expressed disqualification provision by changing "decision" to "governmental decision".

This office recommends against the requested change.

Discussion: The disqualification provision in question (Section D1 of the subject Code) is required by the following language in Government Code Section 87302:

"Each Conflict of Interest Code shall contain ...

"(c) Specific provisions setting forth any circumstances under which designated employees...must disqualify themselves from making or participating in the making of any decision."

As used in Section 87302, the word "decision" is not modified by the word "governmental". Accordingly, we do not consider it proper for a conflict of interest code adopted in compliance with §87302 to modify "decision" to "governmental decision".

The District contends that use of "governmental decision" in §87100 requires a similar interpretation of §87302. But one cannot interpret away the clear import of the language used with specific reference to local conflict codes. In any event, the disqualification provisions of §87100 and §87302 are not identical. Section 87100 is broader in its prohibitions (it prohibits influencing as well as participating); and narrower in its scope (it limits covered decisions to governmental decisions), than §87302.

The conflict codes of all other agencies approved by this Board do not limit the disqualification provision in the manner requested by the Rindge Land Reclamation District, we recommend against making an exception in their favor.

AWW/j

cc: Rindge Land Reclamation District No. 2026

required if the person is a reportable interest of the designated employee as set forth in Appendix "A".

Section D. DISQUALIFICATION:

1. A designated employee is disqualified from making or participating in the making of any governmental decision when he or she has a financial interest in the decision. Financial interest is defined in Paragraph 5 of Appendix "B" of this Code.
2. An investment, interest in real property, income or source of income of a designated employee shall not be a basis for disqualification under Section D(1) where such interest will foreseeably be affected only by the decision to fix an ad valorem property tax rate for the district.
3. If a designated employee is disqualified under Section D(1), the following steps shall be taken:
 - a. Immediately refrain from making or participating in the making of the decision;
 - b. For members of the Board of Trustees the fact that