

State of California



Fair Political Practices Commission

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March 24, 1977

87100

77-03-225

Mr. B. B. Snyder
Attorney-at-Law
777 Chestnut at Center
Santa Cruz, California 95060

Dear Mr. Snyder:

This is in response to your letter to the Commission dated November 17, 1977. Please forgive our delay in responding. As I indicated to you on the telephone, we have had several staff level meetings concerning your request for an opinion regarding certain possible conflicts of interest involving various members of the Santa Cruz Port District. Because your letter does not present a substantial question of interpretation under the Political Reform Act, the Commission will not issue a formal opinion. See 2 Cal. Adm. Code Section 18329(b)(1). However, I trust the following advice will enable you to resolve this matter.

In light of the change of membership on the Port District (which we discussed and which was the subject of a previous letter to you from me), our advice herein will be limited to only one of the situations raised in your letter, to wit: The question of whether under Government Code Section 87100 a commissioner may make or participate in the making of decisions concerning the setting of rates for slip rent when the commissioner presently leases a slip for a rather large boat.

Initially, let me comment that I agree with your conclusion that the Port District is a local government agency and that the commissioners are "public officials" within the meaning of Section 82041 and 87100. Moreover, the Port District will have to adopt a conflict of interest code pursuant to Article 3 of Chapter 7 of the Political Reform Act, and the Board of Supervisors will be the code reviewing body for that code.

The basic prohibitions against conflicts of interest in the Political Reform Act are found in Sections 87100 and 87103 which in relevant part provide that:

87100. 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.

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87103. 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:

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);.

The yachtsman commissioner appears to have an "interest in real property" within the meaning of Section 87103(b). Section 82033 defines "interest in real property" as:

...any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction if the fair market value of the interest is greater than one thousand dollars...

The commissioner has a leasehold interest in the slip. Although it is difficult to assign a "fair market value" to this interest (because the lease on a slip is unassignable), we think the fair market value for purposes of the Political Reform Act is the rent paid for the term of the lease. If this exceeds \$1,000, then the commissioner has an "interest in real property" within the meaning of Section 82033 and 87103(b).

Undoubtedly a decision on slip rent rates will "foreseeably" have a direct economic effect on this interest. The question remains, however, whether this economic effect will be "material" and will be "distinguishable from its effect on the public generally." Section 87103, supra. further define "material financial effect" the Commission has issued a regulation, 2 Cal. Adm. Code Section 18702, which provides, in relevant part:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if, at the time the official makes, participates in making or attempts to use his or her official position to influence the making of the decision, in light of all the circumstances and facts known at the time of the decision, the official knows or has reason to know that the existence of the financial interest might interfere with the official's performance of his or her duties in an impartial manner free from bias.

Subsection (b) of the regulation provides certain guideline amounts. In the case of an interest in real property, they were not intended, nor do we consider them applicable to, a leasehold interest of the type in question.

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Applying this standard to the instant situation is difficult because we are not told the amount of change in the rates that is being proposed. However, in light of the fact that any change in the rates will immediately and directly affect the amount of money the commissioner may pay to retain his docking privileges, we do not think it unreasonable to conclude that "the existence of the financial interest might interfere with the official's performance of his or her duties in an impartial manner free from bias."

There remains the question of whether the effect of the decision as to slip rent rates is "distinguishable from its effect on the public generally". This concept is also defined by regulation of the Commission, 2 Cal. Adm. Code Section 18703, which provides in relevant part, that:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

Since the slip rates of all persons leasing from the Port District will be affected similarly, we must decide whether all persons leasing slips from the Port District constitute the "public or a significant segment of the public." We conclude that they are not. The Port District geographically encompasses approximately 15% of Santa Cruz County (pop., 1970 census, approx. 123,000). Less than 1,000 persons use the port district marina, some of whom are not taxpayers within the Port District. Most persons paying taxes to the Port District do not in fact use the marina's facilities. We do not think that the concept of a "significant segment of the public generally" which was discussed by the Commission in the William Owen opinion, 2 FPPC Opinions (No.76-005; June 2, 1976)(a copy of which is enclosed), includes a special interest group which uses a particular public facility, especially when that facility is supported by taxes paid by other members of the public. Accordingly, I would advise you that to the extent the standard of materiality discussed supra is satisfied, the Port Commissioner may not "make, participate in making or in any way attempt to use his official position to influence" decisions of the Port District on slip rental rates.

With respect to your question concerning whether you might be deemed a "designated employee" of the District, the Board of Supervisors is the Code Reviewing Body for your district and will ultimately be required to make that determination. However, in light of your duties, it is apparent that you might reasonably be defined as either an "officer" of a "consultant" of the District within the meaning of Sections 82048 and 82019.

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Again, please forgive our delay in replying. I have enclosed copies of the cited Regulations and Opinion of the Commission. If I can be of further assistance please call on me at (916) 322-6444.

Sincerely,

Kenneth W. Goshorn

Kenneth W. Goshorn
Research Specialist III

KWG:mfn
Enclosure