

01100/123

State of California



Fair Political Practices Commission

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

Technical Assistance • • • Administration • • • Executive/Legal • • • Enforcement • • • Conflict of Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

June 27, 1980

Robert Matteri
4587 Lambert Drive
Santa Rosa, CA 95401

A-80-06-083

Dear Mr. Matteri:

This is in response to a request from Nick Esposti, Sonoma County Supervisor, concerning whether or not your appointment to the Sonoma County Fair Board would involve a conflict of interest. Mr. Esposti has informed me that he has made this request on your behalf. The following is an analysis of the application of the Political Reform Act, Government Code Sections 81000 et seq., to your situation and it constitutes written advice as provided for in Section 83114(b) of that Act. I also understand, however, that there is some concern about the application of Government Code Section 1090 as well. That Section is not part of the Political Reform Act, which this agency is empowered to interpret and enforce, and this advice therefore does not pertain to Section 1090. The facts as I understand them are as follows.

You have a one-seventh interest in Redwood Empire Disposal Corporation, which is engaged in the business of garbage collection and disposal. This corporation has an exclusive franchise from the City of Santa Rosa, and pursuant to that franchise, the corporation provides garbage service to the County Fair grounds. Given this situation, you have asked whether it is a conflict of interest for you to serve as a member of the Board of Directors of the County Fair.

The Political Reform Act of 1974, Government Code Sections 81000 et seq., does not create a per se conflict of interest by virtue of a person's service on a particular board. The Act instead addresses the question on a decision-by-decision basis, providing that:

No public official at any level of state or local government shall make, participate in making or in any

Mr. Robert Matteri
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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.

Government Code Section 87100

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:

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

. . .

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made;

. . .

Government Code Section 87103

Assuming that your investment in Redwood Empire Disposal Corporation is worth more than \$1,000 or that you have received more than \$250 from it within the past year, the Act therefore provides that you should not make, participate in making or use your official position to influence any decision of the County Fair Board that would have a foreseeable material financial effect on the Corporation, distinguishable from the effect the decision will have on the public generally. The Act does not, however, prohibit you from being a member of the Board or from participating in other decisions of the Board.

If as a Board member you have any questions concerning a particular decision facing you, please feel free to seek the advice of the Fair Political Practices Commission concerning the application of the Act to your participation in that decision.

Sincerely,



Sarah T. Cameron
Deputy Chief for
Conflicts of Interest
Legal Division

Gina

I need to get Sen.

Keene an answer to

this question right

away. Can you help

me? I'd appreciate

it. Thanks

ROY GREGORY deGIERE

Consultant

Senate Elections and Reapportionment Committee

445-2601

Sarah,

6-26-80

Greg deGiere from Senator Keene's office would like us to reply to Nick Esposti concerning Mr. Matteri's question of whether or not there is a conflict if he is appointed to the Sonoma Fair Board due to his interest in the Redwood Empire Disposal Corp. If there is a problem doing this please get back to Greg. I'm going on vacation!!!!

Thanks.

Gina

- send a copy to Greg.

6-23-80

No conflict as long
as Mattie does not
participate in the
making of a decision
concerning his source
of income - Substan-
Collection Service,
- by per Sarah Cameron

G. S-K

COUNTY OF SONOMA
BOARD OF SUPERVISORS
ADMINISTRATION CENTER
SANTA ROSA, CALIFORNIA 95401
(707) 527-2241



MAY 29 1980

NICK ESPOSTI
SUPERVISOR FOURTH DISTRICT

May 27, 1980

The Honorable Barry Keene
Senator, Second District
Room 5053
State Capitol
Sacramento, CA 95814

Attention: Nettie Sabelhaus

Dear Nettie:

As per our phone conversation on Friday, May 23, 1980, I am sending you a copy of letters that I would like Barry to personally deliver to the Attorney General.

The request is for an informal opinion on a conflict of interest on the part of Mr. Robert Matteri.

I personally do not feel that Mr. Matteri's appointment to the Sonoma County Fair Board involves a conflict of interest.

I would like Mr. Deukmejian's unpublished opinion as soon as possible.

Thanking you in advance for your cooperation.

Sincerely,

NICK ESPOSTI
Supervisor Fourth District

NE:lw

JAMES P. BOTZ
COUNTY COUNSEL

OFFICE OF THE
COUNTY COUNSEL
COUNTY OF SONOMA
COUNTY ADMINISTRATION CENTER
2555 MENDOCINO AVENUE
SANTA ROSA, CALIFORNIA 95401
TELEPHONE (707) 527-2421

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JOHN C. GAFFNEY
CHIEF DEPUTY
LYNDA MILLSPAUGH
DEPUTIES
RICHARD W. ERGO
PRENTICE A. FISH
CAROLINE A. KERL
MARK J. FREED
SUZAN D. HATFIELD

May 21, 1980

The Honorable George Deukmejian
Attorney General
Department of Justice
State Building
San Francisco, CA 94102

Re: Request for Informal Opinion

Dear Mr. Deukmejian:


Your informal opinion is requested on the question posed in the attached letter.

In my opinion Mr. Matteri's directorship is contrary to Government Code §1090. Even assuming that a county must comply with a city's exclusive garbage collection franchise ordinance (see County of Marin v. Superior Court (1950) 53 Cal.2d 633 at 638-340 and County of Los Angeles v. City of Los Angeles (1963) 212 Cal.App.2d 160 at 164), the volume of garbage generated is largely a function of decisions made by the Board of Directors of the Fair Corporation.

The Fair is a contract corporate agent of the County (see Government Code §25905) and for your convenience I have enclosed a copy of the current contract. This office has, in the past, taken the position that the Board of Directors is a public body (for purposes of the Ralph M. Brown Act) and that the directors are public officers (for purposes of the Political Reform Act of 1974).

Mr. Matteri, through his attorney, brought this matter to my attention and, pending your decision, Redwood Empire Disposal Corporation has declined to bill the Fair for garbage collection services.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:jw
Enc.

cc: Richard B. Maxwell, Esq.
Ignazio Vella, Manager of Sonoma County Fair & Exposition, Inc.

RICHARD B. MAXWELL
DWIGHT S. ALLEN
DAVID S. COOPER

MALCOLM T. MANWELL

LAW OFFICES OF
MAXWELL, ALLEN & COOPER
A PROFESSIONAL CORPORATION
CHAMBER PLAZA - 635 FIRST STREET
SANTA ROSA, CALIFORNIA 95404
(707) 546-1022

BRYCE SWARTFAGER
(1895 - 1969)

CABLE ADDRESS:
MAXALL, SANTA ROSA,
CALIFORNIA

May 15, 1980

Mr. James Botz
County Counsel
County Administration Center
2555 Mendocino Avenue
Santa Rosa, CA 95401

Re: Request for Opinion of Attorney General
on Possible Conflict of Interest on the
Part of Robert Matteri

Dear Jim:

Robert Matteri has requested that this office submit to you the factual circumstances surrounding his appointment as a member of the Sonoma County Fair Board and the question whether such appointment involves him in a conflict of interest. Your office is requested to submit the question to the office of the California Attorney General for an unpublished opinion. It is my understanding that Supervisor Nick Esposti and Mr. Matteri have arranged for the matter to be expedited by the Attorney General's office.

It is believed that the question to be submitted to the office of the Attorney General can be summarized as follows:

QUESTION

Does the factual situation set forth below involve Robert Matteri, in his capacity as a Director of the Sonoma County Fair Association, in a conflict of interest arising out of Government Code §1090 or other sections of California law?

FACTUAL CIRCUMSTANCES

Robert Matteri was appointed by the Sonoma County Board of Supervisors to serve as a director of the Sonoma County Fair Association, a public entity, which is charged with the operation of the Sonoma County Fair and the management of the real property owned by the Sonoma County Fair Association. The fairground property is situated entirely within the incorporated area of the City of Santa Rosa.

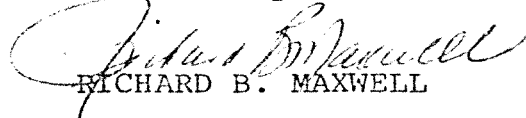
Mr. Matteri is the owner of an approximate one-seventh interest in a California corporation known as Redwood Empire

Mr. James Botz
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Disposal Corp. (herein Redwood) which is engaged in the business of garbage collection and disposal. Redwood has for many years held an exclusive franchise from the City of Santa Rosa for the collection and disposal of all garbage and refuse within the City boundaries. Redwood has for many years provided garbage service to the Sonoma County fairgrounds. There is no formal written contract covering this garbage service. The service is supplied, as required by the fairgrounds, and charges are made in accordance with the rates established by the City of Santa Rosa Ordinance for all service provided by its franchisee.

You may wish to reframe the question or factual circumstances set forth above. If there are any questions concerning this request please give me a call. Your prompt attention to this matter will be much appreciated.

Yours truly,



RICHARD B. MAXWELL

RBM:er

cc: Mr. Robert Matteri
Supervisor Nick Esposti
Attorney Jim Thompson

A G R E E M E N T

THIS AGREEMENT, made and entered into in triplicate this 14th day of June, 1977, by and between the COUNTY OF SONOMA, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and SONOMA COUNTY FAIR AND EXPOSITION, INC., a non-profit corporation, hereinafter referred to as "ASSOCIATION";

WITNESSETH:

WHEREAS, COUNTY proposes to hold and conduct an annual County Fair in said County at the Sonoma County Fairgrounds, and acting by and through its duly elected, qualified and acting Board of Supervisors, in regular session assembled, on the 29th day of November, 1955, by resolution did so announce and declare such purpose, and

WHEREAS, thereafter under dates of March 19, 1957, December 31, 1961, December 20, 1966 and December 21, 1971, the County of Sonoma and Sonoma County Fair and Exposition, Inc. entered into agreements by the terms of which said Sonoma County Fair and Exposition, Inc., a non-profit corporation, was authorized to conduct said County Fair on behalf of COUNTY and was authorized and appointed COUNTY'S agent for the purpose of managing, using, possessing, operating and conducting said Fair and Fairgrounds for the periods beginning March 19, 1957, and ending December 31, 1976, and

WHEREAS, the said agreement of December 21, 1971 has been extended for a period of one year pending the negotiation and execution of a new five-year agreement, and

WHEREAS, COUNTY proposes to conduct a County Fair each year during the term of this Agreement on dates to be hereafter selected, and

WHEREAS, the State of California has appropriated certain monies for the encouragement of the county fairs, and said monies are apportioned to such fairs in accordance with rules and regulations prescribed by the Department of Food and Agriculture of said State pursuant to the Food & Agricultural Code of said State, and

WHEREAS, the County has facilities available to hold said Fair on such dates as may be hereafter selected and designated by the Board of Supervisors of said COUNTY for the purpose of exhibiting and advertising the agricultural and livestock products of said COUNTY and the State of California, and

WHEREAS, it is the mutual desire of the parties hereto that ASSOCIATION act as an agent of COUNTY for the purpose of holding and conducting said Fair annually, and have the use, possession and management of the Fairgrounds for the period of this contract, and

WHEREAS, it is mutually understood by and between the parties hereto that the law of the State of California vests in COUNTY and its duly elected and appointed officials and none other, the power and authority to hold and conduct a County Fair annually, and that the usual records required by County procedures must be kept in connection therewith, which said records constitute County Records, and that all money constituting gross receipts from or in connection with the operation, holding and conducting of said Fair and through the use, possession and management of the Fairgrounds constitute County monies;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. COUNTY, acting under the authority of law applicable thereto, will hold and conduct said Fair on its Fairgrounds on the dates selected and designated by the Board of Supervisors of said COUNTY, and allocated as racing weeks by the California Horse Racing Board.

2. ASSOCIATION shall annually submit to the Board of Supervisors a tentative budget for the next fiscal year. The Board of Supervisors shall make such alterations as it deems appropriate

in said budget and forward the same to the State Department of Food and Agriculture, Division of Fairs and Expositions, in the form of an application for the apportionment, if such has not theretofore been made, and the disbursement to COUNTY by the State of California of money from the Fair and Exposition Fund of the full amount as by law required.

3. COUNTY will pay all premiums awarded by the judges at said Fair, subject to the prior approval of the premium list by the Department of Food and Agriculture and the necessary apportionment and disbursement of the required funds by the State of California to COUNTY, provided:

(a) That all premium awards are made in accordance with a published premium list approved by the Department of Food and Agriculture and the Board of Supervisors aforesaid, and applicable rules and regulations of the Department of Food and Agriculture, and

(b) The certification of awards of said premiums by said judges has been duly and regularly made and presented to COUNTY.

4. COUNTY will and does hereby constitute and appoint ASSOCIATION as an agent of COUNTY for the following purposes, to wit: to manage, use and possess and to operate and conduct said Fair and Fairgrounds for the period beginning January 1, 1977 and ending December 31, 1981, whereupon this Agreement will terminate, provided that this Agreement may be terminated at any time by order of the Board of Supervisors of the County of Sonoma. ASSOCIATION is hereby authorized and empowered to do all things necessary and proper under the law, its articles of incorporation, bylaws and this agreement in the management and operation of the Fair and Fairgrounds as agent of COUNTY.

5. ASSOCIATION will, subject to the laws of the State of California, manage, use and possess said Fair and Fairgrounds, and operate and conduct said Fair under the direction and supervision of COUNTY and within the limits and provisions of this Agreement to the

end that said Fair shall be conducted in accordance with the highest and best standards for the benefit of COUNTY and the State of California.

6. ASSOCIATION agrees to bear, assume, pay and discharge all expenses and obligations incurred by it in connection with said Fair, excepting alone therefrom the following:

(a) such sums as said COUNTY may allocate for work in advance of holding said Fair and other purposes incidental to the plans and preparation of said Fair;

(b) such sums as may be appropriated by said COUNTY to be used for the general conduct of said Fair;

(c) such sums as have been approved for disbursement by the Board of Supervisors of said COUNTY;

(d) such sums as have been or may be appropriated by the State Department of Food and Agriculture to said COUNTY from the Fair and Exposition Fund of the State of California, which said Board of Supervisors, with the consent of the State Department of Food and Agriculture, may determine to use for the purposes of said Fair;

(e) the monies and income received by ASSOCIATION from the conducting of said Fair and from the use, possession and management of said Fairgrounds, mentioned in paragraph 10 of this Agreement.

7. It is understood by the parties that COUNTY is presently self-insured with respect to public liability and all risks arising out of willful act, negligence, condition of property and premises, or operations, and including any and all acts or conditions for which the law imposes absolute or conditional liability to third persons; that such self-insurance extends to a dollar limit established by the Board of Supervisors (currently \$500,000); and that for liability exposure above said limit, COUNTY carries blanket, all-risk excess coverage insurance. COUNTY agrees to include ASSOCIATION, its directors, officers, agents and employees within

the protection and coverage of COUNTY'S self insurance program and the excess coverage insurance maintained pursuant to said program at no expense to ASSOCIATION. Should COUNTY hereafter during the term of this Agreement cease to be self-insured and purchase insurance coverage with respect to all public liability risks and exposures, COUNTY shall include ASSOCIATION, its directors, officers, agents and employees as insured parties in such insurance coverage. COUNTY shall, and hereby agrees to, indemnify, defend and hold harmless the directors, officers and employees of ASSOCIATION from and against any and all claims, loss, damage or liability, including attorneys' fees and all costs of defense, arising out of the operation and management of the Fairgrounds, including both Fair time and interim activities, or arising in any manner out of the performance of this Agreement or any functions connected therewith.

8. ASSOCIATION agrees to bear, assume and pay the premium for Workers Compensation Insurance covering employees of ASSOCIATION. COUNTY agrees that for purposes of such Workers Compensation Insurance, the employees of ASSOCIATION will be considered a separate class, and agrees that to the extent permitted by law, the County Auditor shall pay all premiums and assessments for such insurance from a fund separate and distinct from any and all other accounts designated for the payment of Workers Compensation Insurance coverage for other COUNTY employees.

9. ASSOCIATION will accurately make and keep all records substantially in agreement with the accounting and procedures as illustrated in the Fairs' Administrative Manual, issued by the Department of Food and Agriculture, Division of Fairs and Expositions, of all of its transactions as an agent hereunder, and will, among other things, require and procure serially-numbered receipts in duplicate for any and all money received and detailed, itemized invoices or other supporting documents for any and all money disbursed or expended by the ASSOCIATION in connection with its executive management and control of said Fair and Fairgrounds, and at the conclusion of said Fair will submit to and file with COUNTY a complete

itemized statement of all receipts and disbursements, supported by vouchers and cancelled checks, together with original entry blanks, judging sheets and other documents pertaining to the Fair. Said statement to be filed with the Clerk of the Board of Supervisors of the County of Sonoma not later than sixty (60) days after the conclusion of said Fair. ASSOCIATION hereby agrees that all books, records and documents pertaining to said management and control shall be subject to examination by the State Department of Food and Agriculture and that all such books, records and documents not transferred to and retained by COUNTY shall be preserved by ASSOCIATION and be and remain public records.

10. ASSOCIATION shall retain and use all monies received by it from the conducting of said Fair and from the use, possession and management of said fairgrounds, and shall pay therefrom all expenses incurred in connection with both. ASSOCIATION shall carry out all provisions of law relating to county fairs. In accordance with §§25905 and 25906 of the Government Code, ASSOCIATION agrees that all net proceeds received by such ASSOCIATION from whatever source shall be deposited by it within sixty (60) days after the conclusion of said Fair in the County Fair Fund in the County Treasury, and that a budget shall be submitted by it to and approved by the Department of Food and Agriculture after approval by the County Board of Supervisors, showing the estimated revenues and proposed expenditures from all sources during the current calendar year, and no funds shall be expended by such ASSOCIATION except pursuant to such budget.

11. In each year during the term of this Agreement, after the date in the sixty (60) days period following the conclusion of the Fair on which the ASSOCIATION shall have deposited the net proceeds of its management and operation of the Fair, together with the net proceeds from its use, possession and management of said fairgrounds, and until the time arrives for the appropriation and allocation to ASSOCIATION of funds to be used for the promotion and preparation for holding the Fair in the following year, COUNTY shall allocate and pay to ASSOCIATION, out of the funds in the County Fair Fund in its Treasury, from time

to time or month to month, such funds as are necessary and requested by ASSOCIATION for the upkeep of the Fairgrounds, maintenance and repair of buildings, and contingency expenditures related thereto, for the purchase of materials, supplies and equipment for such purposes, and for other necessary expense.

ASSOCIATION shall, during the same period, not less than once each month during the term of this Agreement, file in duplicate with COUNTY a full and complete report of all its receipts and disbursements from the use, management and possession of said Fairgrounds during said period.

12. ASSOCIATION agrees to file with the Clerk of the Board of Supervisors of said COUNTY, and with the Department of Food and Agriculture, a certified copy of the minutes of each meeting of the Board of Directors of said ASSOCIATION within three (3) business days after each such meeting.

13. ASSOCIATION agrees that all contracts which it executes, including but not limited to contracts for exhibit space, concession services, non-fair usage, or for construction, shall have the approval of a quorum of the Board of Directors of the ASSOCIATION as established by its Bylaws, given in open session of said Board, and recorded in the minutes of the meeting; provided that any contract for a term exceeding three (3) years shall not be effective until submitted to and approved by the Board of Supervisors of COUNTY, and further provided that whenever the estimated cost of construction of any permanent capital improvement shall exceed the sum necessitating formal bids set forth in Government Code §25541.5, as it now provides or may hereafter during the term of this Agreement be amended to provide, such capital improvement shall be made by COUNTY in the manner provided by law.

14. ASSOCIATION and COUNTY agree that with respect to the commitment or expenditure of any funds allocated by an executive order of the State Director of Food and Agriculture pursuant to Division 8, Chapter 4, Article 10 of the Business and Professions Code, the regular County procedure with respect to purchases, employment of personnel and contracts must be followed.

15. ASSOCIATION will not permit or allow any violation of the penal laws of the State of California at or in connection with said Fair insofar as it is possible to prevent the same.

16. ASSOCIATION during the period of this Agreement shall use its best efforts to maximize utilization of the Fairgrounds and revenues derived therefrom by licensing the use of Fairgrounds' facilities for animal shows, sporting exhibitions and social and community activities which are revenue producing or which may be conducted for public benefit without loss to ASSOCIATION or COUNTY, and may license the use of said facilities for public service events such as the Harvest Fair; provided, however, that any interim use agreement which in the opinion of the Board of Directors of ASSOCIATION or the County Counsel substantially increases the liability exposure of COUNTY or ASSOCIATION shall require the user to indemnify and insure COUNTY and ASSOCIATION and their officers, directors and employees against such liability exposure with limits approved by the County Counsel.

17. Pursuant to the provisions of §9504 of the Corporations Code of the State of California, the Directors of Sonoma County Fair and Exposition, Inc., a non-profit corporation, shall not be personally liable for any of the debts, liabilities or obligations of said corporation.

18. COUNTY shall at its own expense purchase and maintain fire and extended casualty insurance with limits set by the Board of Supervisors covering improvements located upon the Fairgrounds.

19. No member of the Board of Directors of ASSOCIATION shall be interested in any contract made by it or be a purchaser or vender in connection with any sale or purchase made by said ASSOCIATION.

20. All persons occupying permanent employee positions of ASSOCIATION, which positions have heretofore been or may hereafter be approved and authorized as permanent employee positions by the

Board of Supervisors of COUNTY, are County employees in the unclassified service as provided in COUNTY'S Ordinance No. 305A, as amended. The compensation paid to such employees by ASSOCIATION is on behalf of COUNTY and shall be paid from ASSOCIATION funds on deposit with COUNTY.

21. COUNTY agrees to provide to ASSOCIATION (at cost) the services of such County personnel as may be reasonably requested by ASSOCIATION in the fulfillment of the agency hereby created, such personnel to include, but not necessarily be limited to the offices of the Purchasing Department, Photocopy Department, Public Works Department, and County Counsel, provided ASSOCIATION shall have the right to contract for any and all such services, save and except legal services, with private entities.

22. This agreement shall not be subject to any form of transfer or assignment by the ASSOCIATION by any means whatsoever, whether voluntary or involuntary.

23. This Agreement shall be without force or effect unless it is approved by the State Department of Food and Agriculture.

COUNTY OF SONOMA, a political sub-division of the State of California

ATTEST:

Gregory S. Williams
Clerk of the Board

By *W. William Williams*
Chairman, Board of Supervisors
of the County of Sonoma

SONOMA COUNTY FAIR AND EXPOSITION, INC
a non-profit corporation

ATTEST:

Angie Martini
Secretary

By *W. F. Adams*
President

APPROVED:

DEPARTMENT OF FOOD AND AGRICULTURE
STATE OF CALIFORNIA

By *Gregory B. Neal*