

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 • • Statements of Economic Interest
(916) 322-3662 322-5660 322-5901 322-6441 322-6444

September 12, 1980

John F. Hahn
Amador County Counsel
108 Court Street
Jackson, CA 95642

Dear Mr. Hahn:

This is in response to your request for advice on behalf of Earl Withycombe. This advice is provided pursuant to Government Code Section 83114. The facts as I understand them from your letter of August 20, 1980, are as follows.

Mr. Withycombe is a member of the Board of Supervisors of Sierra County. Sierra County, through the Sierra County Air Pollution Control District, is a member of the Mountain Counties Air Basin, but Mr. Withycombe does not represent Sierra County on the Control Council, the governing body of the Air Basin. In addition to his position as a supervisor for Sierra County, Mr. Withycombe also serves as district engineer for the Air Pollution Control District and as a consulting engineer for the Air Basin. You have asked whether it is permissible for Mr. Withycombe to hold these positions while serving as a supervisor.

The prohibition against conflicts of interest contained in the Political Reform Act of 1974 reads as follows:

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.

Government Code Section 87100

87103(c)
87030(b)(2)

A-80-143

Mr. John F. Hahn
September 12, 1980
Page Two

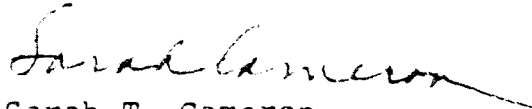
The Political Reform Act therefore does not prohibit people from holding public office because of conflict of interest; it instead provides that once in office, they must refrain from participating in certain decisions.^{1/}

In addition, although a public official must generally refrain from decisions which will have a material financial effect on sources of income to them [Government Code Section 87103(c)], salary from a government agency does not constitute "income" under the Political Reform Act. See Government Code Section 82030(b)(2). Consequently, the Political Reform Act will not require Mr. Withycombe to disqualify himself from decisions of the Sierra County Board of Supervisors simply because those decisions will affect either the Air Basin or the Air Pollution Control District. He would, however, be required to disqualify himself from participating in decisions of any of these agencies if those decisions would affect any private clients he might have.

Finally, I can only advise you concerning the application of the Political Reform Act. Other provisions of law such as the prohibition against contractual conflicts of interest contained in Government Code Section 1090 or the common law doctrine of incompatibility of offices may have an application in this situation.

If you have any further questions concerning the Political Reform Act, please do not hesitate to call me.

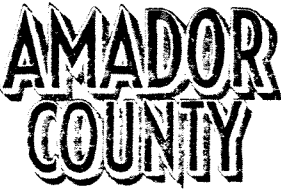
Sincerely,



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

STC:nrw

^{1/} Government Code Section 87103 contains the standards for determining whether an official has a financial interest in a decision.

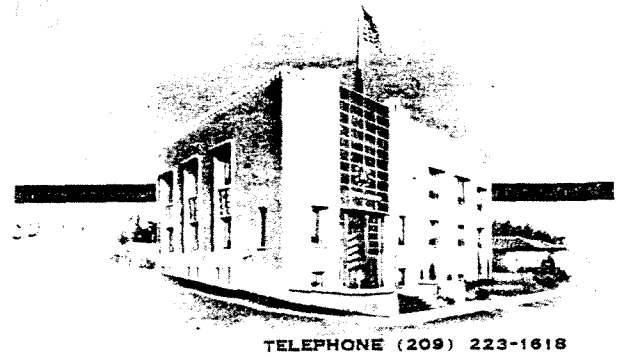


JOHN F. HAHN

COUNTY COUNSEL

108 COURT STREET

JACKSON, CALIFORNIA 95642



TELEPHONE (209) 223-1618

August 20, 1980

Mr. Ted Prim, Chief
Conflicts of Interest Division
Fair Political Practices Commission

Dear Mr. Prim:

The Mountain Counties Air Basin is a regional air basin established pursuant to Part 1 of Division 26 of the California Health and Safety Code. The control council, which is the governing board of the Mountain Counties Air Basin, has asked me to request an opinion from you as to whether or not the Basin, through its control council, may contract with Mr. Earl Withycombe for the latter's furnishing of air pollution consultant services to the Air Basin. The problem giving rise for the need for the opinion is that Mr. Withycombe is a member of the board of supervisors of Sierra County, which County is a member of the Basin. I have been asked to write to you to request an opinion as to whether such a contract creates a conflict of interest so that Mr. Withycombe would be prevented from entering into the contract. Please note that Mr. Withycombe, should he enter into the contract, would not participate in any decision of the board of supervisors of Sierra County as a supervisor on any matter relating to air pollution.

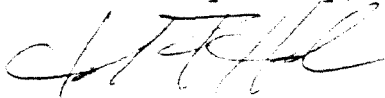
I am enclosing a letter from Mr. Withycombe to me dated December 9, 1979, and copies of relevant contracts, agreements, bylaws, conflict of interest codes, and disclosure statements which accompanied the letter.

Please note that Mr. Withycombe does not represent Sierra County on the council. It may be of further interest to you that Mr. Withycombe has two positions: one as the district engineer for the air pollution control district for Sierra County and as the consultant for the Basin; he held both of those positions prior to his being elected to Sierra County's board of supervisors. Both Mr. Withycombe and the council wish to be assured that his holding of the two positions is not unlawful.

It is my opinion that there is no inherent conflict of interest between Mr. Withycombe's acting as the engineer for the Basin (and the district) while serving as a member of Sierra County's board of supervisors provided that he does not participate as a supervisor in any matter relating to air pollution, the district, and the Basin which come before the Sierra County board of supervisors, and as long as he does not represent Sierra County on the Basin's council.

Please let me know if you disagree with my opinion.

Yours very truly,



JOHN F. HAHN
County Counsel

JFH/p

Enc: a/s