

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) 322-5662 322-5660 322-5901 322-6441 322-6444

February 10, 1981

Richard G. Grogan
Supervising Attorney
Senior Legal Center
P.O. Box 506
Redding, CA 96001

A-81-02-084

Dear Mr. Grogan:

Thank you for your letter of January 28, 1981, requesting advice regarding the conflict of interest provisions of the Political Reform Act. It has been our practice to make a public analyses of how the law applies to a particular set of facts in only two situations:

1. When we are responding to a request for an opinion or advice from someone concerning his or her own duties under the Act pursuant to Government Code Section 83114.^{1/}
2. When we are responding to a formal or informal complaint requesting that we initiate an enforcement action.

Since you are not inquiring about the obligations of yourself or your clients, we cannot offer you advice. However the following general review of the law may help you decide whether or not you want to file a complaint with the Enforcement Division of this agency.

The general disqualification provisions of the Act are contained in Sections 87100-87103. Section 87100 provides:

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.

^{1/} All statutory references are to the Government Code unless otherwise noted.

Richard G. Grogan
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The prohibition set forth in Section 87100 applies only to "public officials." That term is defined by Section 82048 to include consultants.

By regulation the Commission has defined the term consultant. 2 Cal. Adm. Code Section 18700(a)(2) provides:

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

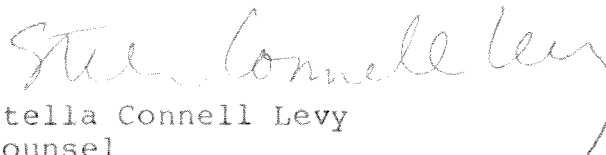
(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

The Commission is empowered to issue administrative remedies with respect to violation of the Political Reform Act only. (See Sections 91000-91014.) Enclosed is a packet of materials describing how to file a complaint with this agency. If you have any questions about these materials, please contact our Enforcement Division. You also have the option of filing a complaint with the District Attorney who is empowered to enforce violations of the Political Reform Act as well as other Government Code Sections.

If you have further questions feel free to contact me.

Sincerely,



Stella Connell Levy
Counsel
Legal Division

SCL:plh
Enclosures

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SENIOR LEGAL CENTER

Toll Free Telephone 800-822-0109

JAN 30 12 41 PM '81

Reply to:

- Butte Office
P.O. Box 3583 2nd St. and Normal
Chico, CA 95927, ph. 916-895-5923
- Glenn Office
P.O. Box 975 722 5th St.
Orland, CA 95963 ph. 916-865-5555

- Shasta Office
P.O. Box 506 2120 Pine St.
Redding, CA 96001 ph. 916-243-3209
- Tehama Office
P.O. Box 397 1216A Franklin St.
Red Bluff, CA 96080 ph. 916-527-9267

January 28, 1981

Fair Political
Practices Commission
1100 "K" Street
Sacramento, CA 95814

Re: Conflict of Interest

Dear Commissioners and Staff:

I am an attorney representing a group of citizens opposed to the formation of a sewer assessment district. In the course of that representation, I am questioning the involvement of an engineering firm with the proposed district.

Enclosed is a copy of the letter I wrote to the Cottonwood County Water District. The engineering firm, Gelonek & Associates apparently claims that there is no conflict. The problem as I see it is that we have an engineering firm giving advice on a continuing basis to a water district. I don't know whether there is a contract for this or not. At the same time, that same firm is apparently contracting and doing engineering for new construction for that same district. The way I read the Fair Political Practices Act and Section 18700 of Title 2 of the California Administrative Code, this is a conflict of interest.

I understand that rural districts need to have a consulting engineer to help them in their day to day operations. For the same firm to say in effect "You need a new system, it is feasible," and then to do the work for that system seems to be a conflict. Apparently, this set-up is common in Shasta County. If that is true then I feel it is even more important for the Commission to look into this.

The real key is to focus on the involvement of the engineering firm. Because of the expertise of the engineering firm and the relative lack of expertise of the board members and the complexity of the problems, the engineering firm carries more weight than what I think the law contemplates a "Consultant" normally has.



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Finally, as to Gelonek & Associates, I have no information to lead me to believe that their work is not up to the highest standards. My only concern is the conflict of interest. I think that a firm should decide whether it will advise on a day to day basis or whether it will bid on projects. I don't think it should do both jobs for the same district.

Very truly yours,



Richard G. Grogan
Supervising Attorney

Enclosure

cc: Samuel A. Sperry
Attorney for
Gelonek & Associates
Suite 1150, Watergate Tower
Emeryville, CA 94608

Robert Rehberg
Attorney for
Cottonwood County
Water District
1524 East St.
Redding, CA 96001

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Board of Directors
Cottonwood County
Water District
High & Chestnut St.
Cottonwood, CA 96022

Re: Opposition to Proposed Sewer
Project and Conflict of Interest

Board of Directors,

I am representing a group of people, most of whom are senior citizens, who are opposed to the proposed sewer project. The cost of the project is their biggest concern. The proposed project is based on the assumption that major development will occur within the proposed district. The property owners will be paying for a system that will primarily benefit some large landowners who want to develop their property. Perhaps the boundaries could be redrawn so that the large landowners who will benefit most from the system through development will bear more of the costs. They can pass those costs onto those that they sell to.

The recent petition forms sent out by the District did not clearly spell out to the people the rights they were waiving by signing that petition. In the fine print there was a reference to code section and nothing else. In fact, by signing that petition people were handing over the decision on the proposed district to the Board of Directors and relinquishing their right to vote on it. Further, the waiver allows an assessment greater than the assessed value of the property. The concept of "waiver" means waiver of a known right. The people did not know what rights they had. Peti-tions are now being circulated and we expect many of those people who signed the original petition to withdraw their support.

Finally, the involvement of Gelonek & Associates in this proposed project must be examined. It is my understanding that they did the initial feasibility study on the project and that they advise the Board on a continuing basis. Do they also plan to do any of the engineering work if the project eventually goes forward? If the Gelonek firm were



Opposition to Proposed Sewer
Project and Conflict of Interest

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to do the engineering work after doing the feasibility study then that would be a conflict of interest under the Fair Political Practices Act.

Government Code Section 82048 includes "Consultant" within the definition of "Public official." Section 87100 states 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."

Obviously, a firm doing a feasibility study would have an interest in finding a project to be feasible if that same firm would be doing the engineering work if the project was approved. At least the appearance of a conflict of interest is created when a firm in the running for an engineering contract mails out the petitions to the land-owners and tabulates the results. There is a rumor that owners of 80% of the land have approved the project. If that is true, we'd like to see the documents.

Very truly yours,

Richard G. Grogan
Supervising Attorney

cc: Gelonek & Associates

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