

JAMES P. BOTZ
COUNTY COUNSEL

F P P S
APR 15 9 54 AM '88

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C. DAVID HURST
RICHARD M. FLORES
KATHLEEN A. LAROCQUE

April 12, 1988

Ms. Lilly Spitz, Counsel
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Informal Advice Per Your File No. I-87-297

Dear Ms. Spitz:

Let me thank you once again for your timely response to my request for advice with respect to Sonoma County Supervisor Janet Nicholas' potential conflict of interest because of her husband's relationship with the Sonoma Valley Bank. A copy of that letter was given to Supervisor Nicholas, and there have been ongoing discussions concerning its implementation with both officials of the Sonoma Valley Bank and certain County department heads.

During the course of these discussions, some questions concerning your opinion have arisen, and I would appreciate any clarification that you might give to them. Both questions concern the 1982 advice letter to the Newport Beach City Attorney (your number A-82-039) concerning a Mr. Balalis, a member of the Newport Beach planning commission.

First, as you may recall, the opinion centered on a \$240,000 loan by Mr. Balalis' bank to a private club located in the city of Newport Beach. At about the time Mr. Balalis was serving as chairman of the bank, the annual interest on the \$240,000 loan would have been about \$37,200. The opinion reaches the conclusion that there was no impropriety found with Mr. Balalis voting on the matters in question. Was this because Mr. Balalis' share of the gross income would have been less than \$10,000 (i.e., \$37,200 interest multiplied by his 6 percent imputed share of that interest equalling \$2,232)?

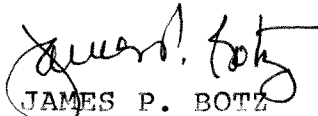
Second, there is some language in the Balalis opinion that appears to establish a conflict only in a case where the public official has actual knowledge. That is, the last sentence of the second full paragraph on page 2 of the advice letter states that Mr. Balalis was under no duty to inform himself as to the identity of the bank's customers. Could you please tell

Ms. Lilly Spitz, Counsel
April 12, 1988
Page 2

us if the same sort of obligation exists for Supervisor Nicholas; i.e., would she be obligated to disqualify herself only as to public matters involving Sonoma Valley Bank customers about which her husband has informed or through which she has information from other sources?

Once again, your timely and professional advice is always appreciated.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb
cc: Supervisor Nicholas

SMS #417

10:30

Mark Huebsch
Stradling, Yocca,
Carlson & Rauth

660 Newport Center Dr.

Suite 1600

Newport Beach, CA

92660-6441

teletype # 714-640-7335

87-297

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NOV 23 8 33 AM '87

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LINDA A. BELIVEAU

November 16, 1987

Mr. John Larson
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

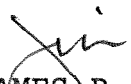
Dear John:

Your informal opinion is requested on the question posed in the enclosed letter addressed to me, dated February 24, 1987 from Sonoma County Supervisor Janet Nicholas. I have also enclosed my response dated March 4, 1987 and a subsequent response dated July 20, 1987.

If you need additional information, please advise.

I hope to see you at the forthcoming meetings of the Association.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb
Enclosure
cc: Supervisor Nicholas

COUNTY OF SONOMA
BOARD OF SUPERVISORS
575 ADMINISTRATION DR., RM. 100A
SANTA ROSA, CALIFORNIA 95401
(707) 527-2241



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COUNTY CLERK

February 24, 1987

James P. Botz, County Counsel
County of Sonoma
575 Administration Drive, Rm 116A
Santa Rosa, California 95401

Re: Conflict of Interest

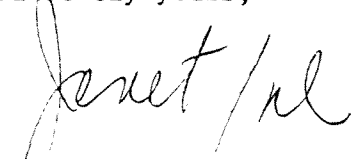
Dear Jim:

Pursuant to our earlier conversations, my husband plans to participate in a Sonoma County commercial banking venture. The new bank is expected to have a State Charter and be operative in August of this year. Bob will be one of six Directors and own approximately 3.5% of the outstanding shares. Controlling interest in the bank (50% +1) will be owned by an existing Northern California bank. As a Director, Bob will serve on the loan committee and perform duties typical of a member of a Board of Directors.

My purpose in writing is to ascertain what, if any, additional disclosure requirements will be required of me as a member of the Board of Supervisors. Naturally, I would annually disclose my community property interest in the bank stock and any director's income.

Your comments and direction are greatly appreciated.

I remain,
Sincerely yours,

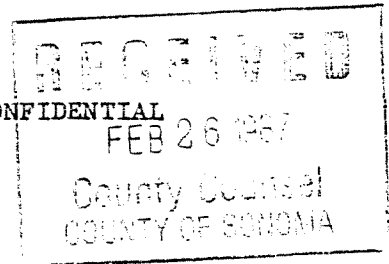

Janet Nicholas,
First District Supervisor

JN/gdc/2424

JPB
OPINION REQUEST

Logged 2-26-87
Answered 3-4-87

CONFIDENTIAL



JAMES P. BOTZ
COUNTY COUNSEL

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LINDA A. BELIVEAU

March 4, 1987

Janet Nicholas
Supervisor, First District
County of Sonoma
575 Administration Drive, #100A
Santa Rosa, CA 95401

Dear Supervisor Nicholas:

This is in response to your letter of February 24, 1987 requesting my advice on a potential conflict of interest problem.

In that letter, you relate that: your husband plans to participate in a Sonoma County commercial banking venture; he will be a director and a shareholder in a new bank which will have a state charter operative in August of 1987; he will be one of six directors and his common stock ownership will represent 3.5 percent of the outstanding shares; an existing Northern California bank will own a majority of the shares; in his capacity as director, your husband will serve on the loan committee and otherwise perform duties typical of a member of a bank board of directors.

You ask "what, if any, additional disclosure requirement will be required of me as a member of the Board of Supervisors." Based on our prior conversations about this matter, I understand that your concern is not with your annual disclosure statements but rather with the possibility of any transactional disqualifications that might be required while sitting as a member of the Board.

Because of the wide variety of ways in which a conflict of interest may arise with respect to a private investment and the complexities of the Political Reform Act, I am unable to predict in advance when a conflict will occur. All that can be done in a situation such as this is to provide guidelines that would serve as an early warning system. The guidelines would help you to identify a transaction that is scheduled for Board action, and at that time we could more carefully analyze whether or not a conflict of interest existed.

The Political Reform Act's seminal rule on conflict of interest is contained in Government Code §87100 which provides:

200-1-16

Janet Nicholas
Supervisor, First District
County of Sonoma

March 4, 1987
Page 2

"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."

The phrase "financial interest" in § 87100 is defined in § 87103 to include, among other things, "any business entity in which the public official has a direct or indirect investment with more than \$1,000.00;". By virtue of your husband's stock ownership in the new bank, you have a "financial interest" in that bank.

Thus you would have a conflict of interest if there were a matter pending before the Board of Supervisors which would have a "material financial effect" on your "financial interest." The phrase "material financial effect" is defined in §18702.2 of the California Administrative Code (a regulation of the Fair Political Practices Commission).

Because of the clarity with which §18702.2 is drafted, I have simply attached a copy of it here for your reference. Suffice it to say that §18702.2 provides certain monetary thresholds that when reached bring the matter pending before the Board of Supervisors into the area of a "material financial effect" on your "financial interest."

The presence of the "parent bank" adds another factor. Your "financial interest" in the subsidiary bank becomes a "financial interest" in the "parent bank" under California Administrative Code § 18706. Thus you would have a potential for a conflict of interest should the interests of the "parent bank" be involved in a Board decision. Of course a conflict of interest would only exist if the Board's decision would also have a reasonably foreseeable material financial effect on your "financial interest" in the "parent bank" (see enclosed copy of § 18702.2).

After you have digested this material, I would be happy to discuss the matter with you further. But in any event, I would recommend that you review the following list of possible transactions which might provide an early warning of a conflict of interest.

1. Direct interaction between either bank and the County (including other public entities governed by the Board of

Janet Nicholas
Supervisor, First District
County of Sonoma

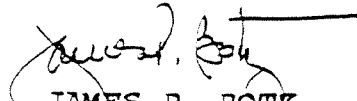
March 4, 1987
Page 3

Supervisors or on which you serve as an ex-officio member). These would include direct applications by either bank for permits, contracts between either bank and the County (e.g. depository agreements); litigation in which both the County and either bank are parties; purchases of real property in which either bank has a possessory interest or a security interest (this is more likely to occur with eminent domain proceedings where the bank holds a trust deed as a creditor of the property owner).

2. Indirect interaction. These areas are more difficult to identify in advance and are potentially the most troublesome. They involve situations where neither bank is directly interacting with the County but rather a third party borrower of either bank is interacting with the County through any of the processes described under direct interaction. The most foreseeable situation would be where a developer or property owner who is a borrower of either bank is applying for a permit from the County.

I hope that this has been and will be useful in avoiding inadvertent violations of the Political Reform Act.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb:slr:db
Enclosure
bcc: Stephen K. Butler



California Fair Political Practices Commission

November 24, 1987

James P. Botz
County Counsel
County of Sonoma
575 Administration Drive, Room 116A
Santa Rosa, CA 95401-12881

Re: 87-297

Dear Mr. Botz:

Your letter requesting advice under the Political Reform Act was received on November 23, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
by Ked
Diane M. Griffiths
General Counsel

DMG:plh
cc: Janet Nicholas

87-297

JAMES P. BOTZ
COUNTY COUNSEL

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LINDA A. BELIVEAU

July 20, 1987

Honorable Janet Nicholas
Supervisor, First District
County of Sonoma
575 Administration Drive, #100A
Santa Rosa, CA 95403

Re: Sonoma Valley Bank Conflict of Interest

Dear Supervisor Nicholas:

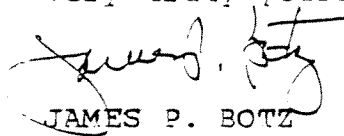
Since my letter to you of March 4, I have received a letter dated June 8th from John Carr of Rosenblum, Parish & Bacigalupi. I understand that Mr. Carr is counsel for the bank and is advising your husband on this matter.

On the second page of Mr. Carr's letter, he expresses some understandable concern with what I have described as "indirect interaction" (situations where borrowers of the bank are before the Board of Supervisors on permit applications).

I do not believe that the Political Reform Act would require you, as a matter of precaution, to disqualify yourself from every matter involving a borrower of the bank. Rather, each situation would have to be reviewed to gauge the "material financial effect" on the bank of the borrower's application. Based on Mr. Carr's analysis of the bank's internal financial structure, that review would be under California Administrative Code section 18702.2(g) (copy enclosed).

One approach might be for the bank to provide you with a list of borrowers whose use of the loan proceeds might cause any of the three threshold figures of §18702.2(g) to be exceeded.

Very truly yours,



JAMES P. BOTZ
County Counsel

JPB:dlb
Enclosure
cc: John Carr

200-1-16

JAMES P. BOTZ
COUNTY COUNSEL

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C. DAVID HURST
RICHARD M. FLORES
KATHLEEN A. LAROCQUE

December 7, 1987

Ms. Lilly Spitz
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Lilly:

Pursuant to your request today, please find enclosed a letter from John W. Carr of the firm of Rosenblum, Parish & Bacigalupi to Robert J. Nicholas, Supervisor Nicholas' husband, concerning the conflict of interest question that I posed recently.

Very truly yours,



JAMES P. BOTZ
County Counsel

JPB:dlb
Enclosure

LAW OFFICES

ROSENBLUM, PARISH & BACIGALUPI
PROFESSIONAL CORPORATION

FIFTEENTH FLOOR
555 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94111
(415) 421-8232

FIFTH FLOOR
55 ALMADEN BOULEVARD
SAN JOSE, CALIFORNIA 95113
(408) 977-0120

June 8, 1987

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TELEX 278319RRPB

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JOHN E. McNERNEY III
BRADFORD N. DEWAN
CLAUDE A.S. HAMRICK
PHILIP S. BOONE, JR.
DAVID G. BICKNELL
MICHAEL A. ISAACS
KEVIN P. JEWELL
WAYNE L. BENDER
DAVID H. JAFFER
CLAIRE YEATON-RISLEY
LISA BARTON ARMANHO
DIANE T. ABEL
EDWARD C. McDONALD, JR.
LISA B. RASMUSSEN
STEPHEN T. HEYMAN

VICTOR J. BACIGALUPI
HENRY P. WINETSKY
JOSEPH G. MASON
STEPHEN M. WURZBURG
JOHN W. CARR
MICHAEL R. HOWARD
GLENN E. WESTREICH
BARRY MILGROM
THOMAS N. MAKRIKIS
EDWARD P. SUZINKY
JANE FABIAN O'LEARY
LOUISA B. WALDNER
BENJAMIN P. KLATSKY
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EVA C. GOLDMAN
CHARLES P. MAHER

* ADMITTED IN OREGON ONLY

OF COUNSEL
DONALD E. BURNS
THOMAS SCHNECK
ROBERT A. GOLDMAN

Mr. Robert J. Nicholas
Nicholas Turkey Breeding Farms
19449 Riverside Drive
P. O. Box "Y"
Sonoma, California 95476-1209

Dear Bob:

This responds to the questions raised in your letter of May 13, regarding the conflict of interest opinion given to Mrs. Nicholas by Sonoma County Counsel James P. Botz.

The first point to note is that Govt. Code §87100 restricts the activities of "public officials" only. It does not act to restrict your future activities as a director of the bank after it commences business. Hence the rather sweeping prohibitions you propose to place on yourself -- not serving on the loan committee and not reading its minutes -- are not called for by the statute in question. In fact, I do not believe it would be possible to isolate yourself from these aspects of the bank's operations and continue to fulfill your fiduciary obligations as a director, which would include keeping abreast of the bank's lending activities.

A second point to note is that the actions you propose would not necessarily prevent Mrs. Nicholas from violation of Govt. Code §87100. To the contrary, your familiarity as a director with the bank's activities would be her best way of keeping informed of any transactions which might involve a "governmental decision" by the Board of Supervisors from which she should abstain. In fact, I would think that the better reading of section 18700 would be that Mrs. Nicholas would have an obligation, by virtue of her relation to you as your spouse and your relation to the bank as a director, to keep herself as fully informed about potential conflicts of interest as those relationships would allow. In terms of the statute, she would have "reason to know" of her financial interest in any matter

Mr. Robert J. Nicholas
June 8, 1987
Page 2

before the Board of Supervisors precisely because of your position as a director of the bank.

Aside from the foregoing, I would not comment much further on Mr. Botz's opinion, which for the most part seems to be a reasonable and prudent exposition of the conflict of interest statute and regulations. I do point out the following, however:

(1) Since "indirect" investments trigger the application of the conflict of interest regulations, the list of business enterprises in which your wife would have an indirect interest would include not only Napa Valley Bancorp but also each subsidiary company or enterprise controlled by it, including at present Napa Valley Bank and Napa Valley Development, and in the future any other affiliated company of Napa Valley Bancorp.

(2) The materiality of any governmental decision with regard to the investment in Sonoma Valley Bank would be measured by subsection (g) of section 18702.2 of the FPPC Regulations, since Sonoma Valley Bank (i) will not be an ASE or NYSE listed company (subsection (c)); (ii) is not to my knowledge planned to be on the NASD Market List (subsection (d)); (iii) will not issue securities qualified under Corp. Code §25110, since bank securities are exempt therefrom (subsection (e)); and will not meet the financial standards for NYSE listing in the near foreseeable future (subsection (f)).

With respect to indirect investment in other future affiliates of Sonoma Valley Bank, other subsections of section 18702.2 would govern materiality -- e.g., Napa Valley Bancorp is, I believe, NASD Market Listed.

(3) I am troubled most by that section of Mr. Botz's opinion dealing with what he terms "indirect interactions," since the thrust of his advice seems to be that Mrs. Nicholas should as a matter of precaution disqualify herself, among other things, from any matter coming before the Board of Supervisors involving any borrower of the bank. This is a very broad scope of potential conflict of interest, indeed, and one with which it would require, in my opinion, extraordinary vigilance to comply. Sonoma Valley Bank alone will have many hundreds, foreseeably thousands, of borrowers, and their relationships to the bank may not necessarily be apparent when matters come before the Board of Supervisors. When one adds in borrowers or other customers of Napa Valley Bancorp and its affiliates, the list of parties as to whose matters Mrs. Nicholas would have to disqualify herself assumes potentially staggering proportions.

Mr. Robert J. Nicholas
June 8, 1987
Page 3

I would advise, therefore, that Mrs. Nicholas seek further clarification from County Counsel Botz with respect to this portion of his opinion.

Sincerely,



John W. Carr

JWC/jg/D:064

cc: James A. Maggetti
Robert B. Hitchcock
Bryan C. Hansen



California Fair Political Practices Commission

January 26, 1988

James P. Botz, County Counsel
County of Sonoma
County Administration Center
575 Administration Dr., Room 116A
Santa Rosa, CA 95401-2421

Re: Your Request for Informal Advice
Our File No. I-87-297

Dear Mr. Botz:

You have requested advice about the duties and responsibilities of Sonoma County Supervisor Janet Nicholas under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Because your request is more of a general inquiry than a request for advice as to a specific action pending before the board of supervisors, we treat your request as one for informal assistance.^{2/}

QUESTION

Under what circumstances should Supervisor Nicholas refrain from participating in actions of the board in light of her husband's involvement with Sonoma Valley Bank?

CONCLUSION

We agree with your analysis of Supervisor Nicholas' responsibilities under the Act. Specifically, Supervisor Nicholas must disqualify herself from participating in actions of the board of supervisors when (1) the bank appears before the board of supervisors or is a named party in a proceeding

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

before the board of supervisors, or (2) the bank has no direct involvement in the proceeding, but the decision of the board of supervisors will foreseeably and materially affect the bank.

Supervisor Nicholas is not required to disqualify herself from decisions of the board of supervisors involving every borrower of the bank, as was suggested by Mr. Carr. The key consideration when the bank is indirectly involved is whether there is a material effect on the bank as a consequence of the decision of the board of supervisors.

FACTS

Janet Nicholas is a member of the Board of Supervisors for the County of Sonoma. Her husband plans to become a director and a shareholder in Sonoma Valley Bank. Based on the information provided, we will assume that Sonoma Valley Bank became state-chartered in August of 1987. The bank is not listed on the American or New York Stock Exchanges, nor with the National Association of Securities Dealers (NASD), and is not qualified for public sale.

Mr. Nicholas will be one of six directors and will receive no salary for serving on the board. His common stock ownership will represent 3.5 percent of the outstanding shares. Napa Valley Bancorp, a financial institution listed on the NASD, owns a majority of the shares of the bank.

You have advised Supervisor Nicholas that she should be aware of potential conflicts of interest in two types of situations:

(1) Direct interaction between the county and the Sonoma Valley Bank or its parent bank, Napa Valley Bancorp; and

(2) Indirect interaction between the county and a third party borrower of either bank, where the county's action could foreseeably have a material financial effect on the banks.

Mr. John Carr, of the law firm of Rosenblum, Parish and Bacigalupi, has advised Supervisor Nicholas' spouse that your analysis of her responsibilities under the Act is overly broad. He feels your advice would require her to disqualify herself from matters before the board of supervisors which involve any borrower of the Sonoma Valley Bank, its parent corporation or subsidiaries thereof.

You are seeking clarification from the Commission relative to Supervisor Nicholas' participation in decisions involving Sonoma Valley Bank, its parent corporation, affiliates and clients.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using her official position to influence a governmental decision in which she knows or has reason to know she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of her immediate family or on any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more. (Section 87103(a).)

Supervisor Nicholas is a "public official" within the meaning of the Act (Section 82048), and as a consequence, she must disqualify herself from governmental decisions in which she knows or has reason to know she has a financial interest. Supervisor Nicholas has an investment interest in Sonoma Valley Bank by virtue of her husband's stock ownership. (Section 82034.) Moreover, this investment interest includes any parent, subsidiary or additional business entities otherwise related to Sonoma Valley Bank. (Regulations 18236 and 18706, copies enclosed.) For example, a decision which would have a reasonably foreseeable material financial effect on the parent entity, Napa Valley Bancorp, would require Supervisor Nicholas' disqualification.

Thus, the first step in preparing appropriate responses to questions concerning the supervisor's new economic interest is to develop a listing of the various business entities related to Sonoma Valley Bank, and to keep this listing current. Regulation 18236 contains a definition of the terms "parent," "subsidiary," and "related business entity" which apply in this situation. We note that in the letter from Mr. Carr there is reference to Napa Valley Bancorp, Napa Valley Bank and Napa Valley Development as business enterprises currently related to Sonoma Valley Bank. Mr. Carr indicates as well that there is potential for additional affiliated enterprises in the future.

Once Supervisor Nicholas has such a list, it would be her responsibility, when issues of major financial consequence come before the board of supervisors, to determine whether Sonoma Valley Bank, its parent corporation or otherwise related enterprises, are in any way involved. She must then determine whether it is reasonably foreseeable that the decision will have a material financial effect on one of those entities.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is

not required; however, if the effect is a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

As was pointed out in the previous letters to Supervisor Nicholas and her husband, there are a number of issues which come before a board of supervisors which could foreseeably have a financial effect on Sonoma Valley Bank, its parent corporation or affiliates. Questions concerning land use are the most obvious issues which would involve the bank in a proceeding of economic consequence with the county. The other activities noted in your correspondence, including involvement by the bank(s) and the county in litigation and contracts, meet the test of foreseeability as well.

Material Effect

The key question when Supervisor Nicholas is faced with an issue in which Sonoma Valley Bank is involved is whether the financial effect on the bank will be material. Not all borrowers of the bank will come before the board of supervisors seeking action which will, in turn, have a material financial effect on the bank. In fact, it is reasonable to assume that a decision affecting one of the bank's borrowers would rarely have a material financial effect on the bank. (See Burnham Advice Letter, No. A-82-039, copy enclosed.)

A. Direct involvement by the bank

The Act has a straight-forward standard of materiality for decisions specifically involving an economic interest of a public official. Regulation 18702.1 (copy enclosed), provides in pertinent part:

(a)...a public official shall not make, participate in making, or use his or her official position to influence a government decision if:

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or more...appears before the official in connection with the decision;

* * *

(b) A person or business entity appears before an official in connection with a decision when that person or entity either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

Thus, when Sonoma Valley Bank, its parent corporation or affiliates, appear before the board of supervisors, Supervisor Nicholas is required to disqualify herself from participation in the decision.

B. Indirect involvement

In order to measure the effect of a decision on a business entity which may be indirectly involved in an issue before a public agency, the Commission has developed guidelines through its Regulation 18702.2 (copy enclosed). Based on the information provided in Mr. Carr's letter, we will assume that Sonoma Valley Bank falls within subsection (g) of Regulation 18702.2, which reads:

if: (g) ...the effect of a decision will be material

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)

Utilizing these guidelines, Supervisor Nicholas would have to determine whether the issue before the board of supervisors, which will affect Sonoma Valley Bank, would foreseeably meet the threshold amounts identified in any one or more of the provisions of Regulation 18702.2(g).

It is important to keep in mind that Regulation 18702.2(g) applies to Sonoma Valley Bank because of the relatively small financial size of that business entity. A different subsection of Regulation 18702.2 would be applied to a decision affecting Napa Valley Bancorp which is a substantially larger business entity and is on the National Association of Securities Dealers Market List. Napa Valley Bancorp falls within the provisions of Regulation 18702.2(d), which reads:

James P. Botz, County Counsel
January 26, 1988
Page 6

(d) The effect of a decision on any business entity listed on the National Association of Securities Dealers National Market List (securities of companies on this over-the-counter market list are registered with and subject to the Security and Exchange Commission's rule requiring tape reporting of last sale information [17 CFR Section 240.77 Aa3-1]) will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

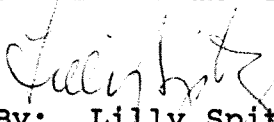
Regulation 18702.2(d)

Thus, where Napa Valley Bancorp will be affected by an item before the board of supervisors, the financial consequences of the decision must be quite sizeable in order to require disqualification on the part of Supervisor Nicholas.

I hope this advice is helpful, and provides some clarity for Supervisor Nicholas. If you have any additional questions or concerns regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosure

JAMES P. BOTZ
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MARY T. JACKSON
LINDA A. BELIVEAU

11/16/87
November 16, 1987

Mr. John Larson
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814


Dear John:

Your informal opinion is requested on the question posed in the enclosed letter addressed to me, dated February 24, 1987 from Sonoma County Supervisor Janet Nicholas. I have also enclosed my response dated March 4, 1987 and a subsequent response dated July 20, 1987.

If you need additional information, please advise.

I hope to see you at the forthcoming meetings of the Association.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb
Enclosure
cc: Supervisor Nicholas

COUNTY OF SONOMA
BOARD OF SUPERVISORS
575 ADMINISTRATION DR., RM. 100A
SANTA ROSA, CALIFORNIA 95401
(707) 527-2241



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EEVE T. LEWIS
COUNTY CLERK

February 24, 1987

James P. Botz, County Counsel
County of Sonoma
575 Administration Drive, Rm 116A
Santa Rosa, California 95401

Re: Conflict of Interest

Dear Jim:

Pursuant to our earlier conversations, my husband plans to participate in a Sonoma County commercial banking venture. The new bank is expected to have a State Charter and be operative in August of this year. Bob will be one of six Directors and own approximately 3.5% of the outstanding shares. Controlling interest in the bank (50% +1) will be owned by an existing Northern California bank. As a Director, Bob will serve on the loan committee and perform duties typical of a member of a Board of Directors.

My purpose in writing is to ascertain what, if any, additional disclosure requirements will be required of me as a member of the Board of Supervisors. Naturally, I would annually disclose my community property interest in the bank stock and any director's income.

Your comments and direction are greatly appreciated.

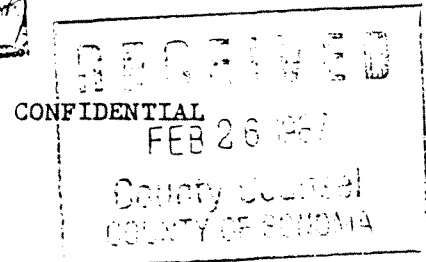
I remain,
Sincerely yours,

A handwritten signature in cursive script, appearing to read "Janet / nl".

Janet Nicholas,
First District Supervisor

JN/gdc/2424

JPB
OPINION REQUEST
Logged 2-26-87
Answered 3-4-87



JAMES F. BOTZ
COUNTY COUNSEL

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LINDA A. BELIVEAU

March 4, 1987

Janet Nicholas
Supervisor, First District
County of Sonoma
575 Administration Drive, #100A
Santa Rosa, CA 95401

Dear Supervisor Nicholas:

This is in response to your letter of February 24, 1987 requesting my advice on a potential conflict of interest problem.

In that letter, you relate that: your husband plans to participate in a Sonoma County commercial banking venture; he will be a director and a shareholder in a new bank which will have a state charter operative in August of 1987; he will be one of six directors and his common stock ownership will represent 3.5 percent of the outstanding shares; an existing Northern California bank will own a majority of the shares; in his capacity as director, your husband will serve on the loan committee and otherwise perform duties typical of a member of a bank board of directors.

You ask "what, if any, additional disclosure requirement will be required of me as a member of the Board of Supervisors." Based on our prior conversations about this matter, I understand that your concern is not with your annual disclosure statements but rather with the possibility of any transactional disqualifications that might be required while sitting as a member of the Board.

Because of the wide variety of ways in which a conflict of interest may arise with respect to a private investment and the complexities of the Political Reform Act, I am unable to predict in advance when a conflict will occur. All that can be done in a situation such as this is to provide guidelines that would serve as an early warning system. The guidelines would help you to identify a transaction that is scheduled for Board action, and at that time we could more carefully analyze whether or not a conflict of interest existed.

The Political Reform Act's seminal rule on conflict of interest is contained in Government Code §87100 which provides:

200-1-16

Janet Nicholas
Supervisor, First District
County of Sonoma

March 4, 1987
Page 2

"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."

The phrase "financial interest" in § 87100 is defined in § 87103 to include, among other things, "any business entity in which the public official has a direct or indirect investment with more than \$1,000.00;". By virtue of your husband's stock ownership in the new bank, you have a "financial interest" in that bank.

Thus you would have a conflict of interest if there were a matter pending before the Board of Supervisors which would have a "material financial effect" on your "financial interest." The phrase "material financial effect" is defined in §18702.2 of the California Administrative Code (a regulation of the Fair Political Practices Commission).

Because of the clarity with which §18702.2 is drafted, I have simply attached a copy of it here for your reference. Suffice it to say that §18702.2 provides certain monetary thresholds that when reached bring the matter pending before the Board of Supervisors into the area of a "material financial effect" on your "financial interest."

The presence of the "parent bank" adds another factor. Your "financial interest" in the subsidiary bank becomes a "financial interest" in the "parent bank" under California Administrative Code § 18706. Thus you would have a potential for a conflict of interest should the interests of the "parent bank" be involved in a Board decision. Of course a conflict of interest would only exist if the Board's decision would also have a reasonably foreseeable material financial effect on your "financial interest" in the "parent bank" (see enclosed copy of § 18702.2).

After you have digested this material, I would be happy to discuss the matter with you further. But in any event, I would recommend that you review the following list of possible transactions which might provide an early warning of a conflict of interest.

1. Direct interaction between either bank and the County (including other public entities governed by the Board of

Janet Nicholas
Supervisor, First District
County of Sonoma

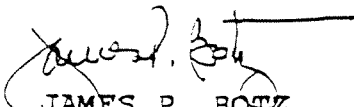
March 4, 1987
Page 3

Supervisors or on which you serve as an ex-officio member). These would include direct applications by either bank for permits, contracts between either bank and the County (e.g. depository agreements); litigation in which both the County and either bank are parties; purchases of real property in which either bank has a possessory interest or a security interest (this is more likely to occur with eminent domain proceedings where the bank holds a trust deed as a creditor of the property owner).

2. Indirect interaction. These areas are more difficult to identify in advance and are potentially the most troublesome. They involve situations where neither bank is directly interacting with the County but rather a third party borrower of either bank is interacting with the County through any of the processes described under direct interaction. The most foreseeable situation would be where a developer or property owner who is a borrower of either bank is applying for a permit from the County.

I hope that this has been and will be useful in avoiding inadvertent violations of the Political Reform Act.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb:slr:db

Enclosure

bcc: Stephen K. Butler

JAMES P. BOTZ
COUNTY COUNSEL

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LINDA A. BELIVEAU

July 20, 1987

Honorable Janet Nicholas
Supervisor, First District
County of Sonoma
575 Administration Drive, #100A
Santa Rosa, CA 95403

Re: Sonoma Valley Bank Conflict of Interest

Dear Supervisor Nicholas:

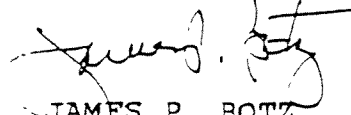
Since my letter to you of March 4, I have received a letter dated June 8th from John Carr of Rosenblum, Parish & Bacigalupi. I understand that Mr. Carr is counsel for the bank and is advising your husband on this matter.

On the second page of Mr. Carr's letter, he expresses some understandable concern with what I have described as "indirect interaction" (situations where borrowers of the bank are before the Board of Supervisors on permit applications).

I do not believe that the Political Reform Act would require you, as a matter of precaution, to disqualify yourself from every matter involving a borrower of the bank. Rather, each situation would have to be reviewed to gauge the "material financial effect" on the bank of the borrower's application. Based on Mr. Carr's analysis of the bank's internal financial structure, that review would be under California Administrative Code section 18702.2(g) (copy enclosed).

One approach might be for the bank to provide you with a list of borrowers whose use of the loan proceeds might cause any of the three threshold figures of §18702.2(g) to be exceeded.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb
Enclosure
cc: John Carr

200-1-16

JAMES P. BOTZ
COUNTY COUNSEL

Dec 11 4 10 17 87

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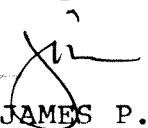
December 7, 1987

Ms. Lilly Spitz
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Lilly:

Pursuant to your request today, please find enclosed a letter from John W. Carr of the firm of Rosenblum, Parish & Bacigalupi to Robert J. Nicholas, Supervisor Nicholas' husband, concerning the conflict of interest question that I posed recently.

Very truly yours,


JAMES P. BOTZ
County Counsel

JPB:dlb
Enclosure

LAW OFFICES

ROSENBLUM, PARISH & BACIGALUPI

PROFESSIONAL CORPORATION

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June 8, 1987

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* ADMITTED IN OREGON ONLY

OF COUNSEL
DONALD E. BURNS
THOMAS SCHNECK
ROBERT A. GOLDMAN

Mr. Robert J. Nicholas
Nicholas Turkey Breeding Farms
19449 Riverside Drive
P. O. Box "Y"
Sonoma, California 95476-1209

Dear Bob:

This responds to the questions raised in your letter of May 13, regarding the conflict of interest opinion given to Mrs. Nicholas by Sonoma County Counsel James P. Botz.

The first point to note is that Govt. Code §87100 restricts the activities of "public officials" only. It does not act to restrict your future activities as a director of the bank after it commences business. Hence the rather sweeping prohibitions you propose to place on yourself -- not serving on the loan committee and not reading its minutes -- are not called for by the statute in question. In fact, I do not believe it would be possible to isolate yourself from these aspects of the bank's operations and continue to fulfill your fiduciary obligations as a director, which would include keeping abreast of the bank's lending activities.

A second point to note is that the actions you propose would not necessarily prevent Mrs. Nicholas from violation of Govt. Code §87100. To the contrary, your familiarity as a director with the bank's activities would be her best way of keeping informed of any transactions which might involve a "governmental decision" by the Board of Supervisors from which she should abstain. In fact, I would think that the better reading of section 18700 would be that Mrs. Nicholas would have an obligation, by virtue of her relation to you as your spouse and your relation to the bank as a director, to keep herself as fully informed about potential conflicts of interest as those relationships would allow. In terms of the statute, she would have "reason to know" of her financial interest in any matter

Mr. Robert J. Nicholas
June 8, 1987
Page 2

before the Board of Supervisors precisely because of your position as a director of the bank.

Aside from the foregoing, I would not comment much further on Mr. Botz's opinion, which for the most part seems to be a reasonable and prudent exposition of the conflict of interest statute and regulations. I do point out the following, however:

(1) Since "indirect" investments trigger the application of the conflict of interest regulations, the list of business enterprises in which your wife would have an indirect interest would include not only Napa Valley Bancorp but also each subsidiary company or enterprise controlled by it, including at present Napa Valley Bank and Napa Valley Development, and in the future any other affiliated company of Napa Valley Bancorp.

(2) The materiality of any governmental decision with regard to the investment in Sonoma Valley Bank would be measured by subsection (g) of section 18702.2 of the FPPC Regulations, since Sonoma Valley Bank (i) will not be an ASE or NYSE listed company (subsection (c)); (ii) is not to my knowledge planned to be on the NASD Market List (subsection (d)); (iii) will not issue securities qualified under Corp. Code §25110, since bank securities are exempt therefrom (subsection (e)); and will not meet the financial standards for NYSE listing in the near foreseeable future (subsection (f)).

With respect to indirect investment in other future affiliates of Sonoma Valley Bank, other subsections of section 18702.2 would govern materiality -- e.g., Napa Valley Bancorp is, I believe, NASD Market Listed.

(3) I am troubled most by that section of Mr. Botz's opinion dealing with what he terms "indirect interactions," since the thrust of his advice seems to be that Mrs. Nicholas should as a matter of precaution disqualify herself, among other things, from any matter coming before the Board of Supervisors involving any borrower of the bank. This is a very broad scope of potential conflict of interest, indeed, and one with which it would require, in my opinion, extraordinary vigilance to comply. Sonoma Valley Bank alone will have many hundreds, foreseeably thousands, of borrowers, and their relationships to the bank may not necessarily be apparent when matters come before the Board of Supervisors. When one adds in borrowers or other customers of Napa Valley Bancorp and its affiliates, the list of parties as to whose matters Mrs. Nicholas would have to disqualify herself assumes potentially staggering proportions.

Mr. Robert J. Nicholas
June 8, 1987
Page 3

I would advise, therefore, that Mrs. Nicholas seek further clarification from County Counsel Botz with respect to this portion of his opinion.

Sincerely,



John W. Carr

JWC/jg/D:064

cc: James A. Maggetti
~~Robert B. Hitchcock~~
Bryan C. Hansen