



California Fair Political Practices Commission

November 7, 1988

Roger C. Lyon, Jr.
1885 Cottontail Creek Road
Cayucos, CA 93430

RE: Your Request for Advice
Our File No. A-88-391

Dear Mr. Lyon:

This is in response to your request for advice concerning whether your jointly held positions as a member of the Coast Joint Union School District Board of Trustees ("School District") and attorney for the Cambria Community Services District ("Community Services District") present a conflict of interest under the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. Do the provisions of the Act require you to resign from either your position with the School District or your position with the Community Services District?
2. Assuming that you are not required to resign from either of these positions, can you participate in School District board decisions affecting the Community Services District and Community Services District decisions affecting the School District?

^{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.

CONCLUSIONS

1. Even if a person has a conflict of interest under the provisions of the Act, there is no requirement that the person resign from the official position he occupied at the time the conflict arose. Therefore, the Act does not prohibit you from holding both positions. We cannot advise you whether other laws prevent you from holding both positions.

2. Under Section 87100 you have no economic interest in the School District. Under the terms of Section 82030(b)(2), the fees you receive as an attorney representing the Community Services District are not "income," so you also have no economic interest in the Community Services District. Therefore, you may participate in School District decisions affecting the Community Services District and Community Services District decisions affecting the School District.

FACTS

You have been a board member for the School District since February 1986 and serve in that position without pay. You have also been on retainer as attorney for the Community Services District since August 1983. You have a contract with the Community Services District by which you provide general legal services, including oral advice, written opinions and representation in legal actions, for a pre-negotiated hourly fee.

The Community Services District is a public entity which, among other things, provides water, sewage disposal, fire protection, refuse collection and lighting services to the public. It's physical boundaries are located within the larger physical boundaries of the School District.

While you have served in these positions, a few situations have arisen in which the interests of the School District and the Community Services District have been potentially at odds. For instance, the School District and the Community Services District both have wells that draw water from the same creek. The Community Services District apparently wants to draw more water than usual from its wells. However, since the School District's well is upstream from the Community Services District's, it has superior water rights and is therefore in a position that could affect the Community Services District's water supplies. In another situation, the School District board considered changing certain school board elections from odd to even numbered years. This change would have made it more expensive for the Community Services District to hold its

elections in odd numbered years. This caused the Community Services District to consider changing its elections to even numbered years. If this occurred, the directors of the Community Services District would have had their terms extended for one more year without an election.

ANALYSIS

Section 87100 sets forth the general rule concerning potential conflicts of interest confronting public officials. It states:

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.

Section 87100 contemplates that public officials occasionally will be confronted with decisions that affect matters in which they have financial interests. On these occasions, this section prohibits officials from participation in those decisions.

This result is consistent with the express purposes of the Act, one of which is to disqualify public officials from acting in situations where their assets and income may be materially affected by their actions. (Section 87100 (c).) Neither Section 87100 nor any other part of the Act requires public officials to resign from their positions when confronted with financial conflicts covered by Section 87100.

The facts that you have provided to us clearly show that you are a public official with both the School District and the Community Services District.^{2/} As a

^{2/} Regulation 18700(a) states that under Section 87100, a "public official at any level of state or local government" includes salaried or unsalaried members of boards with decision-making authority and consultants who provide information, advice or counsel under contract.

public official, you "participate" in decisions affecting each entity.^{3/} The focus of this analysis is upon whether you have a financial interest in any of the decisions made by the School District or the Community Services District.

Section 87103 defines "financial interest in a decision" within the meaning of Section 87100. It states that a public official has the requisite financial interest if it is reasonably foreseeable that the decision will have a material financial effect on the official or on:

(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 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

You have indicated to us that your position as a board member with the School District is unsalaried. As a board member, you are not an officer of a "business entity," since the School District is not a business entity for purposes of the Act. (Section 82005.) Therefore, you have no economic interest in the School District which would be the basis for your disqualification from Community Services District decisions.

^{3/} As a board member of the School District you clearly participate in School District decisions. As an attorney providing general advice to the Community Services District, you fall within the coverage of Regulation 18700(c). Regulation 18700(c) states that, under Government Code Section 87100, a public official "participates in the making of a governmental decision" when he or she:

(2) Advises or makes recommendations to the decision-maker, either directly or indirectly, by:...

(B) [P]resenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official... and the purpose of which is to influence the decision.

The Community Services District is a public agency, not a business entity (Section 82005); therefore, your employment as attorney is not the basis for a conflict of interest under Section 87103(d). You have not indicated what your fees from your position with the Community Services District have been during the past 12 months. We will assume that you have received payments from the Community Services District in excess of \$250 during that time period.

Section 82030 defines the term "income" for the purposes of the Act. (See Section 82000.) Subdivision (a) of Section 82030 includes in this definition payment received for wages, salary, payment of indebtedness and reimbursement for expenses. There is little question that payments received under your retainer agreement with the Community Services District would normally be included in this definition. However, subdivision (b) of Section 82030 sets forth financial benefits that are not considered "income" under the Act. Among these excluded benefits are:

(2) Salary and reimbursement for expenses or per diem received from a state, local or federal government agency.... (Emphasis added.)

Based upon this provision, if the Community Services District is considered to be a "local government agency" and the money you receive from the Community Services District is "salary," you will have no "income" from the Community Services District and no conflict of interest under the Political Reform Act.

Section 82041 defines "local government agency" as a "county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission, or other agency of the foregoing." (Emphasis added.) The Community Services District is apparently formulated under the Community Services District Law. (Section 61000, et seq.). As such, it constitutes a "local government agency" under the Act.

Whether, for purposes of Section 82030, the money paid to you under the retainer agreement with the Community Services District is "salary" presents a more difficult question. However, the Commission has previously considered this question in circumstances similar to yours and concluded that the payment is "salary" for the purposes of Section 82030. This question was presented to the Commission in the Ritchie Advice Letter, No. A-79-045 (copy enclosed).

In the Ritchie letter, Samuel Siegel, a private attorney, had a retainer agreement with the City of Pico Rivera where he provided routine legal advice in a manner similar to a city attorney. Mr. Siegel also represented the city's redevelopment agency under a separate agreement. During the time that Mr. Siegel represented both the city and the redevelopment agency, a redevelopment plan that required rezoning was presented to the city council. If the city council approved the plan, then the redevelopment agency would have been required to issue bonds for the redevelopment. Under Mr. Siegel's potential fee arrangement with the redevelopment agency, he stood to earn a substantial fee if the rezoning was approved by the city council. The Commission was asked whether Mr. Siegel could represent both the city and the agency in this situation.

The Commission concluded that under the provisions of the Act, Mr. Siegel was not prohibited from representing both entities on the rezoning and redevelopment bond matter. The Commission's analysis of this question focused primarily upon whether the fee that Mr. Siegel stood to receive from the redevelopment agency was "income" under Section 82030(b)(2). While the Commission found that Section 82030(b)(2) did not expressly contain an exemption from "fees" received for a governmental agency, it nevertheless concluded that the term "salary" in that section encompassed fees such as those to be paid to Mr. Siegel. The Commission's conclusion was based upon the logical reason for inclusion of the "governmental income" exception in the Act. If governmental salary were "income" under the Act, the agency for which an official worked would, in every case, be a "source of income" for that official and he would be disqualified from ever participating in a decision affecting the agency. Compensation in the form of "salary" to the public official was therefore excluded as a source of "income" under the Act.

To maintain this reasoning, the Commission stated that other forms of compensation for services rendered to a government agency should also be treated as "salary" under Section 82030(b)(2). Otherwise, the Commission believed it would interject itself into the process of how governmental agencies pay individuals for services rendered. As is stated toward the end of its analysis, the Commission believed that how governmental agencies pay for services rendered is a decision to be made by specific agencies and not the Commission in its application of the Act.

The fee you receive from the Community Services District is similar to the compensation paid to Mr. Siegel by the redevelopment agency. On this basis, we conclude that the fee you receive under the retainer agreement with the Community Services District is not "income" under Government Code Section 82030(b)(2). As a consequence, you have no economic interest in the Community Services District and no conflict of interest under the provisions of the Political Reform Act.

Finally, please note that we are not authorized to render advice on the propriety of holding two public offices with overlapping jurisdictions. If you desire to explore this subject in more detail, we have set forth below a partial listing of Attorney General's opinions that may be pertinent to your situation.

68 Op. Att. Gen. 240 (1985)
68 Op. Att. Gen. 7 (1984)
67 Op. Att. Gen. 409 (1984)
66 Op. Att. Gen. 382 (1983)
66 Op. Att. Gen. 293 (1983)
66 Op. Att. Gen. 176 (1983)
65 Op. Att. Gen. 606 (1982)
64 Op. Att. Gen. 795 (1981)
64 Op. Att. Gen. 288 (1981)
64 Op. Att. Gen. 137 (1981)
58 Op. Att. Gen. 241 (1975)

Should you have additional questions or require further information, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

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Enclosure

ROGER C. LYON, JR.
1885 Cottontail Creek Road
Cayucos, CA 93430
(805) 995-1787

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October 6, 1988

Ms. Kathryn Donovan
Acting General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Dear Ms. Donovan:

I am a member of the Coast Joint Union High School District Board of Trustees. I was appointed to that position to fill a vacancy in February 1986 and was elected to a full term in November 1987. My service on the Board of Trustees is without pay.

I am also an attorney with a private practice emphasizing municipal law with offices in San Luis Obispo. One of my clients is the Cambria Community Services District ("CCSD"). The CCSD is a public entity which provides water, sewage disposal, fire protection, refuse collection, lighting and operates the Veterans Memorial Hall for the community of Cambria. I provide legal representation to the District pursuant to a written contract providing for services on an as needed basis. I am not under retainer with the CCSD, but rather am paid on an hourly basis. I began working with the CCSD in August of 1983. All income to me from the CCSD is from a public entity. A copy of my contract with the CCSD is enclosed.

The physical boundaries of the CCSD are located within the physical boundaries of the high school district, the school district serving a larger area including Cambria, Cayucos and San Simeon.

When I was first appointed to the High School Board, Jesse Arnold, who is now a member of the High School Board, but at that time was not, wrote a letter to the editor of the local newspaper alleging that I had a conflict of interest arising out of my being a member of the High School Board of Trustees and also being legal advisor to the CCSD. At that time I conducted my own legal research and determined that there was not a conflict of interest or an incompatibility of office in holding these positions. Relating to the incompatibility of office issue, I concluded that my role as legal advisor to the CCSD was in the nature of an outside consult-

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Ms. Kathryn Donovan
Acting General Counsel
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ing service rather than a "public office" and therefore no incompatibility of office existed.

As an added precaution, I requested at that time that the Schools Legal Service review my contract with the CCSD, as well as the facts involved, to determine whether or not I had any conflict of interest or incompatibility of office. A copy the then Superintendent of Schools' April 2, 1986, letter to Schools Legal Service asking for an opinion, along with Schools Legal Service's April 18, 1986, response letter is enclosed. They concluded that there was no legal impediment to my serving on the High School Board, notwithstanding my employment as an attorney for the CCSD. They also concluded that there was no conflict of interest involved since my income from the CCSD is from a public entity and exempted from the definition of "income" under the Political Reform Act.

Mr. Arnold was then elected to a term as a member of the High School Board of Trustees in November 1987. The last two seasons being relatively dry rainfall years has found the CCSD implementing water conservation measures. In June of this year, a member of the CCSD Board of Directors appeared before the High School Board of Trustees and Elementary School District Board of Trustees and asked that the schools cooperate in conserving water. At that meeting, I requested that the Superintendent look into the matter and provide a report back at the next meeting. Subsequent to that meeting, Mr. Arnold telephoned me and suggested that I had a conflict of interest in participating in any decisions relating to water usage at the high school based upon my being legal advisor to the CCSD. I advised Mr. Arnold that I did not feel that I had any legal conflict of interest but, out of an abundance of caution to avoid any appearance of impropriety in the community, I would voluntarily agree not to participate as a School Board member or as legal advisor to the CCSD in decisions relating to water usage at the high school.

I subsequently received a copy of a letter dated August 29, 1988, addressed to the President of the Board of Trustees of the high school district from Stephen J. Sinton, an attorney who represents local ranchers concerning water rights matters, outlining his clients' position (which I presume is shared by Mr. Arnold) relating to the alleged interplay between water usage by the high school and the CCSD. In that letter, Mr. Sinton suggests that I have a potential conflict of interest. A copy of Mr. Sinton's letter and my response are enclosed.

I then received on September 29, 1988, hand delivered copies of two letters, one addressed "to whom it may concern" and the other "to the editor," signed by Mr. Arnold. The "to the editor" letter,

Ms. Kathryn Donovan
Acting General Counsel
Fair Political Practices Commission
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according to Mr. Arnold's note attached to the letter, was distributed to four local newspapers. The "to whom it may concern" letter, according to a note attached by Mr. Arnold, was distributed to the four local newspapers, the County Bar Association, the State Bar Association, the District Attorney, and the Attorney General. As I read them, the innuendo is that I will continue to have a conflict of interest, that I have an incompatibility of office, and that because of these alleged conflicts and incompatibility of office, I will not be able to perform my functions as School Board member and should resign. Copies of these letters are enclosed.

After receiving these letters, I requested the current Superintendent of Schools to again consult with the Schools Legal Service as to whether or not, based upon these updated allegations, their 1986 opinion that I did not have a conflict or duty to resign was still effective. Copies of Dr. Garnella's September 30, 1988, letter to Schools Legal Service and Schools Legal Service's October 3, 1988, response letter are enclosed. As you can see, the Schools Legal Service again concludes that I may legally continue to serve as attorney for the CCSD, as well as sit as a member of the School Board of Trustees.

With this background, I seek an advice letter from the Fair Political Practices Commission ("FPPC") concerning limitations on my future service on the School Board and as legal advisor to the CCSD. I recognize that the FPPC only has jurisdiction over the conflict of interest issue and not the incompatibility of office issue and therefore limit my inquiry to the conflict issue. I am quite comfortable with my own research and that of Schools Legal Service that no incompatibility of office exists since my function as legal advisor is not a "public office." I would therefore seek advice on the following:

1. Even assuming, arguendo, the allegations of Mr. Arnold and Mr. Sinton to be true, do I have any legal obligation to resign either my position as School Board member or attorney for the CCSD based upon his allegations of conflict of interest?

2. Before Mr. Arnold went public with his latest conflict of interest charges, I indicated a willingness to voluntarily refrain from participation in decisions relating to water usage at the high school. In light of Mr. Arnold's subsequent conduct and Schools Legal Service's updated opinion, I am reconsidering whether I should continue to refrain from all school district discussions or decisions relating to water usage. Therefore, I would ask if I have any legal obligation to disqualify myself from decisions as a School Board member relating to water usage at the high school? For example, I would like to propose that the school district

Ms. Kathryn Donovan
Acting General Counsel
Fair Political Practices Commission
October 6, 1988
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consider construction of a competition size swimming pool at the high school. Is there any legal impediment, under the Political Reform Act, to my participating in School Board discussions or decisions on such a proposal?

3. On this subject, is the CCSD, a local government agency, not a source of income to me under Government Code Section 82030(b)(2)?

4. I predict that Mr. Arnold and others will create other issues in the near future involving both the CCSD and school district. Examples could be questioning the adequacy of CCSD fire protection at the high school, adequacy of sewer service, etc. Is there any legal impediment to my participating in School Board discussions or decisions on such issues?

If you need any further information or documentation to complete your review and advice letter, please do not hesitate to contact me. My office number is (805) 541-2560. Thank you for your assistance.

Sincerely,



ROGER C. LYON, JR.

RCL:ar

Enclosures

cc: District Attorney
Attn: Gerald Shea

Schools Legal Service
Attn: Stephen L. Hartsell

**CAMBRIA COMMUNITY SERVICES DISTRICT
ATTORNEY AGREEMENT**

THIS AGREEMENT is entered into between CAMBRIA COMMUNITY SERVICES DISTRICT (hereinafter "DISTRICT") and ROGER C. LYON, JR. (hereinafter "ATTORNEY").

1. DISTRICT hereby employs ATTORNEY to act as attorney for DISTRICT as a part-time independent contractor.

2. ATTORNEY shall be paid at an hourly rate of Ninety-Five Dollars (\$95.00) for regular duties required of the Community Services District attorney pursuant to provisions of the California Government Code, including:

a. Drafting of ordinances, resolutions, contracts, leases, opinions, and similar documents;

b. Attendance at Board of Directors meetings if requested to do so in advance;

c. Rendering written and oral opinions to the Board and/or General Manager;

d. Reviewing contracts for correct legal form and content and for insurance compliance.

3. ATTORNEY shall be paid at the increased rate of One Hundred Five Dollars (\$105) per hour when assigned to perform any of the following duties or services:

a. Defending or prosecuting actions in all courts or administrative agencies on behalf of the DISTRICT;

b. Representing the DISTRICT or DISTRICT's officers before local State or Federal Courts, boards, or commissions when there is opposing counsel, or when specifically requested to do so by the DISTRICT's Board;

c. Any other unusual, extraordinary, or complicated matters not specifically referred to in Paragraph 2, as requested by the DISTRICT's General Manager or the DISTRICT's Board of Directors.

4. ATTORNEY shall provide the services referred to in Paragraphs 2 and 3 only as requested by the DISTRICT's Board

of Directors, its Chairman, or the DISTRICT's General Manager. The ATTORNEY shall not attend regular meetings of the DISTRICT unless requested to attend nor will he review resolutions, ordinances, contracts, agreements or other legal documents unless requested to do so.

5. In addition to his hourly compensation, ATTORNEY will be reimbursed for out-of-pocket expenses for such items as court filing fees, mileage to court, long distance telephone calls, photocopying and similar out-of-pocket items.

6. ATTORNEY is employed to serve at the pleasure of the DISTRICT's Board and shall at all times hold himself ready to perform DISTRICT's duties pursuant to this Agreement. However, it is understood that ATTORNEY is free to engage in a full-time private practice for himself and it will be necessary to provide adequate notice to ATTORNEY of the need for extraordinary service.

7. This Agreement, including hourly rates, shall be renegotiated annually, with any modification in rates to be effective July 1 of each year.

8. Services provided by an associate attorney working under the supervision of ATTORNEY will be at the hourly rate of Seventy Dollars (\$70) for Paragraph 2 services and Eighty Dollars (\$80) for Paragraph 3 services.

Dated: _____, 1986.

CAMBRIA COMMUNITY SERVICES DISTRICT

By: [Signature]
President, Board of Directors

ATTEST:

[Signature]
Secretary, Board of Directors

[Signature]
Roger C. Lyon, Jr.

CAMBRIA UNION SCHOOL DISTRICT
COAST JOINT UNION HIGH SCHOOL DISTRICT
R.R. 1, Box 100
Cambria, California 93428

Superintendent's Office
(805) 927-3891

Business Office
(805) 927-3880

April 2, 1986

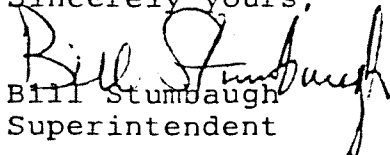
Mr. Frank Fekete
Schools Legal Service
P.O. Box 11110
Bakersfield, CA 93389

Dear Mr. Fekete:

One of the members of the Board of Education for Coast Joint Union High School District is Mr. Roger C. Lyon, Jr. Mr. Lyon is an attorney and includes in his practice a working agreement with the Cambria Community Services District. A copy of his agreement is included with this letter for your review. Please advise as to the legality of Mr. Lyon serving on our Board of Education while also being the attorney for the Services District. We wish to be reassured that his dual role does not violate conflict of interest provisions in the law.

Thank you for your assistance. Please give me a call if you need additional information.

Sincerely yours,


Bill Stumbaugh
Superintendent

BS:bd

Enclosure

ROGER C. LYON, JR.

A LAW CORPORATION

1104 PALM STREET

P.O. BOX 922

SAN LUIS OBISPO, CA 93406

TELEPHONE (805) 541-2500

ROGER C LYON JR

WENDY STULTON

TO

Bill Stumbaugh
Coast Joint Union High School
P.O. Box 100
Cambria, CA 93428

DATE

March 31, 1986

SUBJECT

Attorney Agreement

FROM

Roger

ENCLOSED PLEASE FIND: Copy of current Attorney Agreement with Cambria
Community Services District

FOR YOUR INFORMATION

IN ACCORDANCE WITH YOUR REQUEST

PLEASE READ, SIGN AND RETURN

PLEASE FILE AND RETURN ENDORSED COPIES

PLEASE TELEPHONE

PLEASE COMMENT

PLEASE ACKNOWLEDGE RECEIPT

PLEASE RECORD AND RETURN

CAMBRIA COMMUNITY SERVICES DISTRICT
ATTORNEY AGREEMENT

THIS AGREEMENT is entered into between CAMBRIA COMMUNITY SERVICES DISTRICT (hereinafter "DISTRICT") and ROGER C. LYON, JR. (hereinafter "ATTORNEY").

1. DISTRICT hereby employs ATTORNEY to act as attorney for DISTRICT as a part-time independent contractor.

2. ATTORNEY shall be paid at an hourly rate of Eighty-Five Dollars (\$85) for regular duties required of the Community Services District attorney pursuant to provisions of the California Government Code, including:

a. Drafting of ordinances, resolutions, contracts, leases, opinions, and similar documents;

b. Attendance at Board of Directors meetings if requested to do so in advance;

c. Rendering written and oral opinions to the Board and/or General Manager;

d. Reviewing contracts for correct legal form and content and for insurance compliance.

3. ATTORNEY shall be paid at the increased rate of Ninety-Five Dollars (\$95) per hour when assigned to perform any of the following duties or services:

a. Defending or prosecuting actions in all courts or administrative agencies on behalf of the DISTRICT;

b. Representing the DISTRICT or DISTRICT's officers before local State or Federal Courts, boards, or commissions when there is opposing counsel, or when specifically requested to do so by the DISTRICT's Board;

c. Any other unusual, extraordinary, or complicated matters not specifically referred to in Paragraph 2, as requested by the DISTRICT's General Manager or the DISTRICT's Board of Directors.

4. ATTORNEY shall provide the services referred to in Paragraphs 2 and 3 only as requested by the DISTRICT's Board of Directors, its Chairman, or the DISTRICT's General Manager. The ATTORNEY shall not attend regular meetings of the DISTRICT unless requested to attend nor will he review resolutions, ordinances, contracts, agreements or other legal documents unless requested to do so.

5. In addition to his hourly compensation, ATTORNEY will be reimbursed for out-of-pocket expenses for such items as court filing fees, mileage to court, long distance telephone calls, photocopying and similar out-of-pocket items.

6. ATTORNEY is employed to serve at the pleasure of the DISTRICT's Board and shall at all times hold himself ready to perform DISTRICT's duties pursuant to this Agreement. However, it is understood that ATTORNEY is free to engage in a full-time private practice for himself and it will be necessary to provide adequate notice to ATTORNEY of the need for extraordinary service.

7. This Agreement, including hourly rates, shall be renegotiated annually, with any modification in rates to be effective July 1 of each year.

Dated: MAY 31, 1985.

CAMBRIA COMMUNITY SERVICES DISTRICT

By: Forrest Warren
Forrest Warren
President, Board of Directors

ATTEST:

Barbara Campo
Secretary, Board of Directors

Roger C. Lyon, Jr.
Roger C. Lyon, Jr.

APR 24 1986

SCHOOLS LEGAL SERVICE

5801 SUNDALE AVENUE P.O. BOX 11110
BAKERSFIELD, CALIFORNIA 93389
(805) 398-3830

FRANK J. FEKETE
GENERAL COUNSEL

PETER C. CARTON
JOANNE A. VELMAN
STEPHEN L. HARTSELL
DWAIN L. CHAMBERS
ROGER R. GRASS
COUNSEL

CARL B. LANGE III
DIRECTOR OF LABOR RELATIONS

PHIL LANCASTER
ANTHONY V. LEONIS
BARGAINING SPECIALIST

April 18, 1986

Bill Stumbaugh
District Superintendent
Coast Joint Union High
School District
R.R. 1, Box 100
Cambria, CA 93428

Re: Board Member Employed as Attorney for
Community Services District

Dear Mr. Stumbaugh:

You have requested our opinion as to whether Mr. Roger C. Lyon, Jr., who is employed by the Cambria Community Services District as its attorney, may lawfully serve as a member of your Board of Education. In reviewing the law governing conflicts of interest and incompatible offices, we conclude that Mr. Lyon may sit on your Board.

Government Code Sections 1090-1097 prohibit members of school district governing boards from being financially interested in contracts entered into by the board. Section 1091(b)(5) provides, however, being "an attorney of the contracting party" is merely a "remote interest" which requires only that the board member disclose to the board and note in the board's records that such a remote interest exists, and that any contract with that party be authorized by good faith vote of membership sufficient for the purpose without counting the attorney's vote. Thus, the school district could contract with the Cambria Community Services District if Mr. Lyon notes for the record that he is attorney for the district and then the board approves any contract with that district not counting Mr. Lyon's vote.

Bill Stumbaugh
April 18, 1986
Page Two

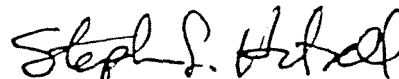
Sections 1125-1128 prohibit public officers, such as board members, from engaging in incompatible or conflicting employment. Section 1128 of the Government Code, however, provides expressly that when a person serves as an appointed or elected government officer, he/she can still be employed by another local agency as an attorney in a nonelected position. As noted by the State Attorney General (66 Ops. Atty. Gen. 382, 10-27-83) this section provides that no forfeiture of either office will occur under any circumstance and that actual conflicts between a person's service as a board member and his/her status as attorney can and must be dealt with by that person on a transactional basis through appropriate abstention.

Finally, the Political Reform Act of 1974 provides (at Government Code Section 82030(b)(2)) that the term "income" does not include salary and reimbursement received from a local agency. Therefore, we conclude that for purposes of the Political Reform Act, any monies received by Mr. Lyon as an attorney for the Cambria Community Services District would not invoke the provisions and sanctions of that act.

Since violation of any of the Government Code provisions noted above involves the possibility of criminal prosecution or forfeiture of office, we advise that if he deems it appropriate, Mr. Lyon should seek independent legal advice as to the issues addressed in your letter. However, our advice to you is that there is no legal impediment to Mr. Lyon's serving on your Board, notwithstanding his employment as an attorney for the Cambria Community Services District.

If you have any questions or if we can be of any further assistance in this matter, please feel free to contact us.

Sincerely,


STEPHEN L. HARTSELL

SLH:rl
L3/3/5

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Note 4

county at a tax-deeded land sale subject to the approval of and in accordance with any rules adopted by the board of supervisors of the county. 63 Ops. Atty. Gen. 868, 12-9-80.

5. Local peace officers

Local peace officers may not wear their official uniforms while privately employed as private investigators, private

GOVERNMENT CODE

patrol operation or repossessions, except that in other private employment situations, the official uniform may be worn only if wearing it involves no conflict of interests, unlawful misrepresentations or other violations of law. 65 Ops. Atty. Gen. 205, 12-30-82.

§ 1128. Agency employed attorneys; service on boards, etc.

Service on an appointed or elected governmental board, commission, committee, or other body by an attorney employed by a local agency in a nonelective position shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the attorney as an officer or employee of the local agency and shall not result in the automatic vacation of either such office.

(Added by Stats. 1981, c. 391, p. 1580, § 2.)

Library References

- Municipal Corporations § 138.
C.J.S. Municipal Corporations § 476 et seq.

Notes of Decisions

In general 1

Compatible offices 2

1. In general

Although the offices of trustee of a school district and city attorney of a city located within the school district are

incompatible under common law principles, under the provisions of this section, no forfeiture of either office ensues under any circumstances; actual conflicts which may arise between the two offices held are to be dealt with by the officer on a transactional basis through appropriate abstention. 66 Ops. Atty. Gen. 382, 10-27-83.

2. Compatible offices

Under West's Ann. Cal. Gov. Code § 1128, office of appointed city attorney and president and board member of airport authority may be held simultaneously by same individual. 67 Ops. Atty. Gen. 347, 8-1-84.

ARTICLE 6. SALARY AND WAGE DEDUCTIONS

Section

- 1150. Definitions.
1151. Insurance premiums; credit union shares; recurrent fees and charges of state agencies; United States savings bond purchases; charitable contributions; transportation passes, etc.; bank or savings and loan deposits; industrial loan company investment or thrift certificate purchases; authorization by state employees.
1152. Employee organizations and associations; membership dues, initiation fees, assessments and benefit deductions.
1153. Administration procedures; deductions, cancellations or changes.
1157.7. Employees of public agencies; ethnic employee organization membership; authorization for dues deduction.
1157.8. United States savings bonds; purchase by officers and employees of public agencies; special accounts; trust funds.
1157.9. Officers and employees of public agencies; bank or savings and loan association deposits; credit union share purchases or payments; industrial loan company investment or thrift certificates; authorization to disbursing officers of agencies.
1157.10. Administration procedures; deductions, cancellations or changes; state employees of public agencies not under uniform payroll system.

Cross References

Director of developmental services, see Welfare and Institutions Code § 4405.

§ 1150. Definitions

Text of section operative until Jan. 1, 1987.

As used in this article:

(a) "State employee" means all persons who receive wages for services through the uniform payroll system established and administered by the Controller under Section 12470.

Underline indicates changes or additions by amendment

GOVERNMENT CODE

(b) "Public agency" includes counties, districts, and other public agencies of the state.

(c) "Employee organization" means an organization of employees of the California State University in their employment with the Department of Personnel Administration has been recognized or certified by the Department.

(d) "Bona fide association" means an association of employees of an agency of the state and the California State University for purposes representing these employees.

(Added by Stats. 1982, c. 1270, p. 4686, § 1.)

For text of section operative until Jan. 1, 1987.

§ 1150. Definitions

Text of section operative until Jan. 1, 1987.

As used in this article:

(a) "State employee" means all persons who receive wages for services through the uniform payroll system established and administered by the Controller under Section 12470.

(b) "Public agency" includes counties, districts, and other public agencies of the state.

(c) "Employee organization" means an organization of employees of the California State University in their employment with the Department of Personnel Administration has been recognized or certified by the Department.

(d) "Bona fide association" means an association of employees of an agency of the state and the California State University for purposes representing these employees.

(e) "Deduction" does not include deductions for contributions to Sections 7506 and 12480.

(Added by Stats. 1982, c. 1270, p. 4686, § 1, Jan. 1, 1987.)

For text of section operative until Jan. 1, 1987.

1982 Legislation.

Former § 1150 was repealed by Stats. 1982, c. 1270, § 1.

1985 Legislation.

§ 1151. Insurance premiums; credit union shares; United States savings bond purchases, etc.; bank or savings and loan deposits; industrial loan company investment or thrift certificate purchases.

State employees may authorize deductions from their pay of one or more of the following:

(a) Insurance premiums or other charges payable under appropriate statutory authority.

(b) Premiums on National Service Life Insurance.

(c) Shares or obligations to any regular savings plan.

(d) Recurrent fees or charges payable to government, as determined by the Controller.

(e) The purchase of United States savings bonds.

Asterisks * * * indicate deletions by amendment.

Stephen J. Sinton

ATTORNEY AT LAW

August 29, 1983

Mr. Victor Malzahn, President
Board of Trustees
Coast Joint Union High School District
2950 Santa Rosa Creek Road
Cambria, CA 93428

Dear Mr. Malzahn:

I received a copy of the August 19 Coastal Residents United letter to you concerning a possible arrangement between the District and the Cambria Community Services District (CCSD) with regard to water supplies. As you are undoubtedly aware, the upstream landowners are extremely concerned about the potential adverse impacts of increased water use by CCSD on farming operations along upper Santa Rosa Creek. In the period since 1978, when CCSD switched to San Simeon Creek for its water, farming practices have expanded substantially along Santa Rosa Creek, resulting in an increased demand for riparian water. More recently, several of these landowners have experienced problems with their water supplies, which may mean that CCSD's return to Santa Rosa Creek diversions is already having an adverse effect.

As the attorney representing many of the upstream landowners on Santa Rosa Creek, I feel that it is important for you to understand what you may be getting into if you sell, lease, or provide without charge, water, or a well site, to CCSD. The High School, so long as it uses its water on contiguous school property, is a riparian user with the highest priority to water, which it shares with all the other riparians along the stream. CCSD is an appropriative water user. If an appropriator purchases water from a riparian, all that is acquired is the right of that riparian to object to the appropriative use. The appropriator does not gain a right to exercise the riparian water right. The appropriator still must obtain the required permits from the State and once acquired, such use is junior to all the other riparian users on the stream. If the high school district sells the water right, it can never be regained, because a riparian right, once severed from the land, can never be reattached. It is lost forever.

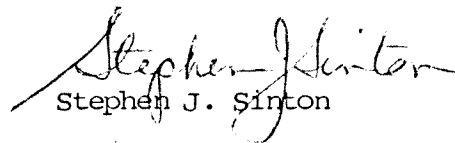
In addition, you should know that CCSD has not proven that it has any legal right to Santa Rosa Creek water and it has therefore applied to the State for a permit to take that water. An application for water from the state is for a particular quantity, for specified uses in designated places, to be taken from a particular location. The application currently on file for CCSD is not for water taken from the high school. Therefore, any taking of water from the high school location by CCSD would be illegal.

I was involved in the protests of CCSD's water rights application. Hearings were held before the State Water Resources Control Board last year as a result of those protests and CCSD made a considerable effort to discount concerns about the potential impacts of its operations because its "town wells" were located in a "lower basin", which was partially isolated from the farming area. Most of the farmers are purportedly located in the "upper basin". There is some question where the high school is located in this two basin concept, but it probably is either in the upper basin, or in the region which separates the two. In either event, it is entirely possible that increased diversions by CCSD would have a very direct impact on farming operations. According to CCSD's own experts, diversions from the high school area would have much more direct impacts on the local farmers than would diversions from the "town" wells. If that were to happen, it seems to me that your school district would have a substantial liability exposure. Your district would have facilitated the illegal diversion of water, which may cause crop losses of perhaps hundreds of thousands of dollars. I can assure you that under such circumstances, the high school would be sued along with CCSD.

I also believe that the Board of Trustees should be concerned about the potential for conflict of interest. While I am reluctant to speculate on all the possible areas of conflict in this potential relationship, unless the interests of the school district and CCSD are identical, Mr. Lyons obligations to his client may not be consonant with his duties as a school district trustee. Which obligation will take precedence? It is my view that the very act of proceeding with this arrangement may constitute such a conflict, since one party, the school district, may be taking unnecessary and potentially costly risks.

I urge you to proceed with great caution in this matter. It may be that the risks greatly exceed any possible benefit to the school.

Sincerely,


Stephen J. Sinton

cc. Mr. Jesse Arnold
Dr. Dean Hilger
Mr. Roger Lyon
Mr. Lou Barnes

ROGER C. LYON, JR.
1885 Cottontail Creek Road
Cayucos, CA 93430
(805) 995-1787

September 6, 1988

Stephen J. Sinton
Attorney at Law
P.O. Box 112
Shandon, CA 93461

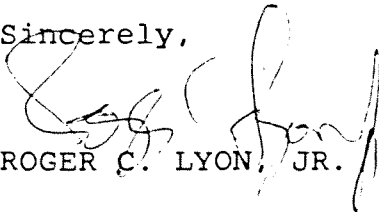
Dear Mr. Sinton:

I am in receipt of a copy of your August 29, 1988, letter to Mr. Malzahn, copies of which you show as being sent to other school board members. I do not take lightly being defamed with false accusations of conflict of interest.

If you had made even the most cursory inquiries prior to publishing such statements, you would have found that in early August, out of an abundance of caution, I advised both the School District and the Cambria Community Services District that I will not participate in decisions relating to the School District's usage of water. Long before your letter or that of Mr. Hanna, I advised school board President Vic Malzahn, school board member Jesse Arnold, Superintendent Tom Garnella, and CCSD Manager John Stratford of my decision. You could have easily verified this prior to distributing your letter. My decision was made, not out of any legal conflict of interest, but rather to avoid even the appearance of impropriety involving my service on the school board and my representation of the CCSD.

I am proud of my public service as a school board member, as well as my legal representation of the CCSD, and resent the innuendo that I would take actions to the detriment of the School District which I serve.

Sincerely,



ROGER C. LYON, JR.

RCL:ar

cc: Mr. Vic Malzahn
Dr. Dean Hilger
Mr. Lou Barnes
Mr. Jesse Arnold
Dr. Tom Garnella
Mr. John Stratford

Sept. 27, 1988

To the Editor:

Roger Lyon is a member of the Coast Union High School board. Being a school board member is a non-paying job.

The same Roger Lyon is also the lawyer for the Camoria Community Services District (CCSD). He holds this lucrative position under contract with the services district. His position is not protected by civil service. In other words, the directors of the services district can get another lawyer if Roger Lyon doesn't keep them happy.

The CCSD would like to take more water from its two wells on Santa Rosa Creek. Coast Union High School also has a well on Santa Rosa Creek, upstream from the CCSD wells. If the high school uses less water from its well, then more water would be available for the CCSD wells.

If Roger Lyon takes part in any decision about water use at the high school he could have a conflict of interest. After this possibility was brought to his attention he wrote a letter, dated Sept. 6, in which he said that he "will not participate in decisions relating to the School District's usage of water."

That is all well and good. But if Mr. Lyon cannot participate in those decisions then he cannot give a 100% effort to the school board. As long as Lyon is in on the closed sessions of both the Coast Union High School District and the Camoria Community Services District his potential for conflict of interest will continue to exist.

I believe that Lyon's position is comparable to that of Jim Brown, who was on the CCSD board at the same time that he was superintendent at Coast Union. In that case the State Attorney General ruled that Brown could not legally hold both offices at the same time.

I believe that it would be in the best interest of the taxpayers of the Coast Union District for Mr. Lyon to either resign his position with the CCSD or resign from the Coast Union High School board.

Jesse Arnold

Mr. Jesse Arnold, Box 1211, Cambria, Calif. 93428

927-3096

Sept. 27, 1988

To Whom It May Concern:

In his Sept. 6 letter to Mr. Sinton, Roger Lyon says that his decision to not participate in decisions relating to water usage at the high school arose from "an abundance of caution" and was made to "avoid even the appearance of impropriety involving my service on the school board and my representation of the CCSD."

However, I believe that the following items do not show an "abundance of caution" on Lyon's part:

1. At the August 4 Coast Union High School board meeting Mr. Lyon made the motion and voted to discontinue the agriculture program at the high school. Lyon had every reason to know that discontinuing the agriculture program would reduce or discontinue the irrigation of the pasture land at the school. He also knew that the irrigation was done with water from the school well. And he knew that the CCSD, which he represents, would be happy to see the high school use less water from its well so that more water would be available for the CCSD wells downstream in Santa Rosa Creek.

2. Mr. Lyon was the school board member who asked that a "Report on Water Usage and Conservation Measures" be put on the July 7 agenda for the Coast Union High School board. The report, which Lyon asked for, contained specific references to reducing watering of the football field and eliminating overnight watering. Again, Lyon had every reason to know that this reduction in the use of school well water would be beneficial to the CCSD, which he represents.

3. In 1986 the CCSD asked the State Water Resources Control Board for an appropriative rights permit to take water from the Santa Rosa Creek basin. At that time the upstream landowners filed objections to the CCSD's request.

If Mr. Lyon had exercised an abundance of caution in 1986 he would have warned Coast Union that it could become involved in the water rights issue on Santa Rosa Creek and he would have advised Coast to consult with legal counsel about protecting its water rights. In addition, Lyon would have removed himself from any consideration of water use at the high school at that time.

4. One final item which does not relate to water, but does relate to Mr. Lyon being on the Coast Union High School board and representing the CCSD: At the December 1986 Coast Union High School board meeting Lyon voted for election consolidation in which school board elections would be moved from the odd to the even year. If the schools had changed but the CCSD had not, it would have been detrimental to the CCSD because its election costs would have gone up. Therefore, the school's vote to seek a change in election time gave impetus to the CCSD to ask that its elections also be changed from the odd to the even year. Had this change been approved by the Board of Supervisors all the directors of the CCSD, which Lyon represents, would have gotten an extra year in office. Judging from the thousands of dollars spent in the 1987 election by incumbents trying to hold onto their seats on the CCSD board it would appear that doing anything to give those directors an extra year in office would be a big favor to them. It certainly appears that Lyon's vote in favor of election consolidation was also a vote to help the directors of the CCSD, which he represents.

I believe that Lyon's position is comparable to that of former school superintendent Jim Brown who was a director on the CCSD board at the same time that he was school superintendent. The State Attorney General ruled that Brown could not legally serve in both positions at the same time.

As long as Lyon is in on the closed sessions of both the CCSD and the Coast Union High School District his potential for conflict of interest will continue to exist. His offer to bow out on decisions relating to water usage is fine, but if he isn't involved in the decisions he isn't giving a 100% effort to Coast Union.

I believe that it would be in the best interest of the taxpayers of the school district for Lyon to either resign his position with the CCSD or resign from the Coast Union High School board.

Jesse Arnold

Mr. Jesse Arnold, Box 1211, Cambria, Calif. 93428
927-3096



CAMBRIA UNION ELEMENTARY SCHOOL DISTRICT
COAST JOINT UNION HIGH SCHOOL DISTRICT

2950 Santa Rosa Creek Road • Cambria, California 93428

Superintendent's Office: (805) 927-3891, (805) 772-5903

Business Office: (805) 927-3880, (805) 772-5903

Maintenance Office: (805) 927-1609, (805) 772-5903

THOMAS W. GARNELLA, Ed. D.
Superintendent

DOUGLAS H. CARR
Business Manager

September 30, 1988 .

Steve Hartsell, Staff Attorney
Schools Legal Service
P.O. Box 11110
Bakersfield, CA 93389

RE: Alleged Board Member Conflict of Interest Charge

Dear Mr. Hartsell:

Mr. Roger Lyon, Clerk and member of the Coast Joint Union High School District Board of Trustees has forwarded to me two letters written by fellow board member Jesse Arnold. In his two letters, which are quite similar, Mr. Arnold makes mention of Coast's well water usage, suggests that Mr. Lyon could have a conflict of interest if he participated in any decision about water usage, and expresses his personal belief that Mr. Lyon might not legally be permitted to be a school board member and contract attorney for the Cambria Community Services District.

Mr. Arnold has advised Mr. Lyon, by a note he attached to each of his letters, that copies of the correspondence had been circulated. With respect to Letter "A", copies were noted as being sent by Mr. Arnold to the San Luis Obispo Telegram-Tribune, the Sun Bulletin, the Cambrian, and the Cambria Independent. Letter "B" was reported by Mr. Arnold to have been sent to the San Luis Obispo County Bar Association, the California State Bar Association, the San Luis Obispo County District Attorney, the State Attorney General, and the four aforementioned newspapers.

On April 2, 1986 former Coast/Cambria Superintendent, Bill Stumbaugh, wrote Schools Legal Service seeking advice relative to the legality of Mr. Lyon serving on the Coast Board of Trustees while being the attorney for the Cambria Community Services District. On April 18, 1986, you opined, after reviewing law governing conflicts of interest and incompatible offices, that Mr. Lyon could legally sit on the school board.

Please review the two letters from Mr. Arnold and your April 18, 1986 opinion. Then please telephone me so I can answer any questions you have. The District wishes to ensure that the conclusion you reached a little over two years ago is still consistent with current law.

In conclusion, I would recommend you discuss this letter with both Frank Fekete and Mel Peters. On September 1, 1988 I wrote Frank with

Mr. Steve Hartsell
September 30, 1988
Page Two

a request that Schools Legal Service review some correspondence and backup material the District had received/collected relative to usage of its well water. Mel has been assigned the matter of researching the issue and responding to the District.

Sincerely,



Thomas W. Garnella, Ed.D.
Superintendent

TWG:bd

cc: Roger Lyon ✓
Vic Malzahn, President, Coast Board
Jim Brown

SCHOOLS LEGAL SERVICE

MAILING ADDRESS: P.O. BOX 11110
 5807 SUNDALB AVENUE
 BAKERSFIELD, CALIFORNIA 93329
 (805) 398-3830
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 MELVIN D. PETERS
 COUNSEL

CARL B.A. LANGE III
 DIRECTOR OF LABOR RELATIONS

PHIL LANGBATER
 ANTHONY V. LEONIS
 BARGAINING SPECIALIST

October 3, 1988

Dr. Thomas W. Garnella
 District Superintendent
 Cambria Union Elementary School District
 Coast Joint Union High School District
 2950 Santa Rosa Creek Road
 Cambria, CA 93428

Re: Board Member Employed as Attorney
 For Community Services District

Dear Dr. Garnella:

You have requested our review of a letter dated April 18, 1986, regarding whether a board member employed as an attorney for the Community Services District may lawfully serve as a member of your board of education. In that letter, we concluded that Mr. Roger C. Lyon, Jr., who is employed by the Cambria Community Services District as its attorney, may lawfully sit as a member of your board.

In that letter, we also concluded that the school district could contract with the Cambria Community Services District if Mr. Lyon notes for the record that he is an attorney for the district and then the board approves any contract with that district not counting Mr. Lyon's vote. We also noted that any other incompatibility between Mr. Lyon's employment by the Community Services District and his status as a school board member can and must be dwelt with by him on a transactional basis through an appropriate abstention.

Mr. Frank Fekete and I have both carefully reviewed our previous advice in light of current state law regarding conflicts of interest and incompatible activities. Based on that review, we conclude that the opinions expressed in our letter of April 18, 1986, are still correct.

Dr. Thomas W. Garnella
October 3, 1988
Page 2

If you have any questions or if we can be of any further assistance in this matter, please feel free to contact us.

Sincerely,


STEPHEN L. HARTSELL

SLH:rl
#2404-S



California Fair Political Practices Commission

October 13, 1988

Roger C. Lyon, Jr.
1885 Cottontail Creek Road
Cayucos, CA 93430

Re: 88-391

Dear Mr. Lyon:

Your letter requesting advice under the Political Reform Act was received on October 11, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin, 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. Code of Regs. 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
Diane M. Griffiths
General Counsel

DMG:plh