



California Fair Political Practices Commission

August 23, 1990

Joseph A. Duffel
Duffel Financial and
Construction Company
P.O. Box 7003
Lafayette, CA 94549

Re: Your Request for Informal Assistance
Our File No. I-90-390

Dear Mr. Duffel:

Thank you for your letter requesting advice on the applicability of Government Code Section 87100 of the Political Reform Act (the "Act")¹ regarding a possible conflict of interest in connection with a proposed highway interchange in District 4. Since your question is general in nature, we are treating your request as one for informal assistance.²

QUESTION

As member of the California Transportation Commission who is disqualifying himself from voting on allocation of funds to a proposed highway interchange because of a conflict of interest, are you permitted to arrange and participate in a meeting between the chief engineer of District 4 and the city manager of Fairfield, California in order to facilitate construction of said highway interchange?

CONCLUSION

Arranging and participating in a meeting between the chief engineer of District 4 and the city manager of Fairfield would not be permissible because by so doing you would be participating in

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).)

the making of a governmental decision in which you have a financial interest and using your official position to influence a governmental decision, which is prohibited by Section 87100 and Regulation 18700.1.

FACTS

The facts, as related in your letter of May 25, 1990 and two subsequent telephone conversations, are that as a member of the California Transportation Commission you are concerned about the unsuccessful efforts of the City of Fairfield to obtain from the Department of Transportation the design specifications of a proposed interchange at the intersection of Highways 680 and 80. Construction cannot begin until Fairfield is provided with the requisite design information. You would like to arrange and possibly participate in a meeting between the chief engineer of District 4 of the Department of Transportation and the city manager of Fairfield to remedy the situation.

In our telephone conversation of June 19, 1990 you stated that the Transportation Commission on which you serve allocates state and federal funds to particular projects and that the particular interchange that is the subject of your inquiry falls within the type of project to which the Transportation Commission allocates funds.

Your letter indicates that your company owns 160 acres within about one-half mile of the interchange. You yourself have determined that your financial interest in that real property disqualifies you from voting on any allocation of funds to the highway project. This letter does not address whether your determination to abstain from voting on the matter is, in fact, required under the Act since you have not requested advice on that issue.

ANALYSIS

The basic prohibition with respect to conflict of interest is found in Section 87100, which states the following:

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 "financial interest" alluded to in Section 87100 is defined in Section 87103 as follows (in pertinent part):

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable

from its effect on the public generally, on the official or a member of his or her immediate family or on:

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

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

* * *

Please note that persons with financial interests in particular governmental decisions must not only disqualify themselves from voting on those decisions, but also must refrain from any participation in connection with those decisions.

As a member of the California Transportation Commission, you are a "public official," defined in Regulation 18700 as follows:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority....

A public official "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the

part of the official or designated employee and the purpose of which is to influence the decision.

Regulation 18700(c)(1) and (2), copy enclosed.

Thus, as an official with a potentially disqualifying financial interest you must also refrain from negotiating or advising as per Regulation 18700(c) above. If your purpose in taking part in the proposed meeting between the Transportation Department engineer and the Fairfield city manager is to assist in negotiations between the two parties, then your presence would be precluded under Regulation 18700(c).

The remaining issue is the question of whether or not it would be permissible for you to arrange the meeting. That issue touches upon the area of "using official position to influence a decision" from the language of Section 87100.

Regulation 18700.1 defines when an official is using his or her position to influence a governmental decision. It states, in pertinent part:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

Regulation 18700.1(a), copy enclosed.

Since the Department of Transportation would receive funds allocated by the Transportation Commission in connection with the proposed highway interchange, that department is at least to some degree under budgetary control of your commission. It would therefore be improper under Regulation 18700.1(a) for you to contact or attempt to influence any employee or member of the Department of Transportation regarding the advisability of meeting with the city manager regarding the project.

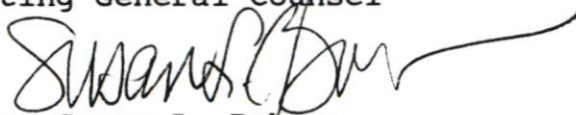
Although your stated purpose in assisting in arranging the meeting would simply be to facilitate an exchange of information in order to get the project underway, the fact that you are a member of a decision making body which allocates funds to the project

would make any activities on your part to generate a meeting an impermissible use of your official position to influence a decision.

I trust the above answers your question. If you require any further information, please feel free to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel

A handwritten signature in black ink, appearing to read "Susan L. Bobrow", with a long horizontal flourish extending to the right.

By: Susan L. Bobrow
Counsel, Legal Division

SH:SLB:plh

Enclosures