



# California Fair Political Practices Commission

April 17, 1992

Mr. Dick Weinkle  
P.O. Box 1029  
Arnold, CA 95223

Re: Your Request for Advice  
Our File No. I-91-484

Dear Mr. Weinkle:

This is in response to your letter requesting advice regarding your duties as a member of the Board of Directors of the Calaveras County Water District (CCWD) under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your advice request seeks general guidance with respect to your conduct, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTION

May you participate in a CCWD decision to provide certain subdivisions access to a sewage treatment plant when you have unimproved property which would be enhanced by such a decision? Does it make any difference that all the other property owners in the subdivisions in question would also receive a benefit if the decision results in their access to the sewage plant?

### CONCLUSION

Since you have a financial interest in a decision to provide certain subdivisions access to the sewer treatment plant and since the "public generally" exception does not apply, you must disqualify yourself from voting on the subdivisions' request. However, you may appear before the Calaveras County Water District

---

<sup>1</sup> 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 Sections 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18239(c)(3).)

to advocate on behalf of your own personal interests with respect to this decision, so long as your comments are limited to your personal interests. You should take care to clarify that you are not acting in any official capacity or appearing to represent any other person's interests.

#### FACTS

Your letter to the Commission outlines the following facts. You own four lots in the Meadowmont subdivision in Arnold, California that are unbuildable due to "non-perkability."

The adjacent subdivision, Lakemont Pines, has sent a letter to the Calaveras County Water District asking that it provide information to Lakemont Pines regarding a hook-up to the Arnold sewer treatment plant. The subdivision has a total of 551 lots, of which 359 are improved with the remaining lots being unbuildable due to non-perkability. The improved lots utilize septic tanks.

There are about 100 lots in Meadowmont abutting Lakemont Pines that are likely to desire the same access to the sewer treatment plant. Four of those lots are owned by you. It is most likely that the project would encompass both areas.

The value of all the unbuildable lots, including the four lots owned by you, would be enhanced by access to the sewer treatment plant.

The Calaveras County Water District ("CCWD") serves about 5,000 customers for water in your area, and about 500 customers for sewer. You are the Director of District 3 for the CCWD.

#### ANALYSIS

The Political Reform Act was enacted by the people of the State of California in 1974. The purpose for the disclosure and disqualification provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own economic interests or the economic interests of persons who have supported them. (Section 81001(b).)

#### The General Rule

In furtherance of this goal, Section 87100 of the Act prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest.

### Public Official

A public official includes every natural person who is a member, officer, employee, or consultant of a local or state government agency. (Section 82048.) You are the Director of District 3 for the Calaveras County Water District. In that capacity, you are a public official of a local government agency and, therefore, you are subject to the disclosure and disqualification provisions of the Act.

### Financial Interests

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 its effect on the public generally, on the official or a member of his or her immediate family<sup>3</sup> 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.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, 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.

\* \* \*

(Section 87103.)

Accordingly, a public official may not make, participate in making, or attempt to use his or her official position to influence a governmental decision if the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on the official, or on a member of the official's immediate family, or on any of the official's economic interests specified in Section 87103 above.

---

<sup>3</sup> An official's "immediate family" includes his or her spouse and dependent children. (Section 82029.)

According to the information you provided, you own real property (i.e., four lots) in which you presumably have an interest of \$1,000 or more.

### Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198.)

You stated in your letter that the value of all unbuildable lots, including the four owned by you, will be enhanced with access to the sewer treatment plant. Therefore, due to the certainty of increased value, it is reasonably foreseeable that your property interest will be affected.

### Materiality

Regulation 18702 sets forth the guidelines for determining whether an official's economic interest in a decision is "materially" affected as required by Section 87103. If the official's economic interest is directly involved in the decision, then Regulation 18702.1 applies to determine materiality.<sup>4</sup>

---

<sup>4</sup> Regulation 18702.1(b) states:

A person or business entity is directly involved in a decision before an official's agency 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; or

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency; or

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

If the official's economic interest is not directly involved in the decision but is indirectly affected by the decision, or if the effect of the decision is not material under Regulation 18702.1, then it must be determined if the effect is material under Regulations 18702.2 - 18702.6.

We cannot make a determination on the magnitude of the financial effect that will be caused by the decisions on your real property. We must leave this factual determination of materiality to you within the guidelines provided by Regulation 18702.3.

However, as your letter alludes to there being a material financial impact on your realty if this decision is favorably made, we assume for purposes of this analysis that the materiality requirement has been met. As a result, you have a conflict of interest and must disqualify yourself from voting on this request for access to the Arnold sewer treatment plant, unless the "public generally" exception would apply.

#### Public Generally Exception

Public officials with real property interests that will be materially affected by a decision may participate in the decision if the effect on their property is not distinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's economic interests in substantially the same manner as it would affect a significant segment of the public. (Regulation 18703.)

The "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPCC Ops. 77.) This is so because all of the residents of the jurisdiction are constituents of the official. Thus, you may only participate in the CCWD's decisions about the Meadowmont subdivision if the effect on your economic interest is substantially the same as the effect on a significant segment of the population of the jurisdiction of the CCWD.

You have not indicated how many customers would be affected by the decision. However, based on the facts you have given, it appears that only a small percentage of the CCWD's customers would be impacted by this decision. Furthermore, arguably the owners of unimproved property will not be affected in the same manner as owners of improved lots. As a result, the public generally will not be affected by this decision. Therefore, we conclude that the public generally exception does not apply in your case and you may not vote on this request.

Representing Your Personal Interests

Regulation 18700.1(b) expressly provides an exception where an otherwise disqualified official appears in the same manner as any other member of the general public before his or her own agency in the course of its prescribed governmental function to represent his or her personal interests in real property, provided the property is wholly owned by the official or members of his or her immediate family.

Thus, you may appear before the Calaveras County Water District, in the same manner as any other member of the public, to advocate on behalf of your own personal interest with respect to this decision from which you are disqualified. However, your comments must be limited to your personal interests, and you should take care to clarify that you are not acting in any official capacity or appearing to represent any other person's interests. (Larson Advice Letter, A-87-151.)

To assist you further, I have taken the liberty of enclosing a pamphlet entitled "A Guide to the Conflict of Interest Provisions of the Political Reform Act of 1974."

I trust this letter addresses your concerns. If you have any further questions, feel free to contact me at (916) 322-5901.<sup>5</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel

*Deanne Stone*

By: Deanne Stone  
Counsel, Legal Division

SH:DS:CMM:aa

Prepared with the assistance of  
Chris Micheli, Legal Intern

---

<sup>5</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.