



California Fair Political Practices Commission

March 16, 1992

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Re: Your Request for Advice
Our File No. A-92-077

Dear Mr. Sexton:

This letter is in response to your request for advice regarding the duties and responsibilities of members of the board of directors of the Biggs-West Gridley Water District under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Your request for advice seeks to determine whether our previous advice to you regarding applicability of the provisions of the Act to members of the board of directors of the district continues to be applicable and represents the Commission's current interpretation of the law. You have also advised me that as a result of the November, 1991, general elections, two of the members of the board were replaced by two additional board members. These newly-elected board members each own in excess of 300 acres of land in the district.²

This letter confirms that the advice provided to you on February 7, 1991, continues to be in effect and is equally applicable to the present board of directors of the district. (Sexton Advice Letter, No. A-91-023.) We advised you that

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 You provided me this information during the course of our telephone conversation of February 7, 1991.

Section 87100 prohibits public officials from making, participating in making, or otherwise using their official position to influence governmental decisions in which they have a financial interest. Members of the board of directors of the Biggs-West Gridley Water District are public officials. (Section 82048.)

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 on a member of the official's immediate family,³ or on:

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

Section 87103(b).

You have advised us that each member of the board of directors of the district holds a fee interest in real property within the district. For purposes of our discussion we assume that the landholdings of each board member are worth in excess of \$1,000. These interests in real property are potentially disqualifying interests for purposes of the Act. If it is reasonably foreseeable that any decision before the board will materially affect real property interests of the board members, disqualification may be required.

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; In re Thorner (1975) 1 FPPC Ops. 198.) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

Materiality

Once it has been determined that a decision will have a foreseeable effect on an official's economic interest, it must be determined whether the effect will be material. When real property interests will be affected directly by a decision, the appropriate standard for determining materiality is that of Regulation 18702.1. If an official's interest in real property

³ An official's "immediate family" are his or her spouse and dependent children. (Section 82029.)

will be affected indirectly by a governmental decision, the appropriate standard for determining materiality is that of Regulation 18702.3.

Public Generally

The remaining issue is whether a decision will affect the public officials who own acreage within the jurisdiction of the district in a manner that is distinguishable from the effect on the public generally. For the public generally exception to apply, the effect of a decision on a public official's economic interest must be substantially the same as the effect on a significant segment of the public. (Regulation 18703).

If it can be shown that persons who hold acreage within the district which is similar to the acreage held by the public officials constitute a significant segment of the public, a decision will affect a public official's interests in the same manner as it will affect the public generally. (Siegel Advice Letter, No. A-90-604.) The public generally exception does not apply to the newly-elected members of the board who each own in excess of 300 acres of land within the district. This is so because their landholdings are larger than those of the vast majority of the population of the jurisdiction, as discussed in our previous advice.

Legally Required Participation

Disqualified public officials may participate in the making of governmental decisions to the extent that their participation is legally required for the action or decision to be made. (Section 87101.) A public official is not legally required to make or to participate in the making of a governmental decision unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision. (Regulation 18701(a).)

Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, the public official must:

(1) Disclose as a matter of official public record the existence of the financial interest;

(2) Describe with particularity the nature of the financial interest before he or she makes or participates in making the decision;

(3) State the reason there is no alternative source of decision-making authority;

(4) Participate in the decision only in an open meeting of the agency, as required by Government Code Sections 11123 and 54953, or in closed session, as provided in Government Code Sections 11126, 54956.7, 54956.8, 54956.9, 54957 and 54957.6, where participation by the official is legally required for the agency to act.

Regulation 18701(b).

In In re Hudson (1978) 4 FPPC Ops. 13, the Commission stated that if a board cannot, as a result of board member disqualifications, obtain a quorum in order to make decisions it is legally required to make, the board may bring back as many disqualified members as is necessary to establish a quorum. The selection process should be by lot or other means of random selection. (Hudson, supra.) Therefore, when a majority of the board members are disqualified from participating in a decision, you must use a random process of selection to requalify three board members to establish a quorum. Once random selection has resulted in a quorum, those board members selected may participate in the decisions without regard to the possible effect of the decisions upon their economic interests. Additionally, those selected should resolve all issues regarding the pending decisions without the participation of the remaining two members of the board.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.⁴

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

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⁴ 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.