



California Fair Political Practices Commission

March 5, 1992

Dawson Arnold
County Counsel
County Administrative Center
707 Nevada Street
Susanville, CA 96130

Re: Your Request for Advice
Our File No. A-92-094

Dear Mr. Arnold:

This letter is in response to your request for advice regarding the duties and responsibilities of Mr. Lyle Lough, Chairman of the Board of Supervisors of Lassen County, under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Under the conflict-of-interest provisions of the Act, may Chairman Lough participate in a decision to place on the ballot the issue of expansion of the prison, California Correctional Center, located in the county?

CONCLUSION

Supervisor Lough may participate in a decision to place the issue of prison expansion on the ballot unless it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on his economic interests.

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.

FACTS

Mr. Lyle Lough, Chairman of the Board of Supervisors of Lassen County, owns and operates a water testing laboratory business within the County of Lassen. Mr. Lough's laboratory provided water testing services to the California Department of Corrections for approximately seven years prior to Mr. Lough's acquisition of it in 1987, and thereafter until June 30, 1991. His contract was on an annual "not to exceed" basis. The contract is awarded on the basis of competitive bidding. Mr. Lough lost the contract for the 1991-1992 fiscal year to a lower unitary bidder. On June 30, 1991, Mr. Lough's business received \$5,000 from the California Department of Corrections in payment of water testing services which the laboratory had performed during fiscal year 1990-1991.

The Department of Corrections presently proposes to expand the California Correctional Center at Susanville, Lassen County, California. This expansion has become a controversial issue within the County of Lassen. The Department of Corrections has indicated that it will not go forward with the project without the endorsement of the Lassen County Board of Supervisors. The scope and amount of services to be furnished under future water testing contracts would not be affected by the expansion.

On February 4, 1992, the board of supervisors conducted a public meeting in which Supervisor Lough did not participate. A motion to put future prison expansion on the ballot for a non-binding advisory vote of the county's electors failed to receive three affirmative votes.

A local radio talk show supports the prison expansion and has broadcast the home phone number of each Lassen County Supervisor, urging the radio audience to call and voice their opinions to the several board members. Supervisor Lough has received an unprecedented number of such calls. A significant percentage of the callers wish to have the matter appear on the June 2, 1992, ballot as a county-wide advisory measure. The last date on which a local measure can be placed on the ballot to be voted upon at the June 2, 1992, election is March 6, 1992.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.

An official has a financial interest in a governmental 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, 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.

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

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

Public officials who have a financial interest in a governmental decision must not only disqualify themselves from voting on those decisions, but also must refrain from any

participation in connection with those decisions. 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).

Thus, an official with a disqualifying financial interest may not participate in any governmental decision in which he or she has a financial interest. Voting as a member of the board of supervisors constitutes making a governmental decision. (Regulation 18700(b)(1).)

We have previously advised that arranging a meeting between public officials to facilitate an exchange of information in order to get a project underway, constitutes using the official's position to influence a decision and is prohibited where the official has a financial interest in the activity. (Duffel Advice Letter, No. I-90-390.) We have also previously advised that a disqualified public official may not chair a meeting where the only item on the agenda will be the official's disqualifying financial interest. (In re Biondo (1975) 1 FPPC Ops. 54; Skousen Advice Letter, No. A-87-062). We have also advised that a public official who has a financial interest in a governmental decision may not call a special meeting of the agency to deliberate on the matter. (Archibald Advice Letter, No. I-91-44.) Similarly, Supervisor Lough may not vote to place an issue on the ballot when he has a disqualifying economic interest.

Moreover, an official with a disqualifying financial interest must refrain from using his or her position to influence a governmental decision in which he or she has a financial interest.

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

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).

Supervisor Lough's economic interests include the California Correctional Center, from which he has received income in excess of \$250 in the preceding twelve months. However, since any benefit flowing to the California Correctional Center, a public agency, would inure to the benefit of the State of California, the financial effect of decisions regarding the California Correctional Center would not be distinguishable from the effect on the public generally. (Siegel Advice Letter, Our File No. A-91-539.) Thus, this source of income is not disqualifying.

Supervisor Lough owns a business which will be indirectly affected by the pending decision.² The appropriate standard for determining materiality when a small business concern will be affected indirectly by a governmental decision is that of Regulation 18702.2 which states in pertinent part that the effect of a decision is material if:

(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 or

² Please note that this test differs from that provided in our previous advice to Supervisor Lough. (Lough Advice Letter, No. A-92-75.) This letter supersedes our previous advice.

reducing or eliminating existing 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).

Thus, if it is reasonably foreseeable that an increase in prison facilities in the county will affect Mr. Lough's business in the amounts stated above, his disqualification would be required.³

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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³ You have stated in your request for advice that the scope and amount of services to be furnished under future water testing contracts with the California Correctional Center at Susanville would not be affected by prison expansion. To the extent that an expansion in correctional facilities will not create further business opportunities for Supervisor Lough, his disqualification would not be required. Bear in mind, however, that his disqualification would be required if, due to prison expansion, there is a greater demand for Supervisor Lough's services thus leading to greater business opportunities, or there is the potential for contracts with the California Correctional Center in amounts exceeding those of previous contracts and the resulting economic effect is material.

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.