



California Fair Political Practices Commission

July 22, 1992

Dana Appling
Senior Attorney
Sacramento Municipal Utility District
P.O. Box 15830
Sacramento, CA 95852-1830

Re: Your Request for Advice
Our File No. A-92-405

Dear Ms. Appling:

This is in response to your letter requesting the confirmation of telephone advice provided to you concerning your responsibilities pursuant to the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter confirms the telephone advice I provided to you on July 8, 1992.

As we discussed, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on any source of income, aggregating \$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.

In addition, the Act requires every public official to disclose all his or her economic interests that could foreseeably

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.

be affected by the exercise of the official's duties, including investments, real property interests, sources of income and sources of gifts. (Sections 81002(c), 87200-87313.)

You stated in our telephone conversation of July 8, 1992, that in addition to being a designated employee of the Sacramento Municipal Utility District (SMUD), you also serve on an advisory commission that advises the Sacramento Air Quality Management District.²

In the context of your position on the commission, you make decisions that may affect SMUD. You asked whether, by virtue of your position at SMUD, you would have a conflict of interest with respect to the commission's decisions.

As we discussed, as a paid employee of SMUD, a public agency, salary and reimbursement for expenses or per diem received from SMUD is expressly exempted from the definition of "income" for purposes of the Act. (Section 82030(b)(2); Boomer Advice Letter, No. I-88-291.) Thus, SMUD is not a "source of income" for purposes of the disclosure or disqualification provisions of the Act.

In addition, because a local government agency is not an organization or enterprise operated for profit, it is, therefore, not a "business entity" as defined by the Act. Thus, your status as an employee of SMUD will not create a conflict of interest concerning decisions affecting SMUD. (Section 87103(d); Section 82005; Darcy Advice Letter, No. I-87-296.)

Consequently, absent some other disqualifying financial interest as set forth in Section 87103, or some direct financial effect on you personally resulting from a governmental decision, you may participate in commission decisions that affect SMUD.

However, please note that our advice is limited to the provisions of the Political Reform Act. Other laws may also apply to your situation. It would be advisable to contact the Attorney General's Office with respect to other provisions of law that might apply. Moreover, this letter is based on the facts

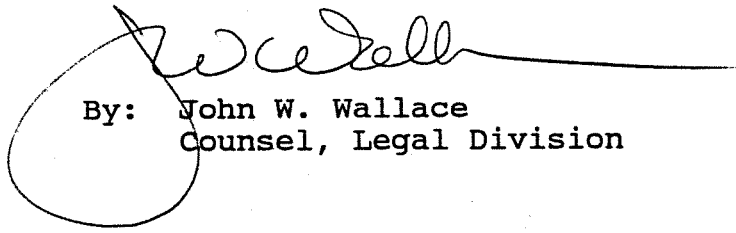
² You stated that the members of the commission have been determined to be members of a decision-making commission and that consequently, you file statements of economic interests with respect to that position.

presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.)

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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³ 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.