



# California Fair Political Practices Commission

December 1, 1992

Russell R. Ruiz  
Hill & Sandford  
800 Presidio Avenue  
Santa Barbara, CA 93101

Re: Your Request for Informal Assistance  
Our Advice File No. I-92-505

Dear Mr. Ruiz:

This is in response to your request for advice under the conflict-of-interest provisions of the Political Reform Act.<sup>1/</sup> Since you are seeking general assistance and not inquiring about a specific decision before you, your letter is considered a request for informal assistance.<sup>2/</sup>

## QUESTION

Does the Political Reform Act's definition of "business position" include positions held by a public official's spouse?

## CONCLUSION

The Political Reform Act's definition of "business position" does not include positions held by any member of a public official's immediate family.

---

<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 Section 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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

### FACTS

The Goleta Water District has been advised by independent counsel that a contract should not be awarded to a firm in which the spouse of one of the members of the Board of Directors had a remote interest in the business that had submitted the bid. The basis for that independent counsel's opinion was Section 1090.

### ANALYSIS

This analysis is limited to the provisions of the Political Reform Act. Your questions concerning the application of Government Code Section 1090 should be referred to the Office of the Attorney General.

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.

Under Section 87103, 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,<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.

---

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

(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(d) provides that a public official must abstain from participating in any decision affecting any business entity in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. This section does not extend to business positions held by a public official's spouse.

Even though the spouse's business position is not a financial interest to the public official, the public official could still have a financial interest in the business by virtue of the spouse's income.

The definition of "income" under the Act provides that the income of an individual also includes any community property interest in the income of a spouse. Any person or business who has been a source of income to an official's spouse of \$500 or more within the past 12 months, is a potentially disqualifying economic interest as described in Section 87103(c). (Thornton Advice Letter, No. I-91-108, enclosed.)

In addition, if the spouse has an investment interest of \$1,000 or more in the business entity in question, this, too, is a potentially disqualifying economic interest as described in Section 87103(a). (Shaw Advice Letter, No. I-90-377, enclosed.)

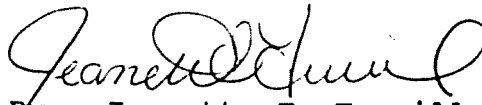
In your letter, you did not provide us with any factual information regarding the spouse's interests in the business entity. For that reason, we are unable to give you specific advice that a conflict of interest exists. If the director has a financial interest in the business entity which submitted the bid, as described above, he may have a disqualifying financial interest under the Political Reform Act.

While the Political Reform Act requires a public official to abstain from participating in a decision in which he has a financial interest, section 1090 is more restrictive in that it prohibits a governmental agency from contracting with such entities. Again, as a reminder, the Fair Political Practices Commission does not administer the provisions of Section 1090. You should contact the Office of the Attorney General for further assistance.

I hope this has provided some guidance to you. If you have any questions, or need further assistance, please feel free to call me at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Jeanette E. Turvill  
Political Reform Consultant  
Legal Division

JET/jt