



# California Fair Political Practices Commission

February 22, 1993

Ted C. Radosevich  
District Counsel  
East Bay Regional Park District  
2950 Peralta Oaks Court  
P.O. Box 5381  
Oakland, California 94605-0381

Re: Your Request for Advice  
Our File No. I-93-021

Dear Mr. Radosevich:

You have requested advice on behalf of East Bay Regional Park District Director Susan Smartt regarding her duties under the conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1</sup>. I am writing to confirm our telephone conversation on February 5, 1993 wherein we discussed your request for advice.

I informed you that we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329 since your questions are general in nature and you did not seek advice regarding a specific pending governmental decision.<sup>2</sup>

Furthermore, I suggested that you contact the Attorney General's office for further advice regarding closed sessions and also Government Code Section 1090, which is not under our jurisdiction.

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<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

Director Susan Smartt is employed as the director of operations/human resources for The Trust for Public Land ("TPL"), a California nonprofit corporation that acquires land for open space, recreation and habitat protection purposes. Typically, TPL acts as a conservation land broker in its transactions and does not maintain long term ownership of the land it acquires. Director Smartt's job responsibilities include management of, and policy setting for, information services, human resources and planning. According to its 1992 annual report, TPL had annual revenues of \$17,000,000.

There is a possibility that the East Bay Regional Park District (the "district") may acquire land from TPL. Currently, TPL is exploring the acquisition of two parcels of land which the district also has expressed an interest in acquiring.

### QUESTION

Under the Act, may Director Smartt participate in decisions on land acquisitions in which The Trust for Public Land is the owner and seller of the land?

### CONCLUSION

Since TPL is a source of income to Ms. Smartt, she may not participate in any governmental decision in which TPL is directly involved. (Sections 87100, 87103(c) and Regulation 18702.1(a)(1).) Therefore, any time TPL is directly involved in a decision (Regulation 18702.1(b)), as would be the case when the district is considering purchasing land from TPL, Ms. Smartt may not participate.


Additionally, if TPL is indirectly involved in a decision, Ms. Smartt must also disqualify herself from participating if there will be a reasonably foreseeable material financial effect on TPL, as must be determined pursuant to Regulation 18702.5, copy enclosed. I have also enclosed for your review some general guidelines on the conflict-of-interest provisions of the Act.

If both the district and TPL are negotiating for the same property during a closed session, Ms. Smartt may not participate in or attend the closed session. In addition, she may not obtain a tape of, or information regarding, the closed session. (Hamilton v. Town of Los Gatos (1989) 213 Cal. App. 3rd 1050, 261 Cal. Rptr. 888.) (See also Haile Advice Letter No. 90-499b, copy enclosed.)

I trust this letter answers your question.

Sincerely,

Jeff Marschner  
General Counsel

By:   
Jill Stecher  
Counsel, Legal Division

JM:JS:d1  
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