



California Fair Political Practices Commission

May 5, 1993

William M. Wilcoxon
Attorney at Law
800 Glenneyre, Suite A
Laguna Beach, CA 92651

Re: Your Request for Advice
Our File No. I-93-181

Dear Mr. Wilcoxon:

This is in reply to your request for advice concerning the Capistrano Bay Park and Recreation District (the "District") and the duties of District Director Lynn Muir under the Political Reform Act (the "Act").¹

Please note that this letter is based on the facts presented to us. The Commission does not act as a finder of fact in providing advice. (In re Oglesby (1975) 1FPFC Ops.71.)

QUESTIONS

1. Is the District's January 1993 decision to exchange real property voidable because Director Muir at a later date agreed to do architectural work for the transferee?²
2. Would the answer to Question 1 be different if Director Muir does not do the previously agreed architectural work for the transferee or does the work without pay?

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 The Commission does not give advice on conduct that has already occurred. (Regulation 18329(b)(8)(A).) However, since your question seeks advice as to the legality of the District's actions, we offer guidance in the form of informal advice. (Regulation 18329(c)(1).) Informal assistance does not provide the advisee with the immunity set forth in Section 83114(a) or (b). (Regulation 18329(c)(3).)

CONCLUSIONS

Questions 1 and 2.

The District's January 1993 decision is only potentially voidable under the Act if, at the time Director Muir participated in the decision, he was promised income from the transferee. From the facts presented, it does not appear that Director Muir was promised income from the transferee at the time he participated in the decision. However, if Director Muir was in fact promised income from the transferee at the time he participated in the decision, then his refusal either to do the work for which the income was promised, or to take the income at all, will not alter the potential voidability of the decision.

FACTS

Lynn Muir is an architect and also is a member of the board of directors for the Capistrano Bay Park and Recreation District. In January 1993, the board agreed to exchange a parcel of District property for a larger parcel of land to be acquired by the transferee. Director Muir participated in this decision. Due to the need for approvals by the City of Dana Point and the Coastal Commission, the actual exchange did not take place until April 6, 1993. On April 8, 1993, Director Muir asked you if he could work for the transferee as an architect to design improvements on the parcel of land that the District exchanged to the transferee. Director Muir has informed you that the transferee did not approach him on this matter until well after the January 1993 decision was made to exchange the property. You have also advised Director Muir that he cannot participate in District decisions which may have a material financial effect on the transferee for 12 months after he has received or been promised income from the transferee.

ANALYSIS

Conflicts of Interest

Section 87100 prohibits public officials, such as Director Muir, from making, participating in or using their official positions to influence governmental decisions in which they have a financial interest.

Section 87103, among other things, states that an official has a financial interest in a government decision when it is reasonably foreseeable that the decision will have a material financial effect on:

Any source of income...aggregating two hundred fifty dollars

(\$250) or more in value provided to, received by or promised to the official within 12 months prior to the time when the decision is made. (Section 87103(c).)

A government decision is considered to have a material financial effect on an official's source of income when the decision will have a financial effect on the source of income and the source of income is the subject of the decision. (Regulation 18702.1(a)(1) and (b).)

From the facts stated, the decision made by the District was material as to the transferee of the property. Therefore, if the transferee promised Director Muir income of \$250 or more within 12 months prior to the decision and Director Muir participated in the decision, he had a conflict of interest. This would be true regardless of whether Director Muir later did not do the offered architectural work or did the work without pay.

However, from the facts you have provided, Director Muir was not promised income until well after the decision on the exchange of property occurred. That decision was made in January 1993 and it appears that Director Muir did not receive his offer of income until about April 1993.

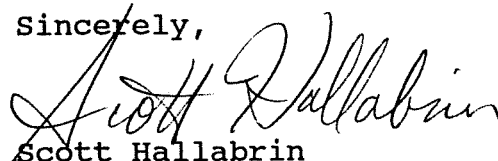
Setting Aside Decisions

Section 91003 provides that, where a court determines a violation of the Act's conflict of interest provisions has occurred and the decision "might not otherwise have been taken or approved," the court may set the decision aside as void.

If Director Muir did in fact have a conflict of interest in voting on the District's decision to exchange the property, the decision is potentially voidable as set forth under Section 91003. According to the facts as discussed above, Director Muir did not have a conflict of interest, meaning that Section 91003 would not apply.

If you have any questions, please contact me at your convenience.

Sincerely,



Scott Hallabrin
Assistant General Counsel

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