



California Fair Political Practices Commission

March 17, 1994

Honorable Timothy R. Davenport
Amador County Board of Supervisors
42-A Summit Street
Jackson, California 95642-2330

Re: Your Request for Advice
Our File No. A-94-030

Dear Supervisor Davenport:

This is in response to your request for advice under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Will your interest in Fucifino Land and Property Management, a limited partnership, prohibit you, as a member of the Sutter County Board of Supervisors, from participating in county decisions affecting one of the other limited partners?

CONCLUSION

You are not prohibited from participating in decisions affecting the other limited partner provided the county decisions do not have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on you, a member of your immediate family, your investment interests, or your sources of income.

FACTS

You and your spouse have a 30 percent interest in a limited partnership known as Fucifino Land and Property Management. The

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, Sections 18000 - 18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

limited partnership has been in existence for approximately nine years. The partnership owns commercial property in Sutter County valued at approximately \$160,000 which is rented out at a monthly rental rate of \$400.

The other limited partners are Paul Molinelli, who owns a 25 percent interest in the partnership, Joel Sweeney who owns a 20 percent interest, and your brother and his spouse who jointly own a 25 percent interest in the partnership. You and Mr. Molinelli have held your interests in the limited partnership since the establishment of the partnership.

Mr. Molinelli is in the process of acquiring a 20 percent interest in a local solid waste franchise. You have stated that you have no interest in the franchise and that you and Mr. Molinelli have no other financial relationship.

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 foreseeable² 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,

² Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.)

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(a) - (c).)

As member of the Sutter County Board of Supervisors, you are a "public official" as defined in the Act. (Section 82048.) You have an investment of more than \$1,000 in a limited partnership, a business entity. (Section 82005.) Therefore, your interest in Fucifino Land and Property Management constitutes an investment interest as described in Section 87103(a) and the partnership is a potentially disqualifying economic interest.³

You and your spouse have a 30 percent interest in Fucifino Land and Property Management which owns commercial property valued at approximately \$160,000. Therefore, you also have an interest in real property worth more than \$1,000.⁴ (Section 87103(b).)

Finally, any person or business that has made any payment to you in the past 12 months is a source of income to you for the purposes of Section 87103(c). This would include the business and the tenant of the business entity.⁵

³ The term "investment" as used in Section 87103(a) above includes a financial interest in a business entity, including but not limited to any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or his or her immediate family, if the business entity owns real property within the jurisdiction. (Section 82034.)

⁴ An individual's interest in real property includes a pro-rata share of interests in real property of any business entity in which the individual or immediate family owns a 10 percent or greater interest. (Section 82033.)

⁵ Section 82030 provides that the income of an individual also includes a pro-rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater.

Accordingly, you may not make, participate in making, or attempt to use your official position to influence a governmental decision if the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on you, or on a member of your immediate family, or on any of your economic interests specified in Section 87103 above.

Fucifino Land and Property Management

It appears that a decision by the county may have a financial effect on Mr. Paul Molinelli, one of the limited partners of the business entity. According to your facts, Mr. Molinelli is in the process of acquiring a 20 percent interest in a local solid waste franchise, and the county approves and authorizes the operation of such franchises. However, you stated that the limited partnership in which you have an interest will not be affected by the county decisions. In addition, you have no other financial relationship with Mr. Molinelli. Therefore, it does not appear reasonably foreseeable that the decisions will have a financial effect on Fucifino Land Property Management, and you would not be prohibited from participating in the county decisions by virtue of the partnership interest.

Mr. Molinelli

However, under some circumstances, a business relationship may result in other persons being considered an economic interest. (See e.g., Hentschke Advice Letter, No. A-80-069.) For example, in In re Nord ((1983) 8 FPPC Ops. 6) the Commission determined that a limited partner in a partnership is considered to have an investment interest in the controlling general partner. (Section 87103(a).)

As noted earlier, you and your spouse have a 30 percent interest in Fucifino Land and Property Management and Mr. Molinelli has a 25 percent interest in the partnership. Thus, you do not have an interest in a controlling general partner as contemplated in the Nord Opinion, supra. Accordingly, Mr. Molinelli is not a disqualifying investment interest of yours with respect to county decisions involving a separate business entity in which Mr. Molinelli holds an interest.

A limited partner may also be a source of income to a public official who receives income from the limited partner within 12 months of a decision, where the official holds a greater than 10 percent interest in the partnership. (Section 82030(a), Nord Opinion, supra; Phillips Advice Letter, No. I-90-340.) According to your facts, both you and Mr. Molinelli have held your interest in the partnership for approximately nine years, and you have no other financial relationship with Mr. Molinelli. Therefore, Mr. Molinelli is not a disqualifying source of income of yours.

I trust this letter has addressed your concerns. Should you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Luisa Menchaca".

By: Luisa Menchaca
Counsel, Legal Division