



California Fair Political Practices Commission

February 17, 1994

William D. Esselstein
District Legal Counsel
East Palo Alto Sanitary District
P.O. Box 51686
East Palo Alto, CA 94303

Re: Your Request for Advice
Our File No. A-94-033

Dear Mr. Esselstein:

This is in reply to your request for advice concerning the duties of East Palo Alto Sanitary District (the "District") Director A. Peter Evans under the Political Reform Act (the "Act").¹

In your request, you ask the Commission to reconsider advice issued to you on Mr. Evans' behalf in Advice Letter Nos. A-93-154 and A-93-468.

Based on the facts provided in connection with those letters, the Commission concluded that Romic Environmental Technologies Corporation ("Romic") was a source of income to Mr. Evans in excess of \$250 and that he was therefore disqualified from participating in a District decision on whether to issue a waste discharge permit to Romic. A copy of both letters is enclosed for your reference.

The Commission concluded that Romic was a source of income to Mr. Evans because, as a result of a lawsuit in which Mr. Evans was a petitioner and Romic a respondent, the court ordered the petitioners to pay Romic \$1,135 for attorney's fees and costs. For purposes of the Act, Section 82030 states that loans are income, and long-standing Commission advice classifies an outstanding debt as a loan, and thus income, under the Act. (Burnham Advice Letter, No. A-87-037.)

You do not question the Commission's advice on this point. Instead, you question how this debt can act to disqualify Mr. Evans from participating in the Romic waste discharge permit decision if the decision will have no impact on the debt itself.

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.

As set forth in our previous letters, Section 87100 prohibits a public official from making, participating in making, or using his official position to influence a government decision in which he knows or has reason to know he has a financial interest.

Section 87103 defines when an official has a financial interest in a governmental decision for purposes of Section 87100. Section 87103 states, in pertinent part:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect ... on:

* * *

(c) Any source of income ... aggregating two hundred fifty (\$250) or more in value ... within 12 months prior to the time when the decision is made.

* * *

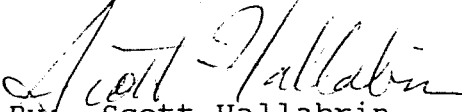
As is evident from the language of Section 87103, an official has a conflict of interest when the effect of the decision is material on the source of the income and not merely upon the income itself. Thus whether the decision affects the \$1,135 debt itself is not the issue. In Mr. Evans' case, the source of the \$1,135 debt is Romic and if the effect of the District's decision on Romic is material pursuant to Regulation 18702.2, Mr Evans must disqualify.

Therefore, Mr. Evans cannot participate in the decision on Romic's waste discharge permit, or on any District decision which has a material financial effect on Romic, during the existence of this debt and for a period of 12 months after it has been reduced to under \$250.

If you have additional questions, please contact me at 916/322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



BY Scott Hallabrin
Assistant General Counsel

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