



FAIR POLITICAL PRACTICES COMMISSION

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May 5, 1998

Nathan John Rangel
President, Adventure Connection
Post Office Box 475
Coloma, California 95613

**Re: Your Request for Advice
Our File No. A-98-032a**

Dear Mr. Rangel:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ On March 4, 1998, we advised you regarding your duties under the conflict-of-interest provisions. (*Rangel* Advice Letter, No. A-98-032.) You would like to correct facts set forth in our initial advice to you. The clarified facts do not alter our original conclusion.

QUESTIONS

1. Do you have a conflict of interest if you actively participate in the management plan public input process held by the Department of Parks and Recreation related to the Mammoth Bar Off-Highway Vehicle Park?
2. Do you have a conflict of interest if the California State Parks and Recreation Commission holds public hearings and votes on a decision regarding the Mammoth Bar Off-Highway Vehicle Park?

CONCLUSIONS

1 and 2. Based upon the facts provided, it is not reasonably foreseeable that the decision concerning the expansion of the Mammoth Bar Off-Highway Vehicle Park will have a material financial effect on your businesses.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

FACTS

You are currently an appointed member of the California State Parks and Recreation Commission. You also own and operate three separate businesses--a professional whitewater rafting company, Adventure Connection, Inc.; a general store, The Lotus Store; and a film and television production support business, Adventure Production Services.

You are also an officer of a trade association, California Outdoors, which consists of professional outfitters throughout California. In your capacity as the president of that organization, you lobby on behalf of the organization's members. You do not receive compensation or gifts of any kind for your service.

The Department of Parks and Recreation ("State Parks") permits your rafting company to operate in the Auburn State Recreation Area on the Middle and North Forks of the American River. The issue that you are concerned with involves the Middle Fork of the American River. That river begins at Owbow Reservoir and the whitewater section runs 17 miles downstream to an area called Greenwood Bridge where your company terminates its trips. The river continues downstream for nine more miles to Mammoth Bar where there is currently a state park, Mammoth Bar Off-Highway Vehicle Park.

Your rafting company does not operate on that final nine mile section, nor does the company advertise it because it has only Class I and II rapids, not whitewater rapids. Your rafting company has not used that section of river in over ten years. Your general store is located about 15 miles from the Mammoth Bar park in Lotus. Commercial establishments that service the Mammoth Bar park area are located in Auburn and Cool, which are closer to the park than Lotus. Your production company has never and does not intend to use the Mammoth Bar park area because there is no road access in that area. In the past, your production company has operated 15-16 miles upstream from the Mammoth Bar park and five to six miles downstream from the park.

State Parks is currently taking public input on a management plan for the Mammoth Bar Off-Highway Vehicle Park. It is considering a number of alternatives for that facility including the possibility of doubling its physical area. Such a move could cause park activity to extend an additional three miles upstream. You believe that such a scenario would not affect your businesses in any way because your businesses do not come into any contact with the Mammoth Bar park.

California Outdoors wants you to lobby State Parks regarding the extension of the Mammoth Bar park. The trade association is more concerned about the environmental impact of the park expansion rather than the fiscal impact because most of its members never utilize that stretch of the river. State Parks' work on the management plan may come before the State Park and Recreation Commission if the management plan is not consistent with the Auburn State Recreation Area General Plan.

CLARIFIED FACTS

The existing Mammoth Bar OHV facility has road access, but there is no road access, only OHV trails, on the section that is being studied for expansion. Notwithstanding this clarification, your production company has never used the Mammoth Bar park area and does not intend to use that area or the section that is being studied for expansion.

ANALYSIS

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

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, distinguishable from its effect on the public generally, on the official or on any of the following:

“(a) Any business entity in which the public official has a direct or indirect investment worth one thousand (\$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 and 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.” (Section 87103(a),(c),(d).)

Pursuant to section 87103(c), your rafting company, general store, and production companies are presumably sources of income to you of \$250 or more within the preceding 12 months. In addition, you have an investment interest in your businesses that may be worth \$1,000 or more. (Section 87103(a).) As the owner, you have a financial interest in your businesses under section 87103(d). It does not appear that you have a financial interest in the trade organization because you do not receive income from the organization.

Accordingly, you may not make, participate in making, or in any way use your official position to influence a governmental decision if that decision will have a reasonably foreseeable material financial effect on any of your businesses.

Making or Participating in Making a Governmental Decision

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter; appoints a person; obligates his or her agency to any course of action; enters into any contractual agreement on behalf of his or her agency; or determines not to act unless such determination is made because of his or her financial interest. (Regulation 18700(b).)

A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision; or advises or makes recommendations to the decisionmaker, either directly or without significant substantive review. (Regulation 18700(c).)

Making or participating in making a governmental decision does not include the appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on matters related to the official’s personal interests. (Regulation 18700(d).) An official’s “personal interests” include an interest in real property wholly owned by the official or members of his or her immediate family; a business entity wholly owned by the official or members of his or her immediate family; and a business entity over which the official exercises sole discretion and control, or over which the official and his or her spouse jointly exercise sole discretion and control. (Regulation 18700.1(b)(1).) Since you seek to represent the association’s interests, the “personal interests” exception does not apply to you.

Thus, if the Parks and Recreation Commission takes action on the management plan involving the Mammoth Bar park, you will be making or participating in making a governmental decision if you participate in any hearings or possible votes related to the management plan.

Influencing a Governmental Decision

With regard to a governmental decision that is within or before an agency other than the official’s agency, and other than an agency appointed by or subject to the budgetary control of the official’s agency, a public official is attempting to use his or her official position to “influence a governmental decision” if the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery. (Regulation 18700.1(c).)

With regard to a governmental decision that is within or before an official’s agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence any member, officer, employee or consultant of the agency. Attempts to influence

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include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client or customer. (Regulation 18700.1(a).) A governmental decision is within or before an official's agency if the decision may come before, is appealable to, or may be reconsidered by the official's agency. (*Lyions* Advice Letter, No. A-94-013.)

As previously discussed, an official is not attempting to influence a governmental decision if the official appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter that is related to his or her personal interests. (Regulation 18700.1(b).)

Accordingly, you will be influencing a governmental decision if you participate in State Parks' management plan public input process and you purport to act as a representative of the Parks and Recreation Commission. In addition, you will be influencing a governmental decision if you contact, appear before, or otherwise attempt to influence any member, officer, employee or consultant of the Parks and Recreation Commission regarding the Mammoth Bar park.

Foreseeability

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.)

Your rafting company utilizes a 17-mile section of the American River that ends nine miles away from the Mammoth Bar park. Your rafting company has not used that section of river in over ten years. You own a general store in Lotus that is located about 15 miles from the Mammoth Bar park. Commercial establishments that service the Mammoth Bar park area are located in Auburn and Cool, which are closer to the park than Lotus. Your production company has never and does not intend to use the Mammoth Bar park area or the section that is being studied for expansion. In the past, your production company has operated 15-16 miles upstream from the Mammoth Bar park and five to six miles downstream from the park. Based upon these facts, it does not appear that it is reasonably foreseeable that a decision concerning the Mammoth Bar park will have a material financial effect upon your businesses.

Materiality

The foreseeability element of the conflict analysis does not appear to be met. Therefore, it is not necessary to determine whether the financial effect of the decision will be material. However, if you find that it is reasonably foreseeable that your businesses will be financially affected by a decision involving the Mammoth Bar park, you may not make, participate in making, or use your official position to influence the decision if the financial effect of the decision will be material.

The Commission has adopted a series of regulations that provide guidance concerning whether the foreseeable effect of a decision is material. These regulations apply different standards depending on whether the decision will directly or indirectly affect the official's economic interest. The effect of a decision is deemed to be material if any person or business entity that has been a source of income to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency. (Regulation 18702(a)(1).) A person or business entity is directly involved in a decision before an official's agency when that person or entity initiates, is the named party in, or is the subject of the proceeding concerning the decision. (Regulation 18702.1(b).)

When an official has an economic interest in a small business entity indirectly involved in a governmental decision, the appropriate standard for determining materiality is set forth in Regulation 18702.2(g) (copy enclosed).

Section 87104

In addition to the Act's general conflict-of-interest provisions, section 87104 prohibits any public official from acting as an agent or attorney for, or otherwise representing, any other person for compensation before his or her agency, or officer or employee thereof, if the appearance or communication is made for the purpose of influencing action on a contract, grant, loan, license, permit, or other entitlement for use. The prohibition in section 87104 applies where the member will be compensated by some third party. (*Geismar* Advice Letter, No. A-95-407.) This section does not appear to apply to your facts. Your facts suggest that you will not receive any compensation for your efforts related to the Mammoth Bar park.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

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