



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

March 31, 1998

Carl Kangas
Commissioner
Napa County Airport Land Use Commission
Planning Department
1195 3rd Street, Room 210
Napa, California 94559

**Re: Your Request for Advice
Our File No. A-98-063**

Dear Mr. Kangas:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May you participate in the formulation of a comprehensive land use plan for the area surrounding Napa Municipal Airport?
2. May you participate in reviewing a proposed amendment of a general plan or specific plan, or adoption of a zoning ordinance or building regulation within the planning boundary established by the Napa County Airport Land Use Commission?

CONCLUSIONS

1. You may participate in the formulation of a comprehensive land use plan for the area surrounding Napa Municipal Airport unless the decisions will have a reasonably foreseeable and material financial effect on your employer.

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

2. You may participate in reviewing a proposed amendment of a general plan or specific plan, or adoption of a zoning ordinance or building regulation within the planning boundary established by the Napa County Airport Land Use Commission unless the decisions will have a reasonably foreseeable and material financial effect on your employer.

FACTS

You are a flight instructor employed by International Air Services Corporation ("IASCO") at Napa Municipal Airport. IASCO provides flight training under contract with Japan Airlines. Napa Municipal Airport is shared by IASCO with members of the public for flight training or other uses. You are a salaried employee and own no stock in IASCO or Japan Airlines.

You are a member of the Napa County Airport Land Use Commission ("ALUC"). The ALUC has a duty to prepare and adopt an airport land use plan, to review the plans, regulations and other actions of local agencies and airport operators, and to review any comprehensive land use plan as often as necessary in order to accomplish its purpose. (PUC Sections 21674(c)(d), 21675 and 21676.)

You are asking whether you may participate in the formulation of a comprehensive land use plan for the area surrounding Napa Municipal Airport as well as reviewing a proposed amendment of a general plan or specific plan, or adoption of a zoning ordinance or building regulation within the planning boundary established by the ALUC.

ANALYSIS

Section 87100 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. Section 87103 states in pertinent part:

"A public 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, a member of his or her immediate family, or on any of the following:

(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, 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." (Sections 87103(c), (d).)

As a salaried employee, you receive income from IASCO. Therefore, you have an economic interest in IASCO (Sections 87103(c) and (d)) and may not participate in any decision that will have a reasonably foreseeable and material financial effect on your employer.

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 a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.) Because your employer has a contract with the Napa Municipal Airport for use of the airport, it is foreseeable that the decisions of the ALUC concerning its land use plan and related decisions will have *some* financial effect on your employer.

Disqualification is still only required where the foreseeable effect on the public official's economic interest is material. The Commission has adopted a series of regulations that provide guidance concerning whether the foreseeable financial effects of a decision are material. (Regulation 18702.) The standard of materiality differs depending on the type of economic interest involved and whether the economic interest is directly² or indirectly involved in the decision.

If the source of income is directly involved, then the public official may not participate in the decision. (Regulation 18702.1(a)(1).) If the source of income is a business entity indirectly involved, then Regulation 18702.2 (copy enclosed) provides the applicable materiality standard. You have provided no facts indicating that your employer is directly involved in the decisions. Pursuant to Regulation 18702.2, you may still have a material financial interest in a decision if the decision will indirectly affect a business entity in which you have an interest, e.g., your source of income. Under this regulation, the indirect effect will not be considered material (and, thus, disqualifying) unless the monetary impact meets a certain level.

You have not provided us with much information concerning your employer, but we will assume it is not a public company traded on the New York, American or Pacific Stock Exchanges. Additionally, we will assume it does not meet the financial standards to be listed in the Fortune Magazine Directory of the 1,000 largest United States companies or the National Association of Securities Dealers National Market List. Therefore, subdivision (g) of Regulation

² An effect is deemed material if a person is "directly involved" in the decision as defined in Regulation 18702.1(b) or there is a "nexus," as defined in Regulation 18702.1(d), between the purpose for which the official receives income and the governmental decision. (Regulation 18702.1(a)(1), copy attached.)

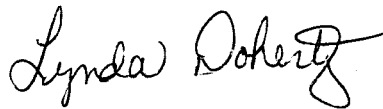
18702.2 (which includes all other business entities not covered by the previously mentioned criteria) would apply. Under that subdivision, in order to have a material impact, the indirect effect of the decision must result in at least one of the following: (1) an increase or decrease in the gross revenues of the business for a fiscal year of \$10,000 or more; (2) the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or (3) an increase or decrease in the value of assets or liabilities of \$10,000 or more.

If the assumptions above are correct, you would not have a material financial interest in the outcome of the decisions as they affect your employer unless the threshold amounts in Regulation 18702.2(g) are met.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lynda Doherty
Political Reform Consultant, Legal Division

SGC:LD:tls

Enclosures