



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

April 26, 1999

Bob Whitney
Brooktrails Township Community Services District
23801 Iris Terrace
Brooktrails Township, California 95490

Re: Your Request for Advice
Our File No. A-99-076

Dear Mr. Whitney:

This letter responds to your request for advice about the Political Reform Act (the "Act").¹

I. QUESTION

As a Member of the Brooktrails Township Community Services District ("BTCSD"), do you have a conflict of interest in either the decision to acquire the Brooktrails Lodge property or to support the "School Site" property as a designated receptor site for a transfer of development rights?

II. CONCLUSION

As to either decision, you will have a conflict of interest if it is substantially likely that the decision will increase or decrease the likelihood of litigation in a business dispute between you and the owner of the Brooktrails Lodge property and the "School Site" property. This is a "judgment call" which you must make on the basis of all available facts.

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

III. FACTS

You are an elected member of the Board of Directors of the BTCSD, which is located just northwest of Willits from U.S. Highway 101. The BTCSD will soon vote on whether to acquire the Brooktrails Lodge property ("Lodge") and whether to support the "School Site" property as a designated receptor site for a transfer of development rights within the BTCSD. The Robert Ohl family, through a corporation and/or as individuals, ("Ohl") own these properties.

You and your wife own two forest land parcels within the BTCSD. You purchased both properties from Ohl in October 1994. Pursuant to the sale agreement, Ohl retains a reserved financial interest, for ten years, in the net proceeds from forest management of the properties you and your wife now own. You and Ohl are not partners or joint venturers in the management of the forest land properties. The properties generate revenues in the form of two years of selective timber harvesting. There has not been a final accounting, as of yet, for the net proceeds. You have not paid any funds to the Robert Ohl family corporation to date, but you may be obligated in the future. Ohl has threatened litigation over the accounting of the net proceeds from the properties.

Neither you nor your wife have any interest in either the Brooktrails Lodge property or the "School Site" property. You have never performed any consulting services for, nor have you received income from, the Robert Ohl family or their corporations. Neither you nor your wife have an investment in any Ohl family business.

IV. ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, 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*.

To say that a public official has a "financial interest" in a governmental decision, within the meaning of the Act, is to conclude that it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).)

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18701.) You are a "public official," for purposes of the Act, and the conflict of interest rules apply to you. (Sections 82048, 82041.)

The Act's conflict-of-interest provisions apply only where the public official "make[s], participate[s] in making, or in any way attempts to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision, and which provide certain exceptions. (Regulations 18702-18702.4.)

By deliberating and voting in the decisions about the Lodge and School Site properties, respectively, you would be making and participating in making governmental decisions. (Regulations 18702.1, 18702.2.) Thus, the Act's conflict of interest rules apply to this situation. At this point, you should carefully note that you must analyze each decision independently; that is, you must decide whether you have a conflict of interest in the Lodge decision and separately make the determination about the School Site decision. The Act's conflict of interest rules are designed to be applied on a decision-by-decision basis.

The Act's conflict-of-interest provisions apply only to conflicts arising from *economic interests*. The "economic interests" from which conflicts of interest may arise are defined in Regulations 18703-18703.5. There are five kinds of such economic interests:

- A public official has an economic interest in a *business entity* in which he or she has a direct or indirect *investment*² of \$1,000 or more (Section 87103(a), Regulation 18703.1(a)), or in which he or she is a *director, officer, partner, trustee, employee, or holds any position of management* (Section 87103(d); Regulation 18703.1(b));
- A public official has an economic interest in *real property* in which he or she has a direct or indirect interest of \$1,000 or more (Section 87103(b); Regulation 18703.2);
- A public official has an economic interest in any *source of income*, including *promised income*, which aggregates to \$250 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- A public official has an economic interest in any *source of gifts* to him or her if the gifts aggregate to \$300 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4); and,

² An 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 public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family—this is known as the “personal financial effects” rule (Section 87103; Regulation 18703.5).

You have no economic interest in Ohl, or in the Lodge or School Site properties, that is, the persons and properties directly involved in the upcoming BTCSD decisions.

You do have an economic interest in your personal finances.³ (Regulation 18705.5.) Your personal finances are implicated in the upcoming decisions about the Lodge and School Site properties because the owner of the Lodge and School Site properties, Ohl, is in the midst of a business dispute with you over the forest land properties. Litigation has been threatened by Ohl. Arguably, the role you take in the decisions about the Lodge and School Site properties could make Ohl more or less likely to sue you over the accounting of the forest land properties. Whether the litigation take places presumably has an impact on your personal finances because you would have to pay attorneys’ fees, and perhaps a judgment if you lose. Thus, the decisions about the Lodge and School Site properties could have an impact on your economic interest, that is, your personal finances.

Your personal finances are considered directly involved in any decision which may have an affect on them. (Regulation 18704.5.) When your personal finances are directly involved in a decision, the decision’s effect on the personal finances is considered material if the effect is at least \$250 in any twelve-month period. (Regulation 18705.5.)

To decide if you have a conflict of interest in the decisions about the Lodge and School Site properties, respectively, you must answer the following question: is it reasonably foreseeable the decision will result in your personal expenses, income, assets, or liabilities, as well as those of your immediate family increasing or decreasing by \$250 or more in any twelve-month period? (Regulation 18706.) “Reasonably foreseeable” means “substantially likely.” (*Ibid.*) This is a judgment call which depends on all the facts of the circumstances. A financial effect need not be a certainty to be “reasonably foreseeable,” but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

For example, if you conclude that either the decision about the Lodge or the School Site properties, respectively, is unlikely to have any impact on Ohl’s decision to pursue litigation

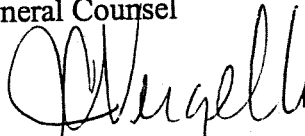
³ You also have an economic interest in your consulting business (Section 87103(a), (d); Regulation 18703.1) and in the forest land parcels you purchased from Ohl (Section 87103(b); Regulation 18703.2). We do not further mention either of these economic interests because, based on the facts you have provided, it appears unlikely that a conflict of interest will arise from either of these indirectly involved economic interests. In the case of your consulting business, you tell us that Ohl has never been a client. In the case of your properties, you present no facts indicating that they are in such proximity to the Lodge or School Site properties to create a possible conflict of interest.

about the accounting of the forest land properties, then you do not have a conflict of interest. On the other hand, if you conclude that either decision is substantially likely to increase or decrease the possibility that you will be sued and will have to pay attorneys' fees or suffer other expenses, then you will have a conflict of interest in that decision.⁴

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

Sincerely,

Steven G. Churchwell
General Counsel



By: John Vergelli
Staff Counsel, Legal Division

SGC:JV:tls

⁴ In the event that you decide you do have a conflict of interest, then you must decide whether the "public generally" exception applies. (See Regulation 18707.) The exception requires that a "significant segment" of your jurisdiction be affected in "substantially the same manner" as are your personal finances. (*Ibid.*) Here, it seems unlikely that the exception would apply because few, if any, persons in your jurisdiction are likely to be affected by the decision in the same manner as are you.