



FAIR POLITICAL PRACTICES COMMISSION

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October 13, 2000

Jan McKinsey
3433 Fairway Drive
Cameron Park, CA 95682

**Re: Your Request for Informal Assistance
Our File No. I-00-212**

Dear Ms. McKinsey:

This letter is in response to your request for advice regarding provisions of the Political Reform Act ("the Act").¹ Because your questions are general in nature and do not relate to a specific decision, we provide you with informal assistance,² and attach our fact sheet "Can I Vote? Conflicts of Interest Overview," as you have requested.

QUESTIONS

To what extent does the Act restrict your participation in a local environmental advocacy group, or limit your decisionmaking activities as an Alternate Public Member of the El Dorado County LAFCO, which may be faced with decisions on projects and policies which you have previously advocated or opposed?

CONCLUSIONS

The Act does not in any way limit or restrict public officials' membership in non-governmental advocacy groups. In addition, so long as you have no financial interest in a given decision before LAFCO, you have no conflict of interest, as that term is defined in the Act, and you may freely participate in the decisionmaking.

¹ Government Code sections 81000 – 91015. Commission regulations appear at title 2, sections 18109-18996, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Regulation 18239(c).)

FACTS

You have recently been appointed as an Alternate Public Member Commissioner on the El Dorado County Local Agency Formation Commission ("LAFCO"). In the past, you have attended LAFCO hearings and have presented oral and written comments on various agenda items concerning specific projects and LAFCO policies. You offered these comments both as a member of the public and as a representative of El Dorado County Taxpayers for Quality Growth ("Quality Growth"), a non-profit public benefit corporation concerned with environmental and land use issues. As a member of Quality Growth's Steering Committee, you hold a position like that of an "officer" or "director" of the corporation. You serve Quality Growth as an unsalaried volunteer, and you have no economic interest in Quality Growth or, so far as you know, in any of the projects or policies on which you have taken a position in the past.³ You believe that matters related to those on which Quality Growth has taken a position will come before LAFCO in the future for decisionmaking.

Quality Growth has initiated litigation against El Dorado County challenging the County's General Plan, as well as against the local Water District, in all cases seeking equitable relief but not monetary damages.⁴ You are not a named party to any of these actions, and you do not foresee any substantial likelihood that this litigation will have any financial effect on you personally. You do anticipate that some of the matters at issue in this litigation may come before LAFCO for decisionmaking in the future.

ANALYSIS

As an alternate member of the El Dorado County LAFCO, you are a public official within the meaning of Section 82048, and you are subject as such to the provisions of the Act. (See, generally, *Miller Advice Letter*, No. A-98-309, copy enclosed.) The Act does not limit or restrict a public official's membership in civic or interest groups and organizations like Quality Growth.⁵

A public official may, however, be prohibited from participation in governmental decisionmaking on matters in which the official has a conflict of interest. The Act's conflict of interest rules prohibit a public official from making, participating in making, or in any way using his or her official position to influence a governmental decision in which the official has a "financial interest." (Section 87100.) Section 87103 provides that a public official has a "financial interest" within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect,

³ We discussed your economic interests in these matters during our telephone conversation of October 3, 2000. There is one project which you feel may effect the value of your personal residence, but you have already announced that you will not take part in decisionmaking on this project, and you have not sought our advice on this matter.

⁴ The parties may, however, be seeking recovery of attorney's fees and costs.

⁵ State and local government bodies like LAFCO may, of course, define "incompatible activities" in which their members or employees may not engage. We suggest that you consult LAFCO's legal counsel to determine whether that agency has promulgated a list of "incompatible activities."

distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the economic interests described in the statute as follows:

- A public official has an economic interest in a *business entity* in which he or she has a direct or indirect *investment* of \$1,000 or more (Section 87103(a);⁶ 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)⁷

You have told us that you have no economic interest that might be financially affected by any of the projects or policies about which you seek advice.⁸ So long this is the case, you do not have a disqualifying “financial interest” in LAFCO decisions on those projects or policies -- if, as you have also indicated, it is not reasonably foreseeable⁹ that those decisions will have a personal financial effect on you or on a member of your immediate family.¹⁰ The Act’s conflict of interest rules regulate only *financial* conflicts of interest. The fact that you may already have views or opinions on matters before LAFCO does not mean that you have a conflict of interest within the meaning of the Act.

⁶ An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official’s immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) “Immediate family” is defined at Section 82029 as an official’s spouse and dependent children.

⁷ Please bear in mind that the Commission is currently engaged in a comprehensive review of its conflict of interest regulations. You may monitor its progress through the Commission’s website, at www.fppc.ca.gov.

⁸ Your position with Quality Growth is like that of a manager or officer of the corporation, but this fact does not constitute an economic interest under Section 87103(d), since that provision applies only to a “business entity.” Section 82005 defines “business entity” as an enterprise operated for profit, expressly excluding non-profit organizations from the definition, and thus from the ambit of Section 87103(d).

⁹ “Reasonably foreseeable” means “substantially likely.” (Regulation 18706.) A mere possibility of an effect is not “substantially likely” within the meaning of the Act’s conflict of interest provisions.

¹⁰ A public official also 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). “Immediate family” means the official’s spouse and dependent children. (Section 82029.)

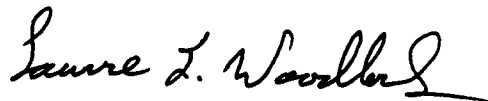
As we discussed over the telephone, if LAFCO were to be faced with a decision relating to the litigation initiated by Quality Growth, it is possible that you would have a disqualifying financial interest in that decision, if it were reasonably foreseeable that the decision would have a personal financial effect on you of \$250 or more. You have not, however, described any decisions coming before LAFCO which relate to this litigation. Since such a conflict appears at this point to be purely hypothetical, we confine ourselves to alerting you to the possibility.

Finally, we note in passing that, notwithstanding any materiality standard otherwise applicable to nonprofit organizations, *any* reasonably foreseeable financial effect of a governmental decision on an official's source of income is deemed to be material if a nexus exists between the decision and the official's private-sector duties. (Regulation 18705.3(c).) A "nexus" exists when the official receives income to achieve a goal that the governmental decision would achieve, defeat, aid or hinder. Because you do not receive income from Quality Growth, there is no potentially disqualifying "nexus" between your association with Quality Growth and your official duties as a LAFCO member.

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

Sincerely,

Luisa Menchaca
Assistant General Counsel



By: Lawrence T. Woodlock
Senior Commission Counsel

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