



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

September 4, 2001

Fred Aguiar, Chairman
Board of Supervisors
County of San Bernardino
385 North Arrowhead Avenue, Fifth Floor
San Bernardino, CA 92415-0110

**Re: Your Request for Advice
Our File No. I-01-156**

Dear Mr. Aguiar:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Please bear in mind that this letter is based on the facts you have presented to us. The Commission does not act as a finder of fact in providing advice. (*In Re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Would you, as a member of the San Bernardino County Board of Supervisors, have a conflict of interest in participating in contract discussions and other matters concerning Burrtec Waste Industries, Inc. if your son-in-law accepts employment with Burrtec?

CONCLUSION

You would not have a conflict of interest in participating in matters regarding Burrtec Waste Industries if your son-in-law is not a disqualifying source of income to you or there are no personal financial effects on you.

FACTS

You are a member and chair the Board of Supervisors of San Bernardino County. San Bernardino County currently has a major contract for solid waste disposal services with Burrtec Waste Industries, Inc. It is highly likely that other matters regarding the contract between

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

Burrtec and the county will be presented to the board of supervisors for its consideration in the future.

You are a co-signor of a mortgage loan that is secured by the personal residence of your daughter and son-in-law. Your daughter and son-in-law are adults, and they are not dependents of yours. Your son-in-law is considering an employment opportunity with Burrtec.

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. A public official has a "financial interest" in a governmental decision within the meaning of the Act, if 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. (§ 87103; Regulation 18700(a).) The Commission has adopted a standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision, which is applied here. (Regulation 18700, subs. (b)(1)-(8).)

1. & 2. Is the individual a "public official" subject to the Act's conflict-of-interest rules and, if he is a "public official," is he making, participating in making, or influencing a governmental decision?

These first two steps are met under your facts. The Act's conflict-of-interest provisions apply to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) As a member of the San Bernardino County Board of Supervisors, you are a "public official" for purposes of the Act (Sections 82048, 82041.) Moreover, you clearly will be making, participating in making, or influencing a governmental decision if you vote and deliberate on decisions regarding current and future contracts between Burrtec Industries and the County of San Bernardino. (Regulations 18702.1, 18702.2, and 18702.3, respectively.)

3. What are your economic interests?

The "economic interests" from which conflicts of interest may arise are described by Section 87103 and Regulations 18703-18703.5. There are six kinds of economic interests recognized under the Act:

A. A public official has an economic interest in a business entity where the public official has a direct or indirect investment of \$2,000 or more in the business entity. (Section 87103(a); Reg. 18703.1(a).) According to the facts presented in your request for advice, you do not have any investment in Burrtec Waste Industries, so you have no economic interest based on this factor.

B. A public official has an economic interest in a business entity where the public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity. (Section 87103(d); Reg. 18703.1(b).) You have not indicated that you hold any position with Burrtec Waste Industries, so this factor would not apply.

C. A public official has an economic interest in any real property in which the public official has a direct or indirect interest worth \$2,000 or more in fair market value. (Section 87103(b); Reg. 18703.2.) While you are the co-signor on your son-in-law's home mortgage, this real property interest is not associated with Burrtec Waste Industries, and as such would not trigger an economic interest in real property under the Act.

D. A public official has an economic interest in any person from whom he/she has received income aggregating \$500 within 12 months prior to the time when the relevant governmental decision is made. (Section 87103(c); Reg. 18703.3.) Section 82030(a) instructs that outstanding loans, as well as payments received by a public official on an outstanding loan are considered income. You have not provided any facts indicating that you have made any payments on your son-in-law's loan or that your son-in-law has reimbursed you for any payments you may have made on his behalf towards the loan. Additionally, Section 82030(b)(9) excludes from the definition of income, loans from or payments received on a loan made to an individual's... child... or the spouse of any such person. It appears that your son-in-law is not a source of income under these circumstances.

E. A public official has an economic interest in any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$320 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. (Section 87103(e); Reg. 18703.4.) Again, there are no facts indicating that either Burrtec Waste Industries or your son-in-law are a source of gifts to you that would trigger this economic interest.

F. A public official has an economic interest in his or her personal finances. (Section 87103.) In particular, a governmental decision has a personal financial effect on a public official if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing by an amount of \$250 or more. (Section 87103; Reg. 18703.5; 18705.5.) We do not have enough facts regarding the governmental decisions in question to determine whether a contract decision about Burrtec will affect you personally.

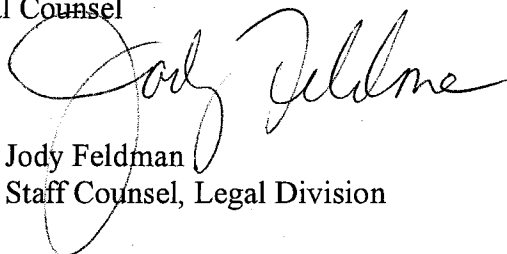
Because we do not have enough facts relevant to the inquiry such as whether you have had to pay on your son-in-law's mortgage loan, or the exact nature of the governmental decisions regarding Burrtec Industries, we can only say that, under the facts you have provided in your request for advice, you have no economic interest that would give rise to a conflict of interest. Because neither Burrtec nor your son-in-law are economic interests of yours, a conflict does not arise under the circumstances you describe, thus it is not necessary to continue with the analysis.

However, if you become personally liable on your son-in-law's mortgage within 12 months of a governmental decision involving Burrtec, our analysis would be different because a decision regarding Burrtec might then have a personal financial effect on you. You would then need to evaluate the situation in the context of the specific governmental decision and how it relates to your economic interest.

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

Sincerely,

Luisa Menchaca
General Counsel

By:  Jody Feldman
Staff Counsel, Legal Division

JF:jg
I:\AdviceLtrs\01-156