



## FAIR POLITICAL PRACTICES COMMISSION

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November 15, 2001

Anthony J. La Bouff  
County of Placer  
175 Fulweiler Avenue  
Auburn, CA 95603

**Re: Your Request for Informal Assistance  
Our File No. I-01-265**

Dear Mr. La Bouff:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your request does not refer to a specific proceeding or decision, we are providing informal assistance. Informal assistance does not confer immunity under Section 83114. (Regulation 18329(c).)

### QUESTION

Where a member of the board of supervisors sells an insurance policy to a city within the county's jurisdiction, may the board member participate in decisions that affect the city?

### CONCLUSION

The board member may participate, if after identifying the appropriate materiality standard, the board member concludes that decision(s) will not have a reasonably foreseeable material financial effect on his economic interest in the city as a source of income.

### FACTS

Supervisor Edward Gaines is an insurance broker. He is a shareholder in a corporation with three other insurance brokers. The supervisor owns 25% of the

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

corporation. Mr. Gaines has the opportunity to sell an insurance policy to the City of Lincoln, located in the County of Placer. Supervisor Gaines' income from this commission would exceed \$250.00.<sup>2</sup>

A land use project in the unincorporated area but near the city is scheduled to come before the board of supervisors for decision. The City of Lincoln will receive funds for sewage treatment expansion and for sewer service from this development. In another instance, there is a land use development currently in the environmental review process that may affect traffic in the City of Lincoln.

Supervisor Gaines serves on several local joint power agencies and local agencies that may be making decisions that may affect the City of Lincoln.

### ANALYSIS

The Act prohibits a 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. (§ 87100.) Pursuant to regulation 18700, an eight-step analysis is applied to determine whether a public official has a conflict of interest in a given governmental decision.

**Steps One-Three: Is the individual a "public official?" Is the public official making, participating in making, or influencing a governmental decision? What is the "economic interest" of the public official?**

Your letter correctly assumes that Supervisor Gaines is a public official, who when making a decision that is before the board, is making a governmental decision under the Act. (§§ 82041, 82048; regulations 18701, 18702.)

You have also correctly concluded that with his sale of insurance to the City of Lincoln, he will have an economic interest in the city as a source of income. (Regulation 18703.3.)<sup>3</sup> The same would be true for his memberships in local joint power authorities and other governmental agencies.

**Step Four: Are the public official's economic interests directly or indirectly involved in the decision?**

You have described a number of decisions that may come before the board of supervisors, which may affect the city. However, while your focus is on the decisions

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<sup>2</sup> In your letter, you have "stipulated" that income from the commission would exceed \$250 in an apparent effort to establish the city as a "source of income" to the board member. However, under § 87103(c) and regulation 18703.3(a), a source of income is defined as "any person from whom [the public official] has received income aggregating five hundred dollars (\$500) within 12 months prior to the time when the relevant governmental decision is made." For purposes of this letter, we will assume that the income from the city meets this threshold amount.

<sup>3</sup> While "salary" from a local government agency is exempt from the definition of "income," these payments are not salary. (§ 82030(b).)

with a potential indirect financial effect on the city, the facts provided are too general to determine with certainty whether the city will be directly or indirectly affected by any of the decisions cited in your letter. However, we have enclosed regulation 18704.1 to assist you in this determination. Regulation 18704.1 sets forth the standard for determining whether a given decision will have a direct or indirect effect on an economic interest in a source of income. (A copy of the regulation is enclosed.)

**Steps Five and Six: Will the financial effect of the decision on the public official's economic interests be material and reasonably foreseeable?**

Once a public official identifies his or her relevant economic interests, the official must evaluate whether it is reasonably foreseeable that the decision will have a material financial effect on any of those economic interests. This determination takes two steps. First, the official must find the applicable materiality standard in Commission regulations. (Regulation 18700(b)(5), Regulation 18705, et seq.) After finding the applicable materiality standard, the official must then decide whether it is reasonably foreseeable that the standard will be met. (Regulation 18700(b)(6).)

An effect is considered "reasonably foreseeable" if the effect is "substantially likely." (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made depends on the facts surrounding the decision. A financial effect need not be a certainty to be considered reasonably foreseeable. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable.

Under the materiality standard for an economic interest in persons who are a source of income and are directly involved in a governmental decision, any reasonably foreseeable financial effect on such persons is deemed to be material.<sup>4</sup> (Reg. 18705.3(a).) Your letter has posited that the city will be indirectly involved in a number of board decisions. The appropriate materiality standard for decisions indirectly involving the city as a source of income, is set forth in regulation 18705.3(b)(2) (copy enclosed).

The board member would have to determine the appropriate standard for the city and apply the same to any decision of the board of supervisors in which the city is indirectly involved.

**Steps Seven and Eight: Does this governmental decision come within any exception to the conflict-of-interest rules?**

Disqualification is not required if the governmental decision affects the public official's economic interests in a manner that is indistinguishable from the manner in which the decision will affect the public generally. (Regulation 18707.) One of the critical issues in applying this exception is whether a "significant segment" of the public is affected by the governmental decision. There are a variety of specialized rules that

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<sup>4</sup> In your letter, you have assumed that the board member will disqualify himself from any decisions in which the city is directly involved.

define what constitutes a "significant segment" of the public in the context of various economic interests. In this regard to the board member's interest in the city, this would implicate the "significant segment" definition contained in regulation 18707.1(b)(1)(D). This section provides:

"Governmental Entities. For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity."

The comment to regulation 18707.1 provides:

"The term 'affect all members of the public' is intended to cover decisions affecting the public in general but to exclude decisions which uniquely benefit a public official."

Application of the "public generally" exception to the types of decisions cited in your letter would only occur where it is determined that the board member has an actual conflict of interest and would be dependent upon the nature and effect of the governmental decision being made. You have not submitted sufficient facts to provide any further information.

Also, if the public official is legally required to make or participate in the making of a governmental decision, disqualification is not required. (Regulation 18708.) Nothing in the facts that you have provided suggests that this exception is applicable to the board member in the context of the facts set forth in your letter.

We are additionally enclosing a copy of the Commission publication, "Can I Vote" to assist you. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel



By: William L. Williams, Jr.  
Staff Counsel, Legal Division

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