



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

November 20, 2001

Michael A. Sass
1900 Amber Ridge Way
Windsor, CA 95492

**Re: Your Request for Advice
Our File No. A-01-271**

Dear Mr. Sass:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please note, our assistance is limited to provisions of the Act and does not address areas of the law outside the Act, such as Government Code section 1090.

QUESTION

You have asked whether abstention from discussions or votes on the Sonoma County Aviation Commission's decisions regarding the Sonoma County Airport minimum standards (a decision in which you have a conflict of interest) satisfies your obligations under the Political Reform Act.

CONCLUSION

So long as you do not make, participate in making, or influence any decision financially affecting your economic interests, you will not have a conflict of interest under the Act.

FACTS

You are the chairman of the Sonoma County Aviation Commission, and your commission is in the process of updating the Sonoma County Airport minimum

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



standards. When the update is completed, the commission will likely vote to recommend the standards to the Sonoma County Board of Supervisors.

Your occupation is real estate development, and you are currently negotiating a land lease between yourself and the Sonoma County Airport for land located at the airport. Since the updated minimum standards will probably affect this lease agreement, you have abstained from any commission discussions regarding the standards. You intend to abstain from additional discussions and any votes.

You would like to know if your abstention as you have described is adequate to prevent a conflict of interest.

ANALYSIS

Your question indicates that you will abstain from any discussions or votes on updating the Sonoma County Airport minimum standards. Since your counsel has already advised you on the conflict of interest, we will not analyze this issue. Your question is whether abstention from discussions or votes on the Sonoma County Airport minimum standards will satisfy your obligations under the Political Reform Act.²

A conflict of interest will only exist if an official is making, participating in making, or influencing a governmental decision. (Section 87100.) The meaning of the terms "making," "participating in making," and "influencing" are explained in detail in regulations 18702.1-18702.4, which are enclosed. A public official "makes a governmental decision" when the official, acting within the authority of his or her position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Section 87100; Regulation 18702.1.) A public official "participates in making a governmental decision" when, acting within the authority of his or her position and without significant substantive review, the official negotiates, advises or makes recommendations to the decisionmaker regarding the governmental decision. (Section 87100; Regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision before his or her own agency if, for the purpose of influencing the decision, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Section 87100; Regulation 18702.3.)

Thus, assuming that the official with the conflict of interest does not make, participate in making, or influence a governmental decision in which he or she has the conflict of interest, that official will have complied with the official's obligations under the Act.

² The Act provides an 8-step process to determine if a conflict of interest exists. We have enclosed a copy of the Commission publication, "Can I Vote?" to assist you in the future.

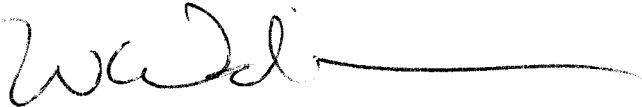
Please note, even if a conflict of interest exists, a public official may be permitted to appear, as any member of the general public, before an agency in the course of its prescribed governmental function, to represent himself/herself on matters related solely to his or her personal interests. (Regulations 18702.4(a)(2) and 18702.4(b)(1).) Regulation 18702.4 makes clear, however, that an official may make "appearances" as a member of the general public "before an agency in the course of its prescribed governmental function" only to represent himself/herself on matters related solely to his/her personal interests, such as:

1. An interest in real property which is wholly owned by the official or members of his or her immediate family;
2. A business entity wholly owned by the official or members of his or her immediate family.
3. A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control. (Regulations 18702.4(a)(2) and (b)(1).)

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

Sincerely,

Luisa Menchaca
General Counsel



By: John W. Wallace
Legal Division

JWW:jg
I:\AdviceLtrs\01-271