



FAIR POLITICAL PRACTICES COMMISSION

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December 12, 2006

Brent P. Collinson
General Counsel – Truckee Tahoe Airport District
Martis Valley Professional Center
9709 Highway 267, Suite A
Truckee, CA 96161

**RE: Your Request for Advice
Our File No. A-06-211**

Dear Mr. Collinson:

This letter is in response to your request on behalf of Steve Sweigard and Michael Golden, members of the Board of Directors of the Truckee Tahoe Airport District, for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Steve Sweigard, a member of the Board of Directors of the Truckee Tahoe Airport District (the "District"), who leases an aircraft hangar and purchases aircraft fuel from the District, participate in Board discussions and decisions setting the price of hangar rentals and adopting policies for setting aircraft fuel prices?

2. May Michael Golden, also a member of the Board of Directors of the District who leases an aircraft hangar and purchases aircraft fuel from the District but whose employer pays for all of these costs, regardless of whether Director Golden sometimes uses the aircraft for personal use, participate in Board discussions and decisions setting the price of hangar rentals and adopting policies for setting aircraft fuel prices?

CONCLUSIONS

1. If it is reasonably foreseeable that decisions regarding the price of aircraft fuel

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

or hangar rentals will have an effect on Director Sweigard's personal finances of at least \$250 or more in any 12-month period, he will have a conflict of interest with respect to those governmental decisions.

2. Director Golden will have a conflict of interest in any decisions regarding the price of aircraft fuel or hangar rental if it is reasonably foreseeable that the decision will have an effect on his personal finances of at least \$250 or more in any 12-month period, or will have a material financial effect on his employer.

FACTS

The Truckee Tahoe Airport District (the "District") is an Airport District organized and existing pursuant to Public Utilities Code Sections 22001 et seq. As part of the District's operations, it leases aircraft hangars and sells fuel for aircraft. The rates for the hangars are set by the Board of Directors, and the rates for fuel are set by the General Manager pursuant to a formula adopted by the Board.

Two directors, Steve Sweigard and Michael Golden, are pilots who own airplanes that are hangared at the airport. They rent hangar space from the airport on the same terms and conditions as other renters, as well as purchase fuel for their aircraft on the same terms and conditions as other fuel purchasers. In a telephone conversation of December 5, 2006, you advised that while both directors initially leased hangars under a one-year lease, both leaseholds automatically converted to month-to-month tenancies at the end of the one-year term.

Director Golden utilizes his airplane for business. As part of his employment contract, his employer pays all hangar rental and fuel expenses for his aircraft regardless of his personal use of the aircraft.

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).) 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.

The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

Step 1. Are the directors “public officials” within the meaning of section 87100?

Section 82048 defines a public official as “every member, officer, employee or consultant of a state or local government agency.” Section 82041 defines “local government agency” to include “a county, city or district of any kind.” Hence, the Truckee Tahoe Airport District is a local government agency. As members of the Board of Directors of this local government agency, Directors Sweigard and Golden are public officials. Therefore, they may not make, participate in making, or otherwise use their position to influence any decisions that will have a reasonably foreseeable material financial effect on any of their economic interests.

Step 2. Will the directors be making, participating in making or influencing a governmental decision?

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or 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. (Regulation 18702.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a governmental decision if, for the purpose of influencing the decision, the official contacts or appears before or otherwise attempts to influence, any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

Your questions presuppose that Directors Sweigard and Golden would be making, participating in making, or using their official positions to influence governmental decisions by participating in District Board of Director decisions to charge a particular price for hangar rentals or to adopt a policy for setting fuel prices.

Step 3. What are the directors’ economic interests?

The Act’s conflict-of-interest provisions apply only to conflicts of interest arising from certain enumerated economic interests. These economic interests are described in section 87103 and regulations 18703-18703.5, inclusive:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more. (Section 87103(a); regulation 18703.1(a).)
- A public official has an economic interest in a business entity 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 \$2,000 or more. (Section 87103(b); regulation 18703.2.)
- An official has an economic interest in any source of income, including promised income, totaling \$500 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 total \$360 or more within 12 months prior to the decision. (Section 87103(e); regulation 18703.4.)
- 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 commonly referred to as the “personal financial effects” rule. (Section 87103; regulation 18703.5.)

Business Entity and Source of Income

Director Golden has an economic interest in the business entity that employs him because he is its employee (section 87103(d); regulation 18703.1(b)), and because his employer is a source of income of \$500 or more (section 87103(c); regulation 18703.3).

Real Property

Section 82033 provides that an “interest in real property” includes any leasehold, beneficial, or ownership interest in real property located in the jurisdiction owned directly, indirectly, or beneficially by the public official if the fair market value of the interest is \$2,000 or more. However, the terms “interest in real property” and “leasehold interest” do not include the interest of a tenant in a periodic tenancy of one month or less. (Regulation 18233.) Thus, since both directors have a month-to-month tenancy rather than a lease, they do not hold a potentially disqualifying interest in real property for purposes of section 87103(b).

Personal Finances

Both directors have an interest in their personal expenses, income, assets, or liabilities. Any decision to increase or decrease the price of aircraft fuel or hangar rentals would have an effect on Director Sweigard’s personal finances because they would cause his personal expenses to increase or decrease. Director Golden’s employer pays for all of his fuel purchases and hangar rental costs pursuant to an employment contract, regardless

of whether he is using his aircraft for personal or employment-related travel. The question arises whether under these circumstances decisions regarding the pricing of fuel and hangar rentals would have a personal financial effect on Director Golden. That portion of his employer's payments that is attributable to personal use of the aircraft constitutes compensation to Director Golden. Since his compensation includes payment for fuel and hangar rental for his personal use, a decision to increase or decrease fuel prices or hangar rental costs would affect Director Golden's income.

Step 4. Will economic interests of the directors be directly or indirectly involved in decisions they will make, participate in making or influence as public officials?

An economic interest which is directly involved in, and therefore, directly affected by, a governmental decision creates a greater risk of a conflict-of-interest than does an economic interest which is only indirectly involved in the decision. Separate rules govern different kinds of economic interest for purposes of determining whether an economic interest is directly or indirectly involved.

Business Entities and Sources of Income

A person, including business entities and sources of income, is directly involved in a decision before an official's agency when that person, either directly or indirectly by an agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.” (Regulation 18704.1(a).)

Applying regulation 18704.1(a) to your facts, purchasing fuel or leasing a hangar by Director Golden's employer does not amount to initiating a proceeding or being named in or being the subject of a proceeding. Accordingly, Director Golden's employer (a business entity and a source of income to Director Golden) is not directly involved in decisions to adopt fuel pricing policies or set the price for hangar rentals. If a person is not directly involved in a governmental decision, he or she is deemed to be indirectly involved.

Personal Finances

Under regulation 18704.5, “[A] public official or his or her immediate family are deemed to be directly involved in a governmental decision which has *any* financial effect on his or her personal finances or those of his or her immediate family.” (Emphasis added.) As stated above, decisions regarding the cost of aircraft fuel or hangar rental would affect Director Sweigard’s personal expenses and Director Golden’s personal income. Accordingly, their personal finances would be directly involved in such decisions.

Step 5. What is the applicable materiality standard?

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official’s economic interest is material. (Regulation 18700(a).) Different standards apply to determine whether a reasonably foreseeable financial effect on an economic interest will be material, depending on the nature of the economic interest and whether that interest is directly or indirectly involved in the agency’s decision.

Business Entities and Sources of Income

Having determined that (i) Director Golden has an economic interest in his employer by virtue of his being an employee of this business entity and also because it is a source of income to him, and (ii) Director Golden’s employer is indirectly involved in governmental decisions setting prices for aircraft fuel and hanger rentals, we must determine the applicable materiality standard. When a business entity in which a public official has an economic interest is indirectly involved in a governmental decision, the applicable materiality standard is found in regulation 18705.1(c). This is the same standard applied to business entities that are sources of income that are indirectly involved in governmental decisions. (Regulation 18705.3(b)(1).) The applicable materiality standard depends upon the size of the business.

If the business entity is listed in the Fortune 500, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that the governmental decision will result in the business entity increasing/decreasing its gross revenues for a fiscal year by \$10,000,000 or more, incurring/avoiding additional expenses or reducing/eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more, or increasing/decreasing the value of its assets or liabilities by \$10,000,000 or more. (Regulation 18705.1(c)(1).)

For businesses listed or eligible for listing on the New York Stock Exchange, the financial effect of a governmental decision is material if it is reasonably foreseeable that the governmental decision will result in the business entity increasing/decreasing its gross revenues for a fiscal year by \$500,000 or more, incurring/avoiding additional expenses or

reducing/eliminating existing expenses for a fiscal year in the amount of \$200,000 or more, or increasing/decreasing the value of its assets or liabilities by \$500,000 or more. (Regulation 18705.1(c)(2).)

For businesses listed or eligible for listing on NASDAQ or the American Stock Exchange, the financial effect of a governmental decision is material if it is reasonably foreseeable that the governmental decision will result in the business entity increasing/decreasing its gross revenues by \$300,000 or more, or incurring/avoiding additional expenses or reducing/eliminating existing expenses by \$100,000 or more, or increasing/decreasing the value of its assets or liabilities by \$300,000 or more. (Regulation 18705.1(c)(3).)

For all other businesses, the financial effect of a governmental decision is material if it is reasonably foreseeable that the governmental decision will result in the business entity increasing/decreasing its gross revenues by \$20,000 or more, or incurring/avoiding additional expenses or reducing/eliminating existing expenses by \$5,000 or more, or increasing/decreasing the value of its assets or liabilities by \$20,000 or more.

We have insufficient information about Director Golden's employer to determine the appropriate materiality standard. He will need to make this determination himself.

Personal Finances

Regulation 18705.5 sets forth the materiality standard to be applied in the case of an official's personal finances:

“A reasonably foreseeable financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period. When determining whether a governmental decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment shall be considered.”

Each time Directors Sweigard and Golden are faced with making or participating in making a decision regarding the pricing of aircraft fuel or hangar rentals they will need to apply the foregoing analysis to their personal situation. For example, if a decision to decrease the price of hangar rentals by \$25 per month comes before the District Board, the materiality threshold will have been met for Director Sweigard because it will decrease his personal expenses by \$300 within the 12-month period following the decrease. The same decrease would have a material financial effect on Director Golden's

economic interest in his personal finances if during a 12-month period the decrease would cause the rental amount representing his personal use of the hangar to decrease by \$250 or more.

Step 6. Is it reasonably foreseeable that the financial effect of the governmental decisions on the economic interests of the directors will meet the applicable materiality standard?

Once an official has determined the materiality standards applicable to each of his or her economic interests, the next step is determining whether it is "reasonably foreseeable" that the standard will be met. A material financial effect on an economic interest is "reasonably foreseeable" if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) An effect need not be certain to be considered "reasonably foreseeable," but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.) On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable.

Ultimately, whether a material financial effect is foreseeable at the time a decision is made depends on facts and circumstances peculiar to each case. (*In re Thorner, supra.*) Because the Commission does not act as a finder of fact in providing advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), the foreseeability of a particular financial effect is a determination that must be left, in most instances, to the informed judgment of the public official.

Steps 7 & 8. Does the "public generally" exception or the "legally required participation" exception apply?

Even if a material financial effect on a public official's economic interest is reasonably foreseeable, he or she still may not be disqualified if the financial effect of the governmental decision on the public official's economic interest is indistinguishable from the effect on the public generally (section 87103; regulations 18700(b)(7) and 18707(a)), or the official is legally required to participate (section 87103; regulation 18708). You have provided no facts indicating that either of these exceptions applies in this instance.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "Valentina Joyce". The signature is written in a cursive style with a long horizontal flourish at the end.

By: Valentina Joyce
Counsel, Legal Division

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