



## FAIR POLITICAL PRACTICES COMMISSION

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May 12, 2008

Cindi Borges  
Member, Board of Directors  
Ninth District Agricultural Association (Redwood Acres Fair)  
3750 Harris Street  
Eureka, CA 95503

**Re: Your Request for Advice  
Our File No. A-08-064**

Dear Ms. Borges:

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> The Commission does not address matters outside of the Act including those implicating Government Code Sections 1090 et seq. For this reason, we urge you seek advice from your agency's counsel or the Attorney General's office on these provisions. In addition, the Commission will not advise with respect to an official's past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place.

### QUESTION

Will you have a conflict of interest in decisions regarding transferring your agency's current bank account to the bank by which you are employed?

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## CONCLUSION

Yes. Under the Act, you have a conflict of interest and may not participate in decisions regarding moving the bank accounts for the Redwood Acres Fair to your employer, Redwood Capital Bank.

## FACTS

You have recently been appointed as a member of the Board of Directors of the Ninth District Agricultural Association (Redwood Acres Fair). Prior to your appointment you had been working with the Executive Director of the Fair in an effort to move the bank accounts of the Redwood Acres Fair to your employer, Redwood Capital Bank. During the process of your appointment, the issue of conflict of interest arose and the Redwood Acres Fair decided to forego decisions regarding possibly transferring its bank account pending your appointment. Now that you are an appointed member of the board, the Redwood Acres Fair is again considering the transfer.

## ANALYSIS

### *Potential Conflict of Interest*

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).) To this end, 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 analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule 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 you a public official?*

Section 82048 defines a public official as any "member, officer, employee or consultant of a state or local government agency." As a member of the Board of Directors of the Redwoods Acres Fair, you are public official under the Act. (Section 82048.)

*Step 2. Will you 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 question presupposes the Board of Directors will be making the government decision to consider moving your agency's bank account and that, unless disqualified, you will be making, participating in making and using your official position to influence that government decision.

*Step 3. Do You Have a Potentially Disqualifying Economic Interest?*

A public official has a financial interest in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated economic interests, including:

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)); 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));

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 economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);

An economic interest in any source of gifts to him or her if the gifts aggregate to \$390 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);

An economic interest in his or her personal finances, including those of his or her immediate family -- this is the "personal financial effects" rule. (Section 87103; Regulation 18703.5)

The interest identified in your request for advice is your economic interest in the business entity that employs you (Section 87103(d); Regulation 18703.1(b)), and is a source of income of \$500 or more (Section 87103(c); Regulation 18703.3).<sup>2</sup>

*Step 4. Are your economic interests directly or indirectly involved in the governmental decision?*

In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, we must first determine if the official's economic interest is directly or indirectly involved in the governmental decision. (Regulation 18704(a).)

For governmental decisions that affect sources of income and business entities, the standards set forth in Regulation 18704.1(a) apply. (Regulation 18704(a)(1).)

Regulation 18704.1(a) states:

"(a) A person, including business entities, sources of income and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by 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."

The decision described in your request for advice regards a possible contract between your agency, Redwood Acres Fair, and your employer, Redwood Capital Bank, and so falls under the standards set forth in Regulation 18704.1(a)(2) meaning that the bank would be directly involved in the proposed decision.

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<sup>2</sup> It is entirely possible that you may also have an investment interest in Redwood Capital Bank. However, since your letter contains no facts to indicate this is so and since the end result would prove the same, we will not pursue this line of analysis.

*Steps 5 and 6: What is the materiality standard for disqualification and is it reasonably foreseeable that standard could be reached as an outcome of the decision?*

Any reasonably foreseeable financial effect, even one penny's worth, on a directly involved source of income to a public official is considered to be material. (Regulation 18705.1(b)(1).) A contract between the bank and your agency would doubtless be worth more than a penny to the bank. Therefore, it is reasonably foreseeable that a decision on the contract will have a material financial effect on your source of income, the bank.

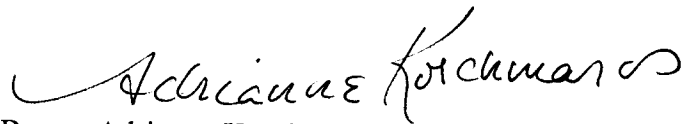
*Steps 7 and 8. Would the decision have the same effect on the public generally and could "legally required participation" be invoked?*

You have not presented any facts indicating that either the "public generally" or "legally required participation" exceptions would be applicable to this situation.

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

Sincerely,

Scott Hallabrin  
General Counsel



By: Adrienne Korchmaros  
Political Reform Consultant  
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