



FAIR POLITICAL PRACTICES COMMISSION

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June 24, 2009

Tony Barrett
P.O. Box 2294
Mammoth Lakes, California 93546

Re: Your Request for Advice
Our File No. A-09-130

Dear Mr. Barrett:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Also please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict of interest laws such as common law conflict of interest or Government Code Section 1090.

QUESTION

Are you prohibited from participating in a governmental decision that involves a development located within 500 feet of where you previously leased property for a business you no longer operate?

CONCLUSION

No. Because you no longer have a leasehold in the property where your business was located you do not have a conflict of interest prohibiting you from participating in the governmental decision.

FACTS

You are a Planning Commissioner for the town of Mammoth Lakes. You were the owner of a business in Mammoth Lakes for which you held a lease on the property

¹ 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.

where the business was located. Last June 30, 2008, your lease expired and no new lease was issued. You and the others in the Village at Mammoth agreed with the lessor to operate on a month-to-month basis while negotiating a new lease. In December 2008, an interim agreement was reached effective December 1, 2008, through April 30, 2009. On March 24, 2009, you closed your business and the interim agreement was invalidated. You have retained your business license until now, and you may make the decision to reopen your business anywhere in town. There is a decision before the planning commission involving approval for development of property that is located within 500 feet of the property where you previously held a leasehold. Now that you no longer have a leasehold in the property where your business was located you would like to know if you are prohibited from participating in the decisions involving the new development.

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 you a "public official" 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." As a member of the planning commission, which is a local government agency, you are a public official. Therefore, you may not make, participate in making, or otherwise use your position to make, participate in making or influence any decisions that will have a reasonably foreseeable material financial effect on any of your economic interests.²

² Section 87105 and Regulation 18702.5 require that certain public officials must immediately prior to the discussion of an item for which the official has a conflict of interest: (1) orally identify each type of economic interest involved in the decision; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. Section 87105 only applies to officials holding positions that are listed in Section 87200, this includes planning commissioners.

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 decision maker 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.)

By participating in a planning commission vote on the new development application, you will be making a governmental decision.

Step 3. What are your 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 \$420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)

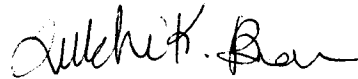
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is commonly referred to as the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

Because you have indicated that your lease has terminated and you have not provided any facts indicating that you have any other economic interests, our analysis ends at this step and you do not have a conflict of interest and are not prohibited from participating in the governmental decision regarding the new development.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Sukhi K. Brar
Counsel, Legal Division

SKB:jgl