



## FAIR POLITICAL PRACTICES COMMISSION

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August 4, 2009

Shirlee Zane  
Third District Supervisor  
County of Sonoma Board of Supervisors  
575 Administration Drive, RM. 100A  
Santa Rosa, CA 95403

Re: Your Request for Advice  
**Our File No. A-09-180**

Dear Ms. Zane:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

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

Do the Act's conflict-of-interest provisions prohibit you from making, participating in, or using your position to influence a governmental decision that may have a financial effect on your adult son or the company for which he works?

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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

Generally, a public official does not have a conflict of interest under the Act solely because the official makes, participates in, or influences a governmental decision that has a financial effect on his or her adult child or a company for which the adult child works. For the Act's conflict-of-interest provisions to apply, the official must have a specific economic interest in the child or in the company for which the child works.<sup>2</sup>

## FACTS

You are a member of the Board of Supervisors for the County of Sonoma (the "Board of Supervisors"). The Board of Supervisors will soon be considering a proposed fee on aggregate mining operators within the County. One operator, who may be subject to the fee, is Syar Industries, Inc. ("Syar"). Syar is one of the larger mining operations in the County.

Your adult son, who is 18 years of age or older, is employed part time with Syar's vineyard operations.<sup>3</sup> Your adult son currently lives at your home and is a student. You also provide his housing and pay for his education, food, and transportation costs. Although you did not claim your adult son as your dependent on your 2008 income tax return, you will be declaring him as a dependent on your 2009 return.

While you do not currently know whether Syar's vineyard operations are a separate corporate entity from Syar, it is your understanding that the same key personal own and/or operate both the aggregate operations and the vineyard operations. Other than your adult son's employment, neither you nor your family has any other interests in Syar.

## ANALYSIS

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. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has

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<sup>2</sup> We emphasize that this conclusion is limited to the provisions of the Act. Your participation in the decisions you have described may be prohibited by other provisions of law including common law conflict-of-interest laws and Government Code Section 1090. We suggest you consult with your county's counsel on these issues.

<sup>3</sup> Speaking on your behalf, your staff assistant, Jessica Diaz, stated that your son is 18 year of age or older in a telephone conversation on July 29, 2009.

adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision.

**Step One: Are you a “public official?”**

The Act’s conflict-of-interest provisions apply only to “public officials.” (Sections 87100, 87103; Regulation 18700(b)(1).) A “public official” is “every member, officer, employee or consultant of a state or local government agency . . .” (Section 82048.) As a member of the Board of Supervisors, you are a public official within the meaning of the Act.<sup>4</sup>

**Step Two: Are you 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 intervening substantive 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 decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.) As a member of the Board of Supervisors, you are making, participating in making, or influencing a governmental decision if you take part in a decision relating to your son’s company Syar.

**Step Three: What are your economic interests?**

Section 87103 provides that a public official has a “financial interest” in a governmental decision 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 of the official’s economic interests, described as follows:

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<sup>4</sup> If a public official’s office is listed in Section 87200 (“87200 filers” include members of a county board of supervisors) and he or she has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in Regulation 18702.5(b)(1)(B), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. For closed sessions, consent calendars, absences and speaking as a member of the public regarding personal interests, special rules found in Regulation 18702.5, subdivisions (c) and (d) apply. (Section 87105.)

- 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).)<sup>5</sup>
- 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 a 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 a source of gifts to him or her if the gifts aggregate to \$420 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 known as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

An official may have a disqualifying conflict of interest in a decision if the decision has a financial effect on a member of the official’s “immediate family.” Section 82029 defines “immediate family” as the official’s “spouse and dependent children.” However, whether a child is claimed as a dependent on an income tax return does not in itself determine whether a child is a dependent under Section 82029. For purposes of Section 82029, we have previously advised that “dependent children” are those children who are under 18 and whom the official can claim as a dependent for federal income tax purposes. (See e.g., *Tremlett* Advice Letter, No. I-89-386.) Accordingly, you do not have a disqualifying conflict of interest in a decision that has a financial effect on your adult son, who is over 18 years of age, or on the company for which he works solely because he is your son. Instead, you would only have a potential conflict of interest in the decision if the decision affected one of the five economic interests identified above.<sup>6</sup>

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<sup>5</sup> We note that an official with an economic interest in a business entity including a source of income that is a business entity also has economic interests in any parent, subsidiary, or otherwise related business entity. (Regulations 18703.1 and 18703.3.) Even if Syar’s vineyard operations are operated as a separate corporate entity, your account of the facts indicates that the Syar’s vineyard operations are related to Syar under Regulation 18703.1(d)(2) because you state that both the aggregate and the vineyard operations are owned/operated by the same key personal. Accordingly, any official with an economic interest in Syar’s vineyard operations would also have an economic interest in Syar.

<sup>6</sup> Note that you are subject to disqualification from a decision if you have an economic interest in your son such as an economic interest in your son as a source of income. (Section 87103(c); Regulation 18703.3.) You are not, however, subject to disqualification from a decision based upon an economic interest in your son as a source of gifts because the term “gift,” as defined by the Act, does not include payments from “an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-

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

Sincerely,

Scott Hallabrin  
General Counsel

A handwritten signature in black ink, appearing to read "B. Lau", written over a horizontal line.

By: Brian G. Lau  
Counsel, Legal Division