



## FAIR POLITICAL PRACTICES COMMISSION

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October 19, 2010

Alexandra M. Barnhill  
Deputy City Attorney  
City of Carpinteria  
Brownstein, Hyatt, Farber & Schreck  
21 East Carrillo Street  
Santa Barbara, California 93101

**Re: Your Request for Advice  
Our File No. A-10-161**

Dear Ms. Barnhill:

This letter responds to your request for advice on behalf of Carpinteria Architectural Review Board Member William Araluce concerning the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that our advice is based solely on the provisions of the "Act." We offer no opinion on the application, if any, of provisions such as Government Code Section 1090, which is not included in the Act.

### QUESTIONS

1. May Board Member Araluce act as a compensated architectural agent for property owners seeking city permits before the Architectural Review Board (ARB) if he recuses himself and acts only in a private capacity?
2. May Board Member Araluce act as a compensated architectural agent for property owners seeking city permits before the Carpinteria Planning Commission and of the city council if he acts only in a private capacity? Does the answer differ depending on whether or not Board Member Araluce has represented the property owners in the same matter before the Carpinteria ARB?

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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.

## CONCLUSIONS

1. Regulation 18702.3 would permit Board Member Araluce, as a solo practitioner of his architectural business, to present architectural or engineering plans, drawings, or similar technical submissions on behalf of clients to the ARB, because the ARB's sole function is to review architectural or engineering plans or designs and to make recommendations concerning those plans or designs to the planning commission, and the Board Member was appointed to the ARB to satisfy the municipal code's requirement that the review committee include architects.

2. The Act does not bar Board Member Araluce from appearing as an advocate in his private capacity to represent clients before the city council or planning commission so long as the board member does not act or purport to act on behalf of, or as the representative of, the ARB to any member, officer, employee or consultant of the planning commission. This conclusion does not depend on whether or not Board Member Araluce has represented the property owners in the same matter before the ARB.

## FACTS

The sole function of the Carpinteria ARB is to review architectural plans and to make recommendations to the city planning commission. The ARB does not have budgetary or appointment control over any other city decision-making body or board, including the planning commission or city council. According to the city's website, ARB members are required to file statements of economic interest under the Carpinteria Conflict-of-interest Code.

Pursuant to Carpinteria Municipal Code Section 2.36.010, the Carpinteria ARB must include architects as members. Board Member Araluce was appointed by the city council to fill one of the professional positions for an architect. Board Member Araluce is an architect with a solo practice and no employees.

## ANALYSIS

The Act seeks to avoid conflicts of interest in governmental decisions. Specifically, Section 87100 prohibits public officials at any level of state or local government from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100; Regulation 18700.) An 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 official's economic interests. (Section 87103; Regulation 18700(a).) To determine if an individual has a disqualifying financial interest under the Act, the Commission applies the following eight-step analysis.

### **Step One: Is the individual a "public official"?**

The Act's conflict-of-interest provisions apply only to "public officials." (Section 87100.) Defined in Section 82048(a), "public official" means every member, officer, employee,

or consultant of a state or local government agency. Regulation 18701(a)(1) clarifies that "public official at any level of state or local government" means every natural person who is a member, officer, employee, or consultant of a state or local government agency. A "member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. Because the members of the Carpinteria ARB are members of a decisionmaking board, the members are public officials under the Act.

**Step Two: Is the public official making, participating in making, or influencing a governmental decision?**

In order for a conflict of interest to exist, a public official must make, participate in making, or influence 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.)

There are two situations where an official will be considered to have used his official position to influence a governmental decision. The first is when a governmental decision is within or before the public official's own agency or an agency appointed by or subject to the budgetary control of the public official's agency. Regulation 18702.3(a) states that an official "is attempting to use his or her official position to influence the 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 the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer."

The second situation is when the government decision is before an agency that is not the official's own agency or appointed by or subject to his or her own agency's budgetary control. Under this situation, Regulation 18702.3(b) states that an "official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency."

We consider application of these definitions to your questions:

*1. May Board Member Araluce act as a compensated architectural agent for property owners seeking city permits before the ARB if he recuses himself and acts only in a private capacity?*

Regulation 18702.4(b)(5) provides as follows:

“(b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:

\* \* \*

“(5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

“(A) The review committee’s sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;

“(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

“(C) The official is a sole practitioner.”

Thus, Regulation 18702.3 would permit Board Member Araluce to represent clients before the ARB, but only to present architectural or engineering plans, drawings, or similar technical submissions he prepared.

*2. May Board Member Araluce act as a compensated architectural agent for property owners seeking city permits before the Carpinteria Planning Commission if he acts only in a private capacity? Does the answer differ depending on whether or not Board Member Araluce has represented the property owners in the same matter before the Carpinteria ARB?*

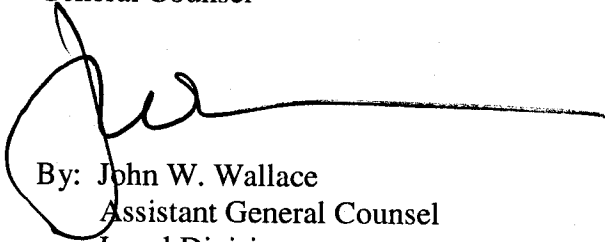
Regarding appearances before the planning commission or the city council, the Act does not bar Mr. Araluce from appearing as an advocate in his private capacity, so long as the board member does not act or purport to act on behalf of, or as the representative of, the ARB to any member, officer, employee or consultant of the planning commission. (Regulation 18702.3(b).) This conclusion will not differ depending on whether or not Board Member Araluce has represented the property owners in the same matter before the ARB.

Because your question focuses on the board member’s ability to present the submissions for his clients to the ARB, the planning commission, and the city council, an inquiry answered under step 2 of the conflict-of-interest analysis, we need not go on to analyze the remaining six steps.

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

Sincerely,

Scott Hallabrin  
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace", with a long horizontal flourish extending to the right.

By: John W. Wallace  
Assistant General Counsel  
Legal Division