



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

September 27, 2011

Pamela Walls
Riverside County Counsel
3960 Orange Street, Suite 500
Riverside, California 92501

Re: Your Request for Advice
Our File No. A-11-173

Dear Ms. Walls:

This letter responds to your request for advice on behalf of Southern California Fair Board Directors Barry Busch, Jaime Hurtado, and Louis Tavaglione regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ 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.)

As you correctly note in your request, our advice is limited to obligations arising under the Act. We do not address the applicability, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090. Questions about the application of these other laws are correctly addressed to the Office of the Attorney General.

QUESTIONS

1. Do Directors Busch, Hurtado, or Tavaglione have a conflict of interest in participating in governmental decisions to approve a proposal to consider, negotiate or enter into an agreement between the County and the State to transfer operations of the Perris Fair from the State to the County?

2. Are Directors Busch and Hurtado required to report the County of Riverside as a source of income on their Statement of Economic Interests (Form 700)?

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.

CONCLUSIONS

1. Directors Busch, Hurtado, or Tavaglione do not have a conflict of interest under the provisions of the Act participating in decisions to approve a proposal to consider, negotiate, or enter into an agreement, between Riverside County and the State, to transfer operations of the Perris Fair from the state to the county resulting from their salaries from the county.

2. Directors Busch and Hurtado are not required to report Riverside County as a source of income on their Statement of Economic Interests (Form 700) because government salary is exempt from reporting under the Act.

FACTS

The County Economic Development Agency of Riverside County has been in discussions with the Southern California Fair Board of Directors to determine if there is a basis for the county to enter into an agreement to operate the Southern California Fair in Perris, California, which currently occurs in October of each year.

Two members of the Southern California Fair Board, Directors Busch and Hurtado, are employed by Riverside County and receive income from their employment by the county. These two county employees work for a county supervisor whose district includes the Perris Fair. One other member (Tavaglione) is a nephew of a county supervisor. The Southern California Fair Board is a state board and the members are appointed by the Governor.

The proposal for the county (specifically the Economic Development Agency) to take over operations of the Perris Fair from the state has come before the Southern California Fair Board of Directors for discussion. The proposal would retain the county to operate the Perris Fair beginning with the 2011 fair. All three directors abstained from voting on the proposal. As a result, the proposal did not attain a sufficient majority vote for approval. Prior to entering into an agreement, the board must obtain approval from the state.

County counsel has been asked for an opinion concerning whether there is a conflict of interest that prohibits the three directors from voting on the proposal. Directors Busch and Hurtado have also asked whether they need to submit an amended Form 700 to add their salaries from employment with the county as a source of income.

ANALYSIS

The Act's conflict-of-interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a "financial interest." (Section 87100.) 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. To determine whether a public official has a "conflict of interest" in a specific governmental decision, we employ a standard eight-step analysis outlined at subdivisions 1 through 8 of Regulation 18700(b).

Step One: Are the individuals in question "public officials"?

Section 82048 states that "public official" means "every member, officer, employee, or consultant of a state or local government agency" and includes members of salaried or unsalaried members of committees, boards or commissions with decisionmaking authority. Thus, the individuals in question, as decisionmaking directors on Southern California Fair Board of Directors, are public officials

Step Two: Will the officials be making, participating in making, or using their official positions to 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 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.)

Therefore, because the members are asking whether they can vote on the Perris Fair proposal, if permitted, they will be making, participating in making, or influencing governmental a governmental decisions.

Step Three: What are the officials' 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:

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).)
- An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation

18703.1(b).)

- An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)
- Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
- A public official also 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 also known as the “personal financial effects” rule. (Section 87103, Regulation 18703.5.)

Your question concerning Directors Busch and Hurtado involve a potential conflict of interest based on income from the county since both are employees of the county and are compensated by the county. However, a county is not considered a “business entity” under the Act for purposes of Section 87103(d). Thus, the Directors would not have an interest in the county by virtue of Section 87103(d). Moreover, compensation received from a government agency such as a Riverside County is exempt from the definition of “income.” Section 82030(b)(2) provides:

“Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.”

Thus, the compensation received from the county would not be reportable income, nor subject the officials to a conflict of interest. Finally, you have presented no facts indicating that participating in these decisions would have a personal financial effect on the officials. Therefore, the officials would not be prohibited by the Act from participating in decisions regarding the Perris Fair proposal.²

The other potential conflict of interest you identified concerns Director Tavaglione, who is a nephew of a county supervisor. Director Tavaglione would generally not have an economic interest in his uncle unless he has received income.³ (Section 87103(c); Regulation 18703.3.)

² We have not gone on to analyze the remaining five steps of the conflict-of-interest analysis as we have concluded that none of the officials’ in question has an economic interest in the county.

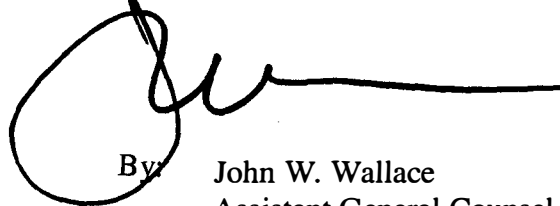
³ Gifts from the Director Tavaglione’s uncle would not be an economic interest because the term “gift,” as defined by the Act, does not include payments from certain family members of an individual, including an uncle. (Section 82028(b)(3).)

Without facts to indicate Director Tavaglione has an economic interest involved in the decision, no conflict of interest will exist.

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

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'W' and a long horizontal line extending to the right.

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl