



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

April 5, 2012

Carol Ann McDaniel
McDaniel Appraisal Service
6800 Baldwin Street
Valley Springs, CA 95252

Re: Your Request for Advice
Our File No. A-12-039

Dear Ms. McDaniel:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ We base this letter on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, we base our advice solely on the provisions of the Act and 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 or your agency's incompatible activities statement.

QUESTION

Does the Act prevent you from accepting payment for performing valuation appraisals and appearing as an expert witness for the defendants in a case between property owners and the Department of Transportation on properties that are proposed to be acquired by eminent domain for a project the Calaveras Council of Governments oversees?

CONCLUSION

No. You are not making, participating in making, or influencing a decision. If you are called upon to participate in governmental decisions that arise in the future that relate to these properties, however, you might have a disqualifying conflict of interest that would prevent you from participating in the decision.

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.

FACTS

You are an appointed citizen board member for the Calaveras Council of Governments (“CCOG”). CCOG is a Regional Transportation Planning Agency (“RTPA”) with two members from the City of Angels, two members from the Calaveras County Board of Supervisors, and three citizen board members. CCOG’s primary responsibilities are to administer the Transportation Development Act (“TDA”) and act as a clearing house for applications for Federal Funds pertaining to transportation facilities. It also develops and administers an annual Overall Work Program (“OWP”) for county transportation projects.

A project that CCOG oversees is the Wagon Trail Re-alignment Project (“the Project”) which has existed since 2003 and will not be complete until at least 2020. In 2011, the overall management of the Project was transferred from CCOG to Calaveras County Public Works. CCOG makes decisions on an on-going basis regarding this project and in which you participate. The project involves properties that have been proposed to be acquired by an eminent domain action filed by the California Department of Transportation in January, 2012.

In addition to your volunteer position as a citizen board member, you also own and operate McDaniel Appraisal Service. In that capacity, the attorney for the defendant property owner asked you to perform valuation appraisals on the properties affected by the eminent domain proceedings. The attorney also asked you to be available for deposition and court testimony.

ANALYSIS

Nothing in the Act prevents you from accepting employment, in your case performing appraisals in a private capacity. If you accept compensation from another person, however, that person is a source of income to you and you may be restricted from participating in any future governmental decisions involving that person.

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 One: As a CCOG Member, Are you a Public Official?

As a member of the CCOG Board, you are a public official under the Act. (Section 82048.) Consequently, you may not make, participate in making, or otherwise use his official position to influence any decisions that will have a reasonably foreseeable material financial effect on any of his economic interests.

Step Two: Are You Making, Participating in Making, or Influencing a Governmental Decision?

CCOG has made decisions in the past that have shaped the trajectory of the Project. At this point, however, the only decisions that you have described are those related to an eminent domain law suit between the Department of Transportation and the affected landowners. There is no decision currently before CCOG. Because there is no governmental decision, there is no potential conflict under the Act.

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl