



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 9, 2015

Jay Freeman
8605 Santa Monica Blvd., #80271
West Hollywood, CA 90069

Re: Your Request for Informal Assistance
Our File No. I-15-169

Dear Mr. Freeman:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Because your question is general in nature and you are not currently a public official, we are providing informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

If you are appointed as a Public Member of Santa Barbara County LAFCO, would you be able to participate in decisions regarding the formation of a community services district ("CSD") in Isla Vista?

CONCLUSION

Based on your facts, you may participate in the CSD decisions. The decisions will not have a material financial effect on your financial interests.

FACTS

You hope to be appointed as a public member of the Santa Barbara County LAFCO. You live in an apartment in Isla Vista, a dense, unincorporated "census designated place" in Santa Barbara County. This community is currently deciding whether to create a new "CSD," through

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.

LAFCO (via Assembly Bill 3). AB 3, as amended in the Senate on August 17, 2015 and as pertinent to the LAFCO, provides the following:

“(b)(1) On or before January 5, 2016, the Board of Supervisors of the County of Santa Barbara shall file a resolution of application with the Santa Barbara County Local Agency Formation Commission, pursuant to subdivision (a) of Section 56654, to initiate a comprehensive review and recommendation of the formation of the district by the Santa Barbara County Local Agency Formation Commission. The board of supervisors shall pay any fees associated with the resolution of application.

“(2) The Santa Barbara County Local Agency Formation Commission shall complete the review no later than 120 days following receipt of the completed resolution of application. Notwithstanding any other law, the Santa Barbara County Local Agency Formation Commission shall not have the power to disapprove the resolution of application.

“(3) Notwithstanding any other law, the resolution of application filed by the board of supervisors pursuant to this subdivision shall not be subject to any protest proceedings.

“(c)(1) The Santa Barbara County Local Agency Formation Commission shall order the formation of the district subject to a vote of the registered voters residing within the boundaries of the district, as those boundaries are set forth in subdivision (e), at an election following the completion of the review pursuant to subdivision (b). If a majority of voters within the boundaries of the district, as specified in subdivision (d), vote in favor of the district, the district shall be formed in accordance with this part.

“(2)(A) The Santa Barbara Local Agency Formation Commission shall determine the appropriate rate of taxation for a utility user tax, applicable utilities to be taxed, and which services the district will be initially authorized to provide, pursuant to subdivision (d) and paragraph (5) of subdivision (h). The rate shall be no lower than 5 percent and no higher than 8 percent of the total cost of an individual’s service charge for the utility being taxed.

“(B) The utility user tax shall only be applied to electricity, garbage disposal, gas, sewage, or water services.

“(C) The board of directors of the district shall, within six months of the passage of a utility user tax, develop a low-income exemption to provide tax exemptions to those who would be disproportionately burdened by the utility user tax.

“(3) If the voters of the district do not vote to impose a utility user tax within the district on or before January 1, 2023, regardless of whether the

establishment of the district is approved by the voters of the district, the district shall be dissolved as of that date.

“(4) The Santa Barbara Local Agency Formation Commission shall direct the Santa Barbara County Board of Supervisors to direct county officials to conduct the necessary elections on behalf of the proposed district and place the items on the ballot including district approval, candidates for the district’s board, and the utility user tax pursuant to subparagraph (A) of paragraph (2) at the next countywide election, as provided in subdivision (f) of Section

“(d)(1) The initial utility user tax imposed by the district shall only be used to fund the following services and powers of the district:

“(A) Finance the operations of municipal advisory councils formed pursuant to Section 31010.

“(B) Create a tenant mediation program.

“(C) Finance the operations of area planning commissions formed pursuant to Section 65101.

“(D) Exercise the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code).

“(E) Contract with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services above the level of police protection services already provided by either the County of Santa Barbara or the Regents of the University of California within the area of the district.

“(F) Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities.

“(G) Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees above the level of service already provided by either the County of Santa Barbara or County Service Area 31. The district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent.

“(H) Abate graffiti.

“(2) This subdivision shall not be construed to limit the services that may be funded by a tax imposed at a later date.

“(e)(1) Notwithstanding Chapter 1 (commencing with Section 261020), Chapter 2 (commencing with Section 61025), and Chapter 33 (commencing with Section 61040) of Part 2, the board of directors of the district shall be composed as follows:

* * *

“(h) In addition to the powers in subdivision (g), the district may, within its boundaries, do any of the following:

“(1) Create a tenant mediation program.

“(2) Exercise the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code).

“(3) Contract with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services above the level of police protection services already provided by either the County of Santa Barbara or the Regents of the University of California within the area of the district.

“(4) Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees beyond the level of service provided by either the County of Santa Barbara or County Service Area 31. The district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent.

“(5) Levy a utility user tax proposed by resolution of the board of directors of the district and pursuant to approval by a two-thirds vote in accordance with Section 2 of Article XIII C of the California Constitution on the utilities of gas, water, electricity, sewer, or garbage disposal services. A utility user tax imposed by the district shall not apply to any utility provided by a telecommunications service provider.

“(i) The district does not possess, and shall not exercise, the power of eminent domain.

“(j) As used in this part, the term ‘district’ means the Isla Vista Community Services District formed pursuant to this part.”

You also own an Internet-based software business. Your company’s official address is Los Angeles, and your designated agent is located in the City of Santa Barbara. You have two

employees, one works in Santa Barbara, and one in San Francisco. Your company also rents an office in Isla Vista by short-term lease (6 months). You stated:

- You do not sell anything at the Isla Vista office.
- No one actually works at the Isla Vista office.
- You only have the Isla Vista office so you can have a place that looks official enough to “impress.”

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. If you are appointed as a public voting member of LAFCO, you would be a “public official” subject to the conflict-of-interest provisions of the Act. Therefore, you would not be able to participate in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on any of your interests.

A public official has a financial interest in a 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 or a member of his or her immediate family or on:

“(a) Any business entity in which the public official has a direct or indirect² investment worth two thousand dollars (\$2,000) or more.

“(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

“(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

“(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

“(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$460]³ or more in value provided to, received by, or promised

² “For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.” (Section 87103.)

to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.”

You live in an apartment in Isla Vista. A rental is considered an interest in real property if the term of the lease is more than a month-to-month term. You also own an Internet-based software business which rents an office in Isla Vista by short-term lease (6 months). Thus, the commercial lease is a real property interest and the business is an investment interest if it is worth \$2,000 or more.⁴

Foreseeability

Generally, a financial effect is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1) –(6).⁵

Based upon the facts provided, you do not have a real property interest that would be considered directly involved in the CSD decision. Similarly, your business is not a named party in, or the subject of, the governmental decision.

If the interest is “not explicitly involved” in the decision, a financial effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. (Regulation 18701(b).) In this case, the formation of a CSD Services will have a foreseeable financial effect on residents and property owners within the district. Property owners will clearly benefit from the improvements through increased property values. The CSD will provide public services to residents and property owners within the district which will generally be financed through assessments on property owners or user fees.⁶

³ The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to Section 89503(f). The quoted provision above has been modified with the current figure.

⁴ You have not mentioned sources of income, but if you have any sources of income of \$500 or more (either directly or through your business) that may be impacted by a LAFCO decision this could also be the basis for a conflict of interest. Since we have no facts about any sources of income other than your business, we limit our analysis to your business.

⁵ Regulation 18702.2(a)(1) –(6) applies to real property in which an official has a financial interest, other than a leasehold interest.

⁶ See, California Special Districts Association's Guide to Special District Laws and Related Codes (2007).

Materiality; Real Property Leaseholds.

Regulation 18702.2(b) provides that the financial effect on a leasehold interest in real property is material if the decision will:

- “(1) Change the termination date of the lease;
- “(2) Increase or decrease the potential rental value of the property;
- “(3) Increase or decrease the rental value of the property, and the official has a right to sublease the property;
- “(4) Change the official’s actual or legally allowable use of the real property;
- “(5) Impact the official’s use and enjoyment of the real property.”

It does not appear that LAFCO’s decision will affect your residential or commercial leases in the ways described above. If not, then you would not have a conflict of interest based on real property.

Materiality; Interest in your Business:

Regulation 18702.1(b) provides an effect is material if:

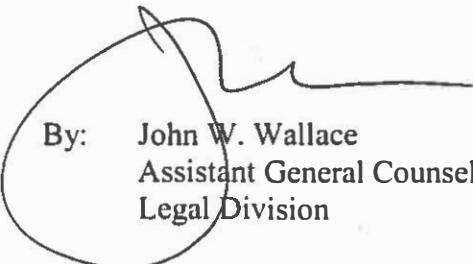
“[The] financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in the price of the business entity’s publicly traded stock, or the value of a privately-held business entity.”

We do not have sufficient facts to determine whether your business will be materially affected by creation of the CSD. But based on your description of your minimal business activities in Isla Vista, it appears that any financial effect on your business would not be foreseeable.

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

Sincerely,

Hyla P. Wagner
General Counsel

By:  John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl