



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 12, 2016

Michelle Wagner
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Your Request for Advice
Our File No. A-16-045

Dear Ms. Wagner:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Please note that this advice applies only to the conflict of interest provisions of the Act, and not to other general conflict of interest prohibitions, such as common law conflict of interest, Section 1090, or incompatible offices under Section 1099. Moreover, this letter is based on the facts presented. We also are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); any advice we provide assumes your facts are complete and accurate.

QUESTION

May you simultaneously work for the California Coastal Commission and the Cachuma Operation and Maintenance Board?

CONCLUSION

Yes. Holding two government offices simultaneously does not necessarily give rise to a potentially disqualifying conflict of interest under the Act.

FACTS

You are a Coastal Program Analyst for the California Coastal Commission's (CCC) South Central Coast District, where your duties include reviewing permit applications, exemptions and waivers. Your position is designated in CCC's conflict of interest code. Prior to joining CCC, you were a seasonal biologist at the Cachuma Operation and Maintenance Board (COMB), a joint powers agency in Santa Barbara that operates and maintains tunnels, pipelines, and control stations that divert water to California's South Coast region.

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.

Alongside your work for CCC, you would like to continue working on a mapping project for COMB's Fisheries Division until approximately June 2016, when you will present your findings at a national conference for users of geographic information system (GIS) software. The COMB Fisheries Division does work along the Santa Ynez River, the outlet of which is within CCC's jurisdiction. To your knowledge, COMB does not have any plans to conduct projects within CCC's jurisdiction at this time. You have indicated that you would recuse yourself from the matter if COMB were to appear before CCC for a permit application.

ANALYSIS

Conflict-of-Interest Provisions

Section 87100 prohibits any public official from making, participating in making, or in any way using his or her position to influence a governmental decision in which the official has a financial interest. A conflict of interest arises when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material, depending on the nature of the interest.

Five types of interests can give rise to a conflict of interests under the Act:

- An interest in a *business entity* in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)) or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d).)
- An interest in *real property* in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a *source of income* to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in a *source of gifts* to the official if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- An economic interest in the official's *personal finances*, including those of the official's immediate family. This is known as the "personal financial effects" rule. (Section 87103.)

The facts you provided do not involve any real property interests or gifts, so the question is whether you have an interest in COMB as a business entity, as a source of income, or whether the "personal financial effects" rule applies.

Business entity: COMB is a joint powers authority, which is a local government agency under the Act. (See *Magill* Advice Letter, No. A-12-084). As such, because COMB is not an organization or enterprise operated for profit, it is not a "business entity" under the Act. (Section 82005.)

Source of income: Because you will be paid for your work for COMB, you have an interest in COMB as a source of income. But we have found that, under the “governmental salary exception,” salary received from a local government agency is *not* considered “income” under the Act. (Section 82030(b)(2).) The Act defines “local governmental agency” as any “county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.)

Again, COMB is a joint powers authority, and we have advised that an entity created under a joint powers agreement clearly falls under the Act’s definition of a “government agency.” (See Sections 6500 and 6502; *Watts* Advice Letter, No. A-03-258; *Siegel* Advice Letter, No. A-81-03-015; and *Hopkins* Advice Letter, No. A-77-274.) The Joint Exercise of Powers Act², which authorizes the formation of a joint powers authority, applies only to entities formed by an agreement between two or more “public agencies” to jointly exercise their respective powers. Thus, any salary you receive from COMB is not considered “income” for purposes of the Act.

Personal finances: A governmental decision has a material financial effect on an official’s personal finances if the official or the official’s immediate family member will receive a measurable financial benefit or loss because of the decision. In this case, while you will be compensated in exchange for your work on behalf of COMB’s Fisheries Division, the GIS work itself will not have an *independent*, material financial impact on your personal finances.³ Thus, the facts here do not implicate your personal finances within the meaning of the Act.

The Act does not prohibit you from continuing to work on the mapping project for COMB’s Fisheries Division while you are employed at CCC because you do not have a financial interest that could potentially cause a conflict of interest under the Act.

Laws Outside of the Act

Laws outside the jurisdiction of the Commission may restrict a public official from holding two public offices simultaneously if those offices are determined to be “incompatible” offices. Moreover, agencies are required to have a “statement of incompatible activities” which also may be implicated. As stated above, the Commission’s advice is limited solely to matters arising under the Act. In light of the facts you present, we encourage you to examine the doctrine of incompatible offices in Section 1099 and review your agency’s statement of incompatible activities.

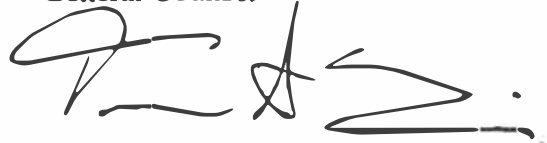
² Government Code Section 6500 *et. seq.*

³ Notwithstanding Regulations 18702.1 through 18702.5, the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant. (Regulation 18702(b).)

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

Sincerely,

Hyla P. Wagner
General Counsel

A handwritten signature in black ink, appearing to read 'T. Lewis', with a stylized flourish at the end.

By: Toren A. Lewis
Counsel, Legal Division

TAL:jgl