



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

June 3, 2016

D.R. Curtze
153 Wave Avenue
Pismo Beach, CA 93449

Re: Your Request for Informal Assistance
Our File No. I-16-093

Dear Ms. Curtze:

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 concerns your duties generally rather than any specific decision, we are treating your request as a request for informal assistance.² Additionally, nothing in this letter should be construed to apply to past conduct. (Regulation 18329(b)(8)(A) and (c)(4)(A).) Finally, 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 1090.³

QUESTION

Does your spouse's part-time employment with a contractor for the City of Pismo Beach create a conflict of interest under the Act where you serve as a planning commissioner for the City?

CONCLUSION

Conflicts of interests under the Act are based on financial effects. So long as you do not make, participate in making, or influence a decision in which you have a financial interest, as set forth below, you will not have a conflict of interest.

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3).)

³ Although we have jurisdiction to provide formal advice under Section 1090, we do not provide informal assistance concerning those provisions. We recommend that you review the California Attorney General's conflict of interest manual at <https://oag.ca.gov/> for a substantive overview of Section 1090 conflicts of interest.

FACTS

You currently serve as a planning commissioner for the City of Pismo Beach. Your spouse is a retired Building Official/Fire Marshal and presently works part-time for a company called California Code Check ("CCC"), which has offices located in Westlake Village, Atascadero and Oakland. He is paid hourly for his services and has no other financial interest in CCC.

CCC offers services to jurisdictions in the areas of plan reviews (building, safety, planning), inspection services and temporary employees. The City of Pismo Beach currently contracts with CCC for their interim Building Official and a part-time Building Inspector position. The City also contracts with CCC for nearly all of their plan check needs.

You generally would like to know whether your spouse's employment with CCC creates any potential conflicts of interest under the Act in light of your position on the Planning Commission.

ANALYSIS

Conflict of Interest

The primary purpose of the Act's conflict of interest provisions is to ensure that "public officials, whether elected or appointed, 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).) In furtherance of this goal, Section 87100 of the Act prohibits a 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. Section 87103 provides that 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, a member of his or her immediate family or on one or more of the official's financial interests. The financial interests are:

1. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more. (Section 87103(a).)
2. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)
3. 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. (Section 87103(c).)

4. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
5. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$460] or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(e).)
6. Personal finances, meaning the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family.

As a planning commissioner for the City, you are a public official. You have a community property interest in your spouse's income from CCC. Assuming his income from CCC will equal or exceed \$500 in the 12 months prior to a decision you have a financial interest in CCC as a source of income. (Section 87102(c).)

Foreseeability and Materiality. 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).) 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. Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material, depending on the nature of the interest.

Because you have an interest in CCC, you must disqualify yourself from making, participating in making, or influencing any governmental decision where it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on CCC.⁴

An official is making a decision if the official "authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his agency." (Regulation 18704(a).) Participating in a decision occurs when the official "provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Regulation 18704(b).) Lastly, an official uses his or her position to influence a decision if the official contacts or appears before any official in his or her agency for the purpose of affecting a decision. (Regulation 18704(c).)

In addition, when a public official who holds an office specified in Section 87200 (including planning commissioners) has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of financial interest involved in the decision as well as details of the financial interest on the record of

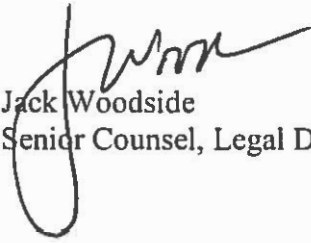
⁴ Of course, we strongly recommend that you request formal written advice from the Commission should a decision involving CCC come before the Planning Commission in order to make such a determination.

the meeting; (2) recuse himself or herself, and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18704.5.)

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

Sincerely,

Hyla P. Wagner
General Counsel

By: 
Jack Woodside
Senior Counsel, Legal Division

JW:jgl