



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 17, 2016

Kyle Jones
1600 Wisconsin Avenue
Redding, CA 96001

Re: Your Request for Advice
Our File No. A-16-122

Dear Mr. Jones:

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 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

May you interact with the city in the city's proposed abandonment of property adjacent to your home on which the city rebuilt your driveway in the late 1980s in the course of the re-alignment of two roads next to your house?

CONCLUSION

You may communicate with the city in the same manner as any other member of the general public to represent your own personal interest in your property.

FACTS

In April 2012, you and your spouse purchased a foreclosed house within the city limits of the City of Redding. At that time, you were not a City of Redding employee and had no indication that you would be employed by the City of Redding in the future.

In January 2014, you were hired by the City of Redding as a Public Works Inspector.

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.

In January 2015, you and your spouse attempted to refinance your mortgage. During the refinance process, the bank that you were working with notified you that there was a problem with the title on the house and that they would not be able to complete the refinance process.

After months of extensive research, you have found that there was a problem with your property's title. Sometime in the mid-1980's, the City of Redding re-aligned two roads (Lakeside & Wisconsin) that were next to your house (the house is a corner lot). The City of Redding also added a "traffic-softening" median in the middle of the road (Lakeside) in front of your house. The traffic-softening median was directly in front of the original location of the driveway to your house so the City of Redding drew up and stamped plans, then built a new driveway (approximately in 1988) to the house on the other street (Wisconsin) on some "left-over," undeveloped property that the City of Redding owned. Since 1988, the driveway to your house has been in the same location as when it was purchased.

The City would prefer to abandon the property in question. The City of Redding started but did not finish the process in the late 1980s. Through a legal process after the abandonment, you would be able to incorporate the abandoned property onto the property on which your house is located.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. Section 82048(a) provides that "public official" means every member, officer, employee or consultant of a state or local government agency. As Public Works Inspector with the city you are a public official. Moreover, pursuant to Section 87103(b) you have a financial interest in real property in which you have a direct or indirect interest of \$2,000 or more. Therefore, you are prohibited from "making," "participating in making" or using your official positions to "influence" a governmental decision in which you have a financial interest.

A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, authorizes or directs any action, votes on a matter, 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 or her agency. (Regulation 18704(a).) A public official "participates in a governmental decision" when he or she provides information, an opinion, or a recommendation in order to affect the decision without significant intervening substantive review. (Regulation 18704(b).)

Neither of these standards apply to you working with the city in your private capacity.

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.² (Regulation 18704(c).) However, Regulation 18702.4(b) provides an exception as follows:

² The definition also covers decisions before an agency that is not the official's own agency or appointed by or subject to his or her own agency's budgetary control where, for the purpose of influencing the decision, the official acts

“Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:

“(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official’s ‘personal interests’ include, but are not limited to:

“(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.”

Consequently, the exception above applies to allow you to appear in the same manner as any other member of the general public in similar circumstances to represent your own personal interest in your property.³

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

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or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency.

³ We have not analyzed Section 1090 since you did not identify a contract in your facts. If this is incorrect, you should contact us for further advice.