



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 16, 2017

Paul J. Dohring, Esquire
Law Offices of Paul J. Dohring
1220 Washington Street
Calistoga, California 94515

Re: Your Request for Advice
Our File No. A-17-039

Dear Mr. Dohring:

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

Do you have a conflict of interest in St. Helena City Council decisions related to the creation of a Property and Business Improvement District given that those decisions would lead to an increased tax assessment and benefits for some of the clients of your law practice?

CONCLUSION

Yes, there is a reasonably foreseeable material financial effect upon your interests, therefore you are disqualified from making, participating in making, or attempting to influence those decisions.

FACTS

You are a City Councilmember on the St. Helena City Council. You also operate a general law practice as a local practitioner. The local chamber of commerce is going through the process of initiating the creation of a Property & Business Improvement District (District) for your community under the Property and Business Improvement Act of 1994. On the Chamber's website, the boundaries of the proposed District include non-residential parcels located within the City as well

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.

as parcels within unincorporated Napa County. A few of these parcels are owned by some of your law practice clients. Your clients own these parcels and also operate businesses on these parcels. You have received income from some of these clients aggregating \$500 or more within the past 12 months.

District development is a multi-step process involving the collection of petitions representing over 50% of the assessed value followed by a balloted election that concludes in a public hearing. The City Council will be required to adopt a Resolution of Intention to establish the District and then conduct the public hearing. Your clients could be affected by the City Council's decisions because the decisions would lead to increased property taxes for them as well as benefits, such as maintenance, beautification, new infrastructure, marketing services and business development, that will affect the area in a positive way as detailed in the Report to the City Council dated April 11, 2017.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A conflict of interest may arise only 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.

Interests from which a conflict of interest may arise are defined in Section 87103. The interest implicated by your facts is the following:

- An interest in a source of income to an official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c)) including any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest (Section 82030(a)).

Regulation 18701(b) sets out the appropriate standard to determine foreseeability where the financial interest is not explicitly involved in the decision. Generally, a financial effect is reasonably foreseeable where it "can be recognized as a realistic possibility and more than hypothetical or theoretical . . . absent extraordinary circumstances beyond the public official's control." (Regulation 18701(b).) A financial effect need not be likely to be considered reasonably foreseeable. (*Ibid.*)

Materiality:

The standard to determine materiality under your facts, for a source of income is found in Regulation 18702.3:

"For income received by the official or his or her spouse for goods and services provided in the ordinary course of business, including a salary, the financial effect is material if:

“(1) The source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or

“(2) The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5 or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively...”

Regulation 18702.2 provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property is material when the governmental decision “[w]ould impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel...”

Should the District be formed, there would be an assessment imposed upon those who own real property in the District. Your clients own real property that may be part of the new District. Therefore, there is a reasonably foreseeable material financial effect upon your client’s real property as a result of the decisions before the City Council.²

Because there is a reasonably foreseeable material financial effect upon your interests with regard to their real property interests in the proposed District, you would have a conflict of interest in the decisions regarding the District and are prohibited from participating absent an exception.

The Public Generally Exception

The Act prohibits an official from taking part in a decision only if the decision’s effect on the official’s interest is distinguishable from the effect on the public generally. (Section 87103.) Commonly referred to as the “public generally exception,” Regulation 18703(a) sets forth the general rule:

“A governmental decision’s financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.”

Therefore, in order to invoke the exception, the official must establish that a significant segment of the public is affected and the effect on his or her interest is not unique compared to the effect on the significant segment. For purposes of the exception, a “significant segment of the

² We also recognize there is a possible reasonably foreseeable material financial affect upon your client’s business entities as Regulation 18702.1 provides that a 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 the value of a privately-held business entity. Examples of circumstances that could contribute to the value of a privately held business entity include decisions that would “make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives....” However, we do not analyze the effect upon your client’s business entities because we have found a conflict based upon the financial effect on their real properties.

public” consists of at least 25 percent of (1) the businesses or nonprofit entities; (2) the real property, commercial real property, or residential real property; or (3) the individuals within the official’s jurisdiction. (Regulation 18703(b).)

You have not provided facts that indicate that the decisions relating to the District would affect a significant segment of the public. If you believe that the public generally exception applies, you should seek further assistance providing all relevant facts supporting the exception’s applicability.³

Disqualification:

When a public official who holds an office specified in Section 87200 (such as a city councilmember) has a conflict of interest in a decision noticed at a public meeting, he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest on the record of 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 18707.)

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Sukhi K. Brar
Senior Counsel, Legal Division

SKB:jgl

³ The financial effect on a public official’s financial interest is deemed indistinguishable from that of the public generally if the decision establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official’s interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. (Regulation 18073(e)(1).) In this case the services that would be provided within the District are not considered to be “water, utility, or other broadly provided public services or facilities”, therefore this specialized public generally exception would not be applicable to the decisions before the City Council in your case. (*Gonzales* Advice Letter, No. A-17-035.)