



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

June 8, 2017

Brent P. Collinson, Esq.
Law Office of Brent P. Collinson
9709 Highway 267, Suite A
Truckee, CA 96161

Re: Your Request for Formal Advice
Our File No. A-17-089

Dear Mr. Collinson:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

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.

QUESTIONS

1. Does the Act prohibit a Director on the Board of the Truckee Fire Protection District of Nevada County from making a governmental decision to impose a special tax on real property located within a portion of the District (the "affected area") when the Director's residence is located within the affected area?
2. Does the Act prohibit you from offering legal counsel regarding the requirements of the governmental decision to impose the special tax to the affected area when your office is located within the affected area?
3. If the Director has a disqualifying conflict of interest in making the governmental decision does the "public generally" exception nonetheless apply to allow the Director to cast his or her vote?
4. If you have a disqualifying conflict of interest in offering legal counsel relating to the governmental decision does the public generally exception nonetheless apply to allow you to participate?

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.

CONCLUSIONS

1. Yes. The Act prohibits the Director from making the decision because it would have a reasonably foreseeable material financial effect on his or her real property interest in his or her residence distinguishable from its effect on the public generally.
2. Yes. The Act prohibits you from participating in the decision because it would have a reasonably foreseeable material financial effect on your real property interest in your office distinguishable from its effect on the public generally.
3. No. You have not presented facts to evidence that a significant segment of the public will be affected by the decision.
4. No. You have not presented facts to evidence that a significant segment of the public will be affected by the decision.

FACTS

You are a sole practitioner and represent the Truckee Fire Protection District of Nevada County. The District's Board of Directors is exploring whether it should submit a proposal for a special tax on residential, commercial, and vacant properties in certain areas within the District that currently do not provide the District with revenue. Per an outside consultant's report, the amount of the contemplated tax could range between \$150-\$300 per property per year.

There are approximately 2,130 parcels located in the proposed affected area. The composition of the parcels within the affected area is as follows: 915 residences, 78 improved non-residential parcels, and 700 unimproved parcels. According to an engineer's benefit assessment report from June 2016, the District contains 21,164 parcels, comprised of 16,449 residences and 338 commercial properties.

One of the Directors owns a residence in the potentially affected area, and you own your office in the potentially affected area. You inquire whether you can counsel the Board regarding the "legal requirements and process" of the governmental decision to impose the special tax on the affected area. You also inquire whether the Director can make the decision.

ANALYSIS

Section 87100 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.

In your representation of the District, you are a public official and are subject to the conflict of interest provisions of the Act whenever you participate in the making of a governmental decision. (Section 82048(a).) A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).) Given that you anticipate

that you will counsel the Board on the legal requirements and process surrounding its decision to implement the special tax, your involvement constitutes participating in the decision and subjects you to the Act's conflict of interest provisions.

Section 87103 provides that an official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's interests. Section 87103 also identifies the financial interests that may give rise to a conflict of interest. Of those interests, the facts presented and the decision at issue implicate the following:

- Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a) and (d); Regulation 18702.1.) If you operate your sole practitionership out of your office, you have a financial interest in your "business entity" under Section 82005.
- Any real property in which the official has a direct or indirect interest worth \$2,000 or more. (Section 87103(b); Regulation 18702.2.) The Director has a real property interest in his or her residence; you have a real property interest in your office.
- Any source of income, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18702.3.) If you receive sufficient compensation within the relevant timeframe through your sole practitionership that you operate out of your office, you have a source of income interest in the sole practitionership.
- An interest in the official's personal finances, including those of the official's immediate family. (Section 87103; Regulations 18702(a)(5) and 18702.5.) As an official, you always have an interest in your personal finances.

Foreseeability and Materiality:

You informed me that neither the Director's residence nor your office is explicitly referenced in the decision. For a financial interest not "explicitly involved" in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.2(a)(3) sets forth the materiality standard applicable to a decision's effect on an official's real property interest if the decision would affect an area encompassing the official's real property: "[t]he reasonably foreseeable financial effect of a governmental decision [] on a parcel of real property in which an official has a financial interest . . . is material whenever the governmental decisions [w]ould impose, repeal, or modify any taxes, fees, or assessments that may apply to the parcel."

It is reasonably foreseeable that the decision at issue would have a material financial effect on both the Director's and your real property interests. Accordingly, the Act prohibits the Director from making the governmental decision unless the decision's effect on the Director's residence is indistinguishable from the effect on the public generally. Likewise, the Act prohibits you from

participating in the governmental decision unless the decision's effect on your office is indistinguishable from the effect on the public generally.

Public Generally Exception:

The Act prohibits an official from partaking 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 public" consists of at least 25 percent of (1) the businesses or nonprofit entities; (2) the real property, commercial or residential; or (3) the individuals within the official's jurisdiction. (Regulation 18703(b).) With respect to the decision at issue, the "significant segment of the public" is 25 percent of the residences within the District, as well as 25 percent of the commercial property within the District.

The District contains approximately 16,449 residences. 25 percent of those residences equals 4,113; therefore, the decisions at issue must affect at least 4,113 residences to affect a significant segment of the residences within the District. You have informed me that only 915 residences are within the affected area. This figure does not establish that the decisions at issue will affect a significant segment of the residences within the District. Therefore, the Director may not invoke the public generally exception for the governmental decision on the special tax.

The District contains approximately 551 commercial properties.² 25 percent of those commercial properties equals 138; therefore, the decision at issue must affect at least 138 residences to affect a significant segment of the commercial properties within the District. The affected area contains 78 improved, non-residential parcels. You have not indicated that these parcels contain commercial properties. However, liberally assuming that the entire improved, non-residential land within the affected area contains 78 commercial properties, this figure would not breach the significant segment threshold. Therefore, you may not counsel the Board with respect to its governmental decision on the special tax.³

² This figure was formulated by the District Fire Chief and represents 338 traditional commercial properties, 123 industrial properties, and 90 warehouses.

³ Neither of the above analyses discuss the "unique effect" prong of the exception because a "significant segment of the public" was not found.

In sum, we conclude that the Act prohibits the Director and you from partaking in the decision relating to the special tax because that decision will have a reasonably foreseeable material financial effect on the Director's and your real property interest distinguishable from the effect on the public generally.⁴

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Ryan P. O'Connor
Counsel, Legal Division

RPOC:jgl

⁴ The facts you presented do not indicate that the special rules to the public generally exception apply. However, the Commission calls your attention to Regulation 18703(e)(1) in the off chance it is applicable:

(e) Specific Rules for Special Circumstances. The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally if the official establishes:

(1) Public Services and Utilities. The decision establishes or adjusts assessments, taxes, 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.