



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

September 22, 2017

Travis Lyon, Chairman
Alpine Community Planning Group
P.O. Box 1419
Alpine, CA 91903-1419

Re: Your Request for Advice
Our File No. A-17-225

Dear Mr. Lyon:

This letter responds to your request for advice regarding 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.

Also note that we 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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Do you have a disqualifying conflict of interest in making, participating in making, or influencing governmental decisions of the Alpine Community Planning Group ("ACPG") concerning a recommendation that a middle school receive funds for an athletic field project when the middle school is part of the Alpine Union School District ("School District") to which you are a Trustee?

CONCLUSION

Based on the "government salary" exception in Section 82030(b)(2), you do not have a conflict of interest under the Act and may participate in the decisions.

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 ("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.

FACTS

You hold two elected offices – Chairman of the ACPG and Member of the Board of Trustees for the School District.

You state that the ACPG provides feedback and recommendations to the County of San Diego Board of Supervisors, Planning Commission, and Zoning Administrators regarding land use issues within their communities. Any recommendations made by the ACPG are subject to review by staff who then incorporate the recommendations into a report for the agencies to make a final decision. The agencies have complete discretion in making a final determination of the issue. You informed me that the agencies ultimately disregard the ACPG recommendations “more often than not.” You contend that none of the votes taken by the ACPG are binding on policy or funding, and the group is an advisory body.

You have served on this board since 2009. You file a Statement of Economic Interest in your role as Chairman of the ACPG. However, no stipends or benefits are provided to you by virtue of your position.

The County Board of Supervisors Policy No. I-C states that planning groups must adhere to the Act and their conflict-of-interest codes. On March 23, 2010, the County Board of Supervisors declared that all planning group members are public officials subject to the Act. The Board also required that all planning groups adopt their own conflict-of-interest code.

You were elected to the School District’s Board of Trustees in November 2016. As a Trustee, you receive a monthly stipend of \$240 per month. You also are entitled to participate in the district employee health and welfare benefits plan with an annual maximum value of \$9,500. Given that you have other health insurance, you elected to receive the buyout offering. As such, you receive \$1,000 annually in 10 installments of \$100.

Park Lands Dedication Ordinance funds are paid by developers each time a dwelling unit is added in the County. The ACPG makes recommendations to the County regarding these funds. The funds are restricted to development of park lands, either improvements to existing park lands or development/acquisition of new park lands. These park lands may be owned by the County government or other governmental agencies through joint powers agreements. The agreements require that the park lands be available for use by the general public.

The ACPG is considering a proposal to recommend that the County direct Alpine funds towards an athletic field project located on the Joan MacQueen Middle School campus. The school is part of the School District to which you are a Trustee. You have indicated that directing the funds towards the school will not affect your compensation or your elected position as a Trustee. In fact, you will not benefit financially in any way by the distribution of the funds. Lastly, you indicated that you have no relationship with any of the contractors that may benefit from the proposed development.

ANALYSIS

Conflicts-of-Interest Code and Statements of Economic Interest:

Section 87300 provides that every “agency” shall adopt and promulgate a conflict-of-interest code pursuant to Article 3 of the Act. Section 82003 defines “agency” as any state agency or local government agency. “Local government agency” is defined in Section 82041 to include “a district of any kind” or any “department, division, bureau, office, board, commission, or other agency” of a district. The ACPG is a local government agency and required to adopt and promulgate a conflict-of-interest code. The County Board of Supervisors directed the ACPG to adopt its own conflict-of-interest code on March 23, 2010.

A conflict-of-interest code enumerates the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial interest. (Section 87302.) Persons designated in the conflict-of-interest code are “designated employees,” a term that includes any “officer, employee, member, or consultant” of an agency whose position involves making or participating in making decisions that may have a foreseeable and material effect on any financial interest. (Section 82019(c).) The term “designated employee” does not include an unsalaried member of any board or commission who serves in a solely advisory function. (Section 82019; *Simon Advice Letter*, No. I-04-013.)

Public officials, including members of boards or commissions of a local government agency, disclose their financial interests in accordance with the conflict-of-interest code developed by their respective agency. (See Sections 87300-87313; *Simon Advice Letter*, No. I-04-013.) Specifically, members of advisory boards must file Statements of Economic Interest because they have decision-making authority within the meaning of Section 82019. You informed me that you adhere to this disclosure requirement and file a Statement of Economic Interest.²

Conflicts of Interest Under the Act:

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.) Section 82048 defines “public official” as every member, officer, employee, or consultant of a state or local government agency. A “member” does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decision-making authority. (Regulation 18700(c)(2).)

Interests from which a conflict of interest may arise are defined in Section 87103 and include the following:

- 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,

² Pursuant to regulation 18329.5, the Commission will not render formal written advice or informal assistance regarding the interpretation of an agency’s conflict-of-interest code or the application of that code to a specific individual unless the enumerated criteria are satisfied. Please note that the Commission is not the “Code Reviewing Body” for local government agencies.

aggregating \$500 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.

Your account of the facts potentially implicates a financial interest in the School District as a source of income. However, in regard to a source of income, the Act's definition of income expressly excludes "salary and reimbursement for expenses and per diem received from state, local, or federal government agency . . ." (Section 82030(b)(2).) Thus, the District would not be a source of income for purposes of Section 87103(c).

Nonetheless, an effect on an official's governmental salary may still be disqualifying under limited circumstances as a material and foreseeable financial effect on the official's personal finances. However, your facts show no connection between your monthly stipend or the health benefits buyout and the decisions in question. Consequently, with no interest in Section 87103 that will be impacted financially by the decisions, you will not have a conflict of interest under the Act.

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

Sincerely,

Jack Woodside
General Counsel



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

RPOC:jgl