



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 6, 2018

Betsy Martyn
General Counsel
Big Bear Airport District
13 Via Palmira
Palm Desert, CA 92260

Re: Your Request for Advice
Our File Nos. A-18-167 & A-18-216

Dear Ms. Martyn:

This letter responds to your request for advice on behalf of Big Bear Airport District Director Joseph Kelly 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. Please also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide is based on the facts you provide.

QUESTION

Does the Act prohibit Director Kelly from participating in governmental decisions relating to the Board's decisions regarding fuel prices and airport facility rental rates where he rents District facilities on a month-to-month basis?

CONCLUSION

No. The Act does not prohibit Director Kelly from taking part in decisions relating to fuel prices and airport facility rental rates so long as the rate is adjusted equally, proportionally, or by the same percentage for all consumers and renters.

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.

FACTS PROVIDED BY THE REQUESTOR

You are the General Counsel of the Big Bear Airport District (the District) and the authorized representative of Director Joseph Kelly. The Big Bear Airport District has an elected/appointed independent Board of Directors (the Board). The Board sets policies regarding aviation fuel prices and facility rental rates. The Board is not advisory, but rather directly controls District policy and pricing. There are five Directors on the Board, some of whom own aircraft, purchase fuel and rent facilities from the District.

Mr. Kelly is an elected Director on the Board. He is a pilot who has in the past, and may in the future, purchase aviation fuel at the District airport. He currently rents facilities at the District airport under a month-to-month agreement.

ANALYSIS

Sections 87100 and 87103 of the Act prohibit a public official from taking part in a governmental decision if the decision will have a reasonably foreseeable material financial effect on one or more of the official's financial interests distinguishable from the effect on the public generally. Section 87103 identifies the interests that may give rise to a disqualifying conflict of interest under the Act. Of those interests, Director Kelly has an interest in his personal finances and those of his immediate family members.

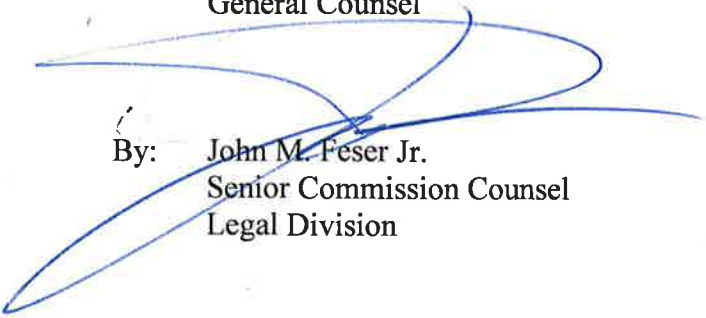
We first consider whether Director Kelly also has a real property interest in his month-to-month rental of airport facilities from the District. Section 82033 provides that such an interest in real property includes a leasehold interest owned directly, indirectly, or beneficially by the official or the official's immediate family if the fair market value of the interest is \$2,000 or more. Regulation 18233 clarifies that an "interest of a tenant in a periodic tenancy of one month or less" is neither an "interest in real property" nor a "leasehold interest." Thus, Director Kelly has no real property interest in his month-to-month rental of District facilities.

Next, we consider whether the decisions relating to District fuel prices and facility rental rates would have a reasonably foreseeable material financial effect on Director Kelly's interest in his personal finances distinguishable from the effect on the public generally. To the extent that a decision may potentially affect the monthly rate that the District charges to rent its airport hangars, or the prices the District charges to purchase its fuel, the effect of those decisions on Director Kelly's personal finances is indistinguishable from the effect on the public generally if the decisions adjust the rates/prices equally, proportionally, or by the same percentage for all renters and fuel purchasers. (Regulation 18703(e)(1).) Thus, the Act does not prohibit Director Kelly from taking part in decisions relating to fuel prices and facility rental rates that would adjust the District's monthly rate it charges to rent its airport facilities, and the prices it charges for fuel, as long as the rates are adjusted equally, proportionally, or by the same percentage for all renters and fuel purchasers.

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

Sincerely,

Dave Bainbridge
General Counsel



By: John M. Feser Jr.
Senior Commission Counsel
Legal Division