



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

June 16, 2023

Brandon Criss
Siskiyou County Supervisor, District One
P.O. Box 183
Macdoel CA 96058

Re: Your Request for Advice
Our File No. A-23-048

Dear Mr. Criss:

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. 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 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

Does the Act prohibit you from taking part in decisions to change the existing Siskiyou County laws concerning vacation rentals given you own a residence in Butte Valley and a bed-and-breakfast in the City of Dorris, an incorporated city that is not subject to the County’s vacation rental laws?

CONCLUSION

No. As explained below, the proposed changes to the County’s vacation rental laws will not have a reasonably foreseeable and material financial effect on your Butte Valley residence or your bed-and-breakfast in the City of Dorris.

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 18104 through 18998 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 AS PRESENTED BY REQUESTER

You are a member of the Siskiyou Board of Supervisors and represent District One. The Board is considering changes to the laws concerning vacation rentals. According to the Vacation Rental Analysis of Siskiyou County (October 2022):

Siskiyou County has experienced an increasing demand for vacation homes, and a growing number of property owners have sought to fulfill this demand by converting structures from primary residences to short-term rentals over the last few years. At the same time, it has become increasingly challenging over this period for people who live and work in Siskiyou County to find and afford housing, particularly people who work in the service and tourism industries. County residents and policy makers have observed that the increase in demand for Vacation Rentals has coincided with limited availability of residential units and very low vacancy rates.

Currently, Section 10-6.1502(h) of the Siskiyou County Code establishes conditions and standards for vacation rentals that include: 1) the parcel must be 2.5 acres or larger; 2) occupancy is limited to a maximum of 10 persons; 3) a maximum rental period for each occupancy of 30 consecutive days; 4) one off-street parking space, plus one additional space for each bedroom must be provided; and 5) must be managed by a County resident or a professional management firm located in Siskiyou County.

The proposed changes currently under consideration include: 1) Caps on permits in areas with high concentrations of vacation rentals; 2) tax options that would fund affordable housing production, including dedication of a portion of the Transient Occupancy Tax, a one-time impact fee charged at the time a use permit is issued, and a Lodger's Tax assessed as a per night charge to vacation rental guests.

McCloud is within District One and is a vacation destination similar to Lake Tahoe. You are unsure how many vacation rentals are currently in the District, but you provided a chart prepared by County staff showing that while the Butte Valley area only has two vacation rental listings, the McCloud area has 44.² Any cap for vacation rental permits would only apply to areas such as McCloud, not to areas such as Butte Valley where there are few vacation rentals. A cap on the total number of vacation rentals in McCloud would likely not result in an increase in vacation rentals in Butte Valley because the climate is different and it is not a vacation destination like McCloud.

You own your residence in Butte Valley, an area which has very few vacations rentals. While your residence would likely qualify for a vacation rental permit, you do not have any intention of applying for one. There are no vacation rentals within 1,000 feet of your residence. The proposed changes to the ordinance would not impact your ability or the ability of other residences in Butte Valley to obtain a vacation rental permit.

² McCloud is an hour drive from your Butte Valley residence when road conditions are good. The City of Dorris and your bed and breakfast are more than an hour from McCloud.

In addition to your residence in Butte Valley, you recently purchased a bed-and-breakfast located in the City of Dorris, an incorporated City within Siskiyou County, which has a population of less than 1,000. Any proposed changes to the County laws concerning vacation rentals would not apply to your bed-and-breakfast, which is located about three blocks (more than 1,000 feet) from the border with Butte Valley where the existing vacation rental laws apply. The property is advertised on various websites, and your spouse stays at the property to run the business. Most of your clients have been travelers driving through the area. Few, if any, have actually been from Siskiyou County.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using their position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. Section 87103 identifies an official's interests that may give rise to a disqualifying conflict of interest under the Act. Based on the facts presented, those interests relevant to the question presented include:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- 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, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

A threshold issue exists regarding whether an official may have a disqualifying conflict of interest under the Act with respect to real property interest located outside of the boundaries of the official's local government agency. Section 82035 sets forth the Act's definition of "jurisdiction," and provides that real property is within the jurisdiction of a local government agency if the property is located "not more than two miles outside the boundaries of the jurisdiction." The Act's definition of "jurisdiction" applies to its conflict of interest provisions. (*Burton* Advice Letter, No. A-07-052.) Your bed-and-breakfast is less than two miles from the boundaries of the County's jurisdiction (approximately three blocks from the City's edge), and therefore within the County's jurisdiction for purposes of the Act's conflict of interest provisions.

Relevant to your request, you have a real property interest in your Butte Valley residence. In addition, you have a real property interest in your bed-and-breakfast property, as well as a business

entity interest in your bed-and-breakfast business, and source of income interests in the business, as well as its tenants.³

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest. In addition, an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1)-(6).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Business Entity

Regulation 18702.1 provides, in relevant part, that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income to the official, is material where the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of the entity's annual gross revenues and at least \$10,000. (Regulations 18702.1(a)(2)(A)-(B), 18702.3(a)(4).) The reasonably foreseeable financial effect of a governmental decision on an official's business entity interest is also material where the decision may cause the entity to incur, avoid, reduce, or eliminate expenses equal to or greater than \$250,000, or one percent of the entity's annual gross revenues and at least \$2,500. (Regulation 18702.1(a)(3)(B).)

According to the facts, the County currently has laws that govern vacation rentals in the County which, among other things, limits the rental period to a maximum of 30 days, limits occupancy to a maximum of 10 persons and requires at least one off-street parking space. The proposed changes would likely include a one-time Transient Occupancy Tax assessed with the issuance of a vacation rental permit, a Lodger's tax assessed as a per night charge to vacation rental guests and a cap on vacation rental permits in areas with a high concentration of vacation rentals. However, the facts indicate that the proposed decision is unlikely to impact your bed-and-breakfast business in a manner that would meet the above materiality thresholds. The cap on vacation rental permits will apply only to the McCloud area, which would not likely result in an increase in

³ You will also have an interest in any client of your business who is a source of income to you totaling at least \$500 or more in a 12-month period. (Section 87103(c).) However, you have not identified any clients, so we do not analyze this issue further.

vacation rentals in Butte Valley because the Butte Valley climate is different, and it is not a vacation destination like McCloud. Also, because your bed-and-breakfast is not a vacation rental and is located within the City of Dorris, it is not subject to the current vacation rental laws and will not be subject to any changes to those laws. Lastly, the Transient Occupancy tax and Lodger's tax would apply to the Butte Valley area near your business, however, because Butte Valley has only a few existing vacation rentals, there is no indication that the proposed changes would impact your bed-and-breakfast business's annual gross revenues by at least \$10,000. Therefore, it is not reasonably foreseeable that decisions concerning the proposed changes to the County's vacation rental laws will meet the materiality thresholds for business entities.

Real Property

Bed-and-breakfast Parcel

Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Here, your bed-and-breakfast is more than 1000 feet from any part of the County that will be subject to the changes in the rental vacation laws. Regulation 18702.2(b) provides the effect of a decision involving property more than 1,000 feet from the official's property is presumed not to be material unless clear and convincing evidence shows the decision would have a substantial effect on the official's property.

Here, therefore, it is presumed that the financial effect of the proposed changes to the vacation rental laws on your real property interest will not be material, unless the presumption is rebutted by clear and convincing evidence of a substantial effect on your property. For the same reasons just provided, including that the proposed cap on vacation rentals will not immediately impact the Butte Valley area due to its few existing vacation rentals, there is no clear and convincing evidence indicating that the proposed changes will have a substantial effect on the property. Thus, the presumption is not rebutted.

Butte Valley Residence

As mentioned, Regulation 18702.2 provides that the reasonably foreseeable financial effect of a governmental decision on a real property in which an official has a financial interest is material, which includes decisions that:

- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel (Regulation 18702.2(a)(3)); and
- Involve the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property. (Regulation 18702.2(a)(5)).

According to the facts, the Board will consider a cap on vacation rental permits that would only apply to areas such as McCloud, not to areas such as Butte Valley where your residence is located. Therefore, to the extent any such decision to cap vacation rental permits will not apply to Butte Valley, your real property interest in your residence will not be the “subject” of the decisions concerning vacation rentals. (See, e.g., *Heglund* Advice Letter, No. No. I-22-126 [even though official does not currently have a vacation rental permit for his residence, his real property interest in the residence would be “subject” to a decision concerning cap on vacation rental permits where the cap would apply to the area where his residence is located].)

The facts also state the proposed changes would include tax options to fund affordable housing production, including dedication of a portion of the Transient Occupancy Tax, a one-time impact fee charged at the time a use permit is issued, and a Lodger’s Tax assessed as a per night charge to vacation rental guests. However, these fees/taxes do not currently apply to your parcel and will apply only to the extent that you convert your current residence into a vacation rental business, which would require that you first obtain a use permit to do so. Therefore, based on these facts, your interest in your residence will not be the “subject” of the decisions concerning vacation rentals under Regulation 18702.2(a)(3).

The facts state that there are no vacation rentals within 1,000 feet of your residence. As with your bed-and-breakfast, under Regulation 18702.2(b), it is presumed that the financial effect of the proposed changes to the vacation rental laws on your residence will not be material, unless the presumption is rebutted by clear and convincing evidence of a substantial effect on your property. According to the facts, it is unlikely a cap on the total number of vacation rentals in McCloud, which is about an hour drive from Butte Valley when the road conditions are good, would result in an increase in vacation rentals in Butte Valley because the climate is different, and it is not a vacation destination like McCloud. For this same reason, it is unlikely the proposed Occupancy Tax and Lodger’s Tax would have a substantial effect on property values in Butte Valley, including your property, where there appears to be little interest for a vacation rental market. Therefore, there is no indication from the facts through clear and convincing evidence that any of the proposed changes will have a substantial impact on your residence.

Accordingly, you may take part in decisions concerning the proposed changes to the County’s vacation rental laws.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja