



California Fair Political Practices Commission

October 8, 1993

Charlie Moore
District Engineer
Calaveras County Water District
423 East St. Charles Street
Post Office Box 846
San Andreas, CA 95249

Re: Your Request for Informal Assistance
Our File No. I-93-343

Dear Mr. Moore:

This letter is in response to your request for general advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ on behalf of the Calaveras County Water District. Therefore, we are treating your request as one for informal assistance.²

In your letter, you ask about an unidentified member of the water district board who is under consideration for a position as an inspector on water district projects. Pursuant to our telephone conversation of September 15, 1993, you indicated that you are authorized to request advice on behalf of the district. It appears, however, that you are not authorized to ask on behalf of the board member regarding his or her responsibilities. Please note that the Commission is precluded from giving third party advice. (See Regulation 18329(c)(4)(C).)

Furthermore, our advice is limited only to provisions of the Act. We cannot provide advice about other conflict-of-interest laws, such as the doctrine of incompatible activities or Section 1090.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTION

Do the conflict-of-interest laws of the Act prohibit the Calaveras County Water District from employing one of its board members as an inspector on water district projects?

CONCLUSION

The Act does not prevent a public official from holding multiple public positions within a single public agency. However, the conflict-of-interest provisions of the Act (Section 87100 et seq., discussed below) do prohibit a public official from participating in a decision that will have a financial effect on the official's economic interests. This prohibition is applied on a decision-by-decision basis.

In addition, other laws restrict the ability of public officials to hold two different public offices simultaneously if the offices are determined to be "incompatible offices." It would be advisable to contact your district counsel or the Attorney General's Office with respect to the doctrine of "incompatible offices" and other provisions of law, such as Section 1090, that might apply to your facts.

FACTS

The Calaveras County Water District is considering hiring, as an inspector, an individual who is presently a member of its board of directors. The district is interested in knowing whether the Act prevents the district from considering the member for the position.

ANALYSIS

The Political Reform Act was enacted by the people of the State of California in 1974. The purpose of the disclosure and disqualification provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own economic interests or the economic interests of persons who have supported them. (Section 81001(b).)

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest.

For purposes of the Act, a board member is a public official by virtue of his or her membership on the board of directors of the district. (Section 82048.) The Act does not prohibit a

public official from holding multiple public positions, either within a single agency or different agencies. Therefore, the Act would not prohibit the district from employing a member of the board.

However, the conflict-of-interest provisions of the Act do prohibit a public official from participating in a decision that will have a financial effect on his or her economic interests. This prohibition is applied on a decision-by-decision basis.

Section 87103 specifies that a public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) 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.

Section 87103(c).

Salary and reimbursement for expenses or per diem received from a state, local or federal government agency, however, is not regarded as income for purposes of the Act. (Section 82030(b)(2).) Therefore, a public official who is a salaried employee of the district would not have an economic interest in the district by virtue of the income. (Sampson Advice Letter, No. I-89-196.)

The conclusion would differ if the exclusion of Section 82030(b)(2) would not apply, for example, because a person is an independent contractor. (McEwen Advice Letter, No. I-92-481.) The conclusion would also differ if a different disqualifying financial interest exists, or if there would be some direct financial effect on the public official personally resulting from a governmental decision. (Section 87103; Regulation 18702.1(a)(4).) Therefore, if the board member is hired, we suggest the member seek assistance from the Commission with respect to his or her own obligations under the Act.

Please note that other laws do restrict the ability of public officials to hold two different public offices simultaneously if the offices are determined to be "incompatible offices." It would be advisable to contact your county counsel or the Office of the Attorney General with respect to the doctrine of "incompatible

offices" and other provisions of law, such as Section 1090, that might apply to your facts.

I trust this letter addresses your concerns. If you have any further questions, feel free to contact me at (916) 322-5901.³

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Luisa Menchaca".

By: Luisa Menchaca
Counsel, Legal Division

³ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.