



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 15, 2015

Blaise J. Jackson
General Counsel
Grossmont Healthcare District
16935 West Bernardo Drive, Suite 170
San Diego, CA 92127

Re: Your Request for Informal Assistance
Our File No. I-15-093

Dear Mr. Jackson:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Advice is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, the Commission does not provide advice relating to past conduct. You should not construe this letter as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).) Because your request seeks general guidance beyond a specific governmental decision, we are treating your request as one for informal assistance.²

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.

QUESTION

Do board members of the Grossmont Healthcare District, who simultaneously serve as board members of the Grossmont Healthcare Corporation, have potentially disqualifying interests in the Grossmont Healthcare Corporation or its parent corporation, Sharp Healthcare, resulting from a stipend received from the district for attending meetings of the Grossmont Healthcare Corporation?

CONCLUSION

Based upon the facts provided, the board members do not have interests in Grossmont Healthcare Corporation or Sharp Healthcare merely because they have received a stipend from the

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.

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).)

Grossmont Healthcare District for attending Grossmont Healthcare Corporation meetings. Barring any other interests they may have, the Act does not disqualify board members from taking part in governmental decisions affecting Grossmont Healthcare Corporation or Sharp Healthcare.

FACTS

Your office serves as General Counsel for the Grossmont Healthcare District (the "GH District"). The GH District is organized under California Health and Safety Code, Section 32000 *et seq.*, to provide healthcare services for the communities served by the GH District in San Diego County and owns Grossmont Hospital located in the City of La Mesa, California.

Since 1991, Grossmont Hospital has been the subject of a long-term lease and operating arrangement with Grossmont Hospital Corporation ("GH Corporation"), a wholly owned subsidiary of Sharp Healthcare, a nonprofit public benefit corporation. The GH District and GH Corporation entered the original 30-year lease in accordance with Health & Safety Code Section 32121(p). In 2006, special legislation (Health & Safety Code Section 32126.3) authorized the GH District and GH Corporation to enter into a lease extension for an additional 30-year term, subject to voter approval. The extended lease, that the voters approved, became effective on July 1, 2014.

In accordance with the terms of the original and extended lease, GH District Board Members have the right to appoint five members to serve on the GH Corporation Board. Up to two of the five appointed members may be GH District Board Members who may appoint themselves to serve on the GH Corporation Board. Both GH District Director Randy Lenac and GH District Director Michael Emerson have appointed themselves to serve as GH District representatives on the GH Corporation Board.

As Health & Safety Code Section 32103 authorizes, each GH District Board Member can receive a stipend from the GH District of \$100 for attending meetings on behalf of the GH District, up to a maximum of \$500 per month. In November of 2014, the GH District amended its stipend policy to allow GH District Board Members, also serving on the GH Corporation Board, to include GH Corporation meetings in determining their monthly stipend.³ This is the only compensation GH District Board Members receive for serving on the GH Corporation Board.

ANALYSIS

GH District Board Members are subject to the Act's conflict of interest provisions. Under Section 87100, a public official may not make, participate in making, or use his or her official position to influence a governmental decision in which the official has a financial interest. 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 on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise and includes:

³ Note that we do not provide advice regarding past conduct and reach no conclusion regarding the application of the Act's conflict of interest provisions to the decision to extend the stipend to GH Corporation meetings.

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in a source of gifts to the official if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- An interest in the official's personal finances, including those of the official's immediate family, also known as the "personal financial effects" rule. (Section 87103.)

In itself, serving as a board member for both the GH District and GH Corporation simultaneously does not result in a potentially disqualifying conflict of interest.⁴ However, a disqualifying conflict of interest may occur if a GH District Board Member has an interest in GH Corporation or Sharp Healthcare as identified above. Because you have indicated that GH District Board Members serving on the GH Corporation Board receive no remuneration for serving on the GH Corporation Board other than the stipend for attending meetings, the only interests implicated are potential interests in GH Corporation and Sharp Healthcare as sources of income resulting from the stipend.⁵ Accordingly, the determinative question is whether the stipend received from the GH District for attending GH Corporation meetings may be income attributed to GH Corporation or Sharp Healthcare for purposes of disqualification.

Previously, we have advised that in some circumstances there may be more than a single source for income. (*Dorsey* Advice Letter, No. A-87-176.) Most comparably, we have previously determined that a city councilmember had an interest in a nonprofit organization as a source of income resulting from salary directly received from a school district for serving as the executive director of the nonprofit. However, in this instance, the nonprofit organization had agreed to reimburse the official's salary to the school district. (*Bettenhausen* Advice Letter, No. A-09-261.)

In this case, the facts provided do not indicate that the GH District has any formal or informal agreement with GH Corporation or Sharp Healthcare to pay a stipend to GH District Board Members on behalf of GH Corporation or Sharp Healthcare for attending GH Corporation

⁴ We are not analyzing whether GH Corporation could be considered a local governmental entity based upon the factors provided in the Commission's opinion *In re Siegel* (1977) 3 FPPC Ops. 62. (See also *Heurey* Advice Letter, No. A-01-251; *Stone* Advice Letter, No. A-97-630; and *Francis* Advice Letter, No. A-86-214.) In light of the conclusion reached, any determination regarding GH Corporation's status as governmental or non-governmental entity is unnecessary.

⁵ A nonprofit organization is not a "business entity" under the Act. (Section 82005.) Accordingly, GH Corporation Board Members do not have interests in GH Corporation or Sharp Healthcare, both nonprofit corporations, resulting merely from their positions as members of the board.

meetings. Furthermore, it appears that the stipend is wholly within the GH District's discretion and expressly authorized under Health and Safety Code 32103 as remuneration for services performed on behalf of the GH District. As limited to these facts, we do not find the stipend attributable to GH Corporation or Sharp Healthcare for purposes of disqualification. Accordingly, members of the GH District Board also serving on the GH Corporation Board do not have an interest in GH Corporation or Sharp Healthcare merely from the stipend received from the GH District. The members may take part in decisions affecting GH Corporation or Sharp Healthcare barring a reasonably foreseeable material financial effect on any other interests they may have.

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Brian G. Lau
Senior Counsel, Legal Division

BGL:jgl