



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 01, 2021

Lauren D. Layne
Baker Manock & Jensen
5260 N. Palm Avenue, Suite 201
Fresno, CA 93704

Re: Your Request for Informal Assistance
Our File No. I-21-144

Dear Ms. Layne:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your inquiry is general in nature, 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. 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 Board members from the LeGrand-Athlone Water District (the “District”) from taking part in decisions before the District Board where those decisions involve a District landowner who has loaned money to the District?³

CONCLUSION

No. The District Board members are only prohibited from participating in decisions that will have a reasonably foreseeable and material financial effect on their economic interests. The facts do not suggest that a loan to the District by a landowner would itself form the basis of an economic interest of the Board members in the landowner. Unless there are other factors that we do not have

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 18109 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.

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).)

³ For convenience, we have consolidated your Questions 1-2 as they both pertain to whether Board members may take part in decisions involving a landowner who has made a loan to the District. Question 3 involves issues outside the purview of the Act.

before us that would form the basis of a Board member's economic interest in the landowner, the Act's conflict of interest provisions would not be implicated.

FACTS AS PRESENTED BY REQUESTER

Your office serves as General Counsel for the LeGrand-Athlone Water District (the "District") and you seek advice on behalf of the District Board of Directors concerning a loan from a District landowner.

As a California water district, and therefore a landowner voting district, the District is authorized to "borrow money and incur indebtedness" without calling and holding an election in the District. (Wat. Code, § 36400) The debt may be incurred "for any purpose for which the district is authorized to expend funds," and "shall be evidenced by warrants or negotiable notes of the district payable at stated times fixed by the board and bearing interest at a rate not exceeding 8 per cent per annum, payable annually or semiannually." (Wat. Code, §§ 36401-36402.)

Currently, the District is considering temporarily borrowing funds from private individuals, including District landowners who are not members of the Board, to help meet its short-term financial obligations. The District would issue notes to such landowners in accordance with the California Water Code. You state your question thus centers on the law as it relates to loans to *public agencies*:

A loan from a District landowner poses certain ethical issues in terms of the manner in which the loan is solicited, the negotiation of key terms of the loan, and the selection process if there are multiple prospective lenders. Additionally, there is an inherent conflict of interest that could arise if the District landowner who made the loan were to address or otherwise make a formal request of the Board on a separate District-related matter. Due to the District's financial interest in and reliance on the loan, such a request from a District landowner lender could foreseeably influence a Board decision in the landowner's favor.

Here, the Board's concern is not limited just to the appearance of impropriety, but also the potential compromise of the Board's ability to act in a manner consistent with its respective duty to act in the best interest of the public.

In a follow-up email dated November 15, 2021, you stated that the Board members are not compensated, and that no Board member would derive any personal financial benefit from a loan by another landowner to the District.⁴

⁴ We caution that the Commission has authority only in regard to advice under the Act. We can offer no advice pertaining to other bodies of law. Except as addressed by the provisions of the Act, we express no opinion regarding concerns outside of the Act including, but not limited to, any ethical issues, appearance of impropriety, ability of the Board to act in a manner consistent with its respective duty to act in the best interest of the public.

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 his or her 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; Regulation 18700(a).) Section 87103 defines financial interests to include:

- 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)), including a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater (Section 82033).
- An interest in a source of income to the official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c)) including any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest (Section 82030(a)).
- Personal finances, meaning the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family. (Section 87103; Regulation 18702.5.)⁵

Thus, the District Board members are prohibited from participating in any decision that will have a reasonably foreseeable and material financial effect on their economic interests. Here, the primary issue is whether a loan to the District by a landowner would itself form the basis of an economic interest of the Board members in the landowner. According to the facts, however, the individual Board members, who are not compensated for their services, would derive no personal

⁵ Under Regulation 18702.5, a governmental decision's reasonably foreseeable financial effect on a public official's financial interest in his or her personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official, or the official's immediate family member, receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).)

financial benefit from such a loan. Indeed, the loan would be to the District, not any individual Board member.

Accordingly, unless there are other factors that we do not have before us that would form the basis of a Board member's economic interest in the landowner who has made a loan to the District, the Act's conflict of interest provisions would not be implicated, and the Board members could take part in District-related matters involving that landowner.

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
Counsel, Legal Division

JW:dkv