



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 11, 2021

Keith F. Collins
Jones & Mayer
Southern California Office
General Counsel
6349 Auburn Blvd.
Citrus Heights, CA 95621

Re: Your Request for Advice
Our File No. A-20-138

Dear Mr. Collins:

This letter responds to your request for advice on behalf of South San Luis Obispo County Sanitation District board members Grover Beach Mayor Jeff Lee and Arroyo Grande Mayor Caren Ray Russom regarding the conflict of interest and “pay-to-play” 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.

QUESTIONS

1. Do Mayor Lee and Mayor Ray Russom have a conflict of interest under Section 87100 regarding the District’s review and award of a project contract, where they have received campaign contributions from labor organizations required to be used for construction of the project?
2. Under the Act’s “pay-to-play” restrictions in Section 84308, must Mayor Lee and Mayor Ray Russom disclose the contributions received from labor organizations which are part of

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.

the Community Workforce Agreement and recuse themselves from decisions regarding the project contract?

CONCLUSIONS

1. No. Section 87100 governs only financial conflicts of interest, such as gifts and income. The Act specifically exempts campaign contributions from the definitions of “gift” and “income.”
2. No. Mayors Lee and Ray Russom need not recuse themselves as the contract at issue qualifies for the “competitively bid” exception to Section 84308.

FACTS AS PRESENTED BY REQUESTER

You serve as legal counsel to the South San Luis Obispo County Sanitation District (“District”). The District provides sewer and wastewater treatment services to the Cities of Arroyo Grande and Grover Beach, and the unincorporated area served by the Oceano Community Services District.

The District is governed by a three-member Board of Directors, whose membership is determined by Health and Safety Code Section 4730.10. This statute provides that “the governing body of the South San Luis Obispo County Sanitation District shall be constituted as set forth in this article[.]” Health and Safety Code Section 4730 provides that:

The governing body of a sanitation district is a board of directors of not less than three members. The presiding officer of the governing body of each city, the whole or part of which is included in the sanitation district, is a member of the board. A member of the governing body of each sanitary district, the whole or part of which is included in the sanitation district, is a member of the board.

Accordingly, the District’s Board of Directors is comprised of Caren Ray Russom, Mayor of Arroyo Grande; Jeff Lee, Mayor of Grover Beach; and Linda Austin, the President of the Oceano Community Services District.

The District is currently soliciting bids for a public works project (the “Redundancy Project”). There is a Community Workforce Agreement (“CWA”) in place that requires the contractor or contractors who are selected for the Redundancy Project to use identified local labor organizations during construction and pay these labor organizations employee benefit contributions.

Supplemental information provided by you specifies that the District pre-qualified bidders such that the following contractors are the only ones permitted to submit bids for the Redundancy Project: 1. J.R. Filanc Construction Company; 2. Pacific Hydrotech Corporation; 3. PCL Construction Inc.; 4. Shimmick Construction; and 5. W.M. Lyles Co. Of these five companies, none have made political contributions to Board members within the last 12 months. Because the District pre-qualified bidders, it is bound to accept the lowest bidder in response to the September 16, 2020 request for bids.

However, Board Members Lee and Ray Russom have each received campaign contributions from labor organizations (“Donor Labor Organizations”) identified in the CWA within the past 12 months. Specifically:

- Board Member Jeff Lee
 - Received a \$1,000.00 contribution Operating Engineers Local No. 12 on June 25, 2020.
 - Received a \$1,000.00 contribution from Laborers Local 220 on October 23, 2020.
 - Received a \$1,000.00 contribution from Sheet Metal Worker’s Local No. 104 on September 11, 2020.
- Board Member Caren Ray Russom
 - Received a \$950.00 contribution from IBEW Local Union 639 on April 19, 2020.
 - Received a \$2,500.00 contribution from Laborers Local 220 on April 10, 2020.

The five contractors listed above have submitted bids, and the District must next decide which bid to accept in regard to the Redundancy Project contract.

ANALYSIS

1. *Do Mayor Lee and Mayor Ray Russom have a conflict of interest under Section 87100 regarding the District’s review and award of a project contract, where they have received campaign contributions from labor organizations required to be used for construction of the project?*

You have asked whether campaign contributions received by Mayors Lee and Ray Russom give rise to a conflict of interest under Section 87100 of the Act. Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Section 87103 provides that an official has a “financial interest” in a decision if it is reasonably foreseeable that the decision will have material financial effect on one or more of the official’s interests identified in that section. In addition, Section 87103 identifies five types of interests that may give rise to a disqualifying conflict of interest:

1. 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)).
2. An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
3. 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)).
4. An interest in a source of gifts to the official if the gifts aggregate to \$520 or more within 12 months prior to the decision. (Section 87103(e).)
5. 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.)

None of the above interests are implicated here. Moreover, the Act expressly exempts campaign contributions from the definitions of “income” and “gift.” (Sections 82030(b)(1) and 82028(b)(4).) Therefore, campaign contributions received by Mayors Lee and Ray Russom do not give rise to a conflict of interest under Section 87100.

2. *Under the Act’s “pay-to-play” restrictions in Section 84308, must Mayor Lee and Mayor Ray Russom disclose the contributions received from labor organizations which are part of the Community Workforce Agreement and recuse themselves from decisions regarding the project contract?*

Section 84308 imposes contribution limitation, disclosure, and disqualification requirements on members of appointed boards and commissions who make decisions involving licenses, permits or other entitlements for use. While a matter is pending before an agency, Section 84308(b) provides:

No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7.

Section 84308(a)(5) defines “license, permit, or other entitlement for use” as “all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (*other than competitively bid*, labor, or personal employment contracts), and all franchises.” (Emphasis added.) The Commission has construed the exception for “competitively bid” contracts to apply only when the bidders submit fixed amounts in their bids and the agency is required to select the lowest qualified bidder. (*Smart* Advice Letter, No. I-92-249; *Thatch* Advice Letter, No. I-89-222; *Thatch* Advice Letter, No. A-84-318; *Greenwald* Advice Letter, No. I-93-220.) The intent being to exclude only those contracts where the District has little, if any, discretion to choose the contractor.

According to your facts, the District, in considering bids made in response to the September 16, 2020 request, must accept the lowest bid submitted by the pre-qualified contractors permitted to participate. As the District will have no discretion in selecting a contractor, and indeed must accept the lowest bid, this decision qualifies for the “competitively bid” exception to the pay to play provisions of Section 84308.² Members Lee and Ray Russom therefore need not recuse themselves from the decision awarding the contract for the Redundancy Project.

² Section 84308 applies to parties and participants in a proceeding. While the bidding contractors are parties in the proceeding, it is unclear based upon the facts provided whether any of the contributing labor unions are parties or participants in the proceeding. However, in light of the conclusion that Section 84308 does not apply to the competitively bid contract, it is unnecessary to make this determination at this time.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja