



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 17, 2024

Kristin M. Horrell
Sonoma County
Board of Supervisors
575 Administration Drive, Room 100 A
Santa Rosa, CA 95403

Re: Your Request for Advice
Our File No. A-24-047

Dear Ms. Horrell:

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. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

Under the Act, may Sonoma County (“County”) Board of Supervisors member, Supervisor Lynda Hopkins, participate in decisions concerning a project to design and construct a bike and pedestrian path within 500 feet of her property? If a conflict of interest exists, does that conflict prevent her from attending community events and advocating for the bike path or extend to her staff to prohibit them from being involved in meetings with local residents and public officials?

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.

CONCLUSION

Supervisor Hopkins has a disqualifying financial interest in her real property located within 500 feet of the bike and pedestrian path and she may not make, participate in making, or use her position to influence decisions related to the bike and pedestrian path. This restriction includes any attempt to communicate with county officials and employees for the purpose of influencing the decision. This restriction applies to all communications with county employees including those with members of her staff that are for the purpose of influencing the decision. Thus, she may not direct members of her staff to make any such communications on her behalf or attempt to influence a member of her staff in any other way should the staff member take part in the decision. However, she may appear as a member of the public, not in her official capacity, if she appears on matters related solely to her personal interest in her real property as specified below.

FACTS AS PRESENTED BY REQUESTER

Supervisor Hopkins is an elected representative of the County Board of Supervisors. Her District encompasses west Sonoma County, which includes the unincorporated area of Sebastopol, where Supervisor Hopkins also resides. She seeks advice regarding decisions concerning a bike and pedestrian path being designed and constructed in Sebastopol within 500 feet of her home.

In 2017, Supervisor Hopkins was contacted by a City of Sebastopol Councilmember to launch a joint City of Sebastopol and County planning project to design a bike and pedestrian path (“the Path”) in west Sebastopol. The purpose of the Path is not one of beautification but functionality, the Path will provide greater access and connectivity between major roadways, existing bike paths, a regional park, and two local schools. The concept of the Path was initially adopted as part of the 2010 Sonoma County Bicycle and Pedestrian Plan, which was later incorporated into the Sonoma County Transportation Authority Bicycle and Pedestrian Master Plan (“Master Plan”), which was adopted in 2008 and updated in 2014, Supervisor Hopkins participated in the Path by convening local government officials to discuss the project and also assisted in securing funding for a local consultant to hold community meeting and design the project. These meetings continued through 2018 and the project has been designed. Currently, the Master Plan is in the process of being updated again and community meetings are going to be scheduled in the future.

When Supervisor Hopkins was originally involved with discussions about the Path in 2017-2018, she did not live or own real property near the Path’s location. In 2022, years after the Path project design was completed, Supervisor Hopkins purchased a home and moved within 500 feet of a portion of the Path. The Supervisor owns her home in its entirety with her husband. The Path will be located in both Sebastopol City limits and the unincorporated area of Sebastopol and will be approximately 0.67 miles in length. Part of the Path will run along the entire length of a road that goes by Supervisor Hopkins property to a regional park that is south of the Supervisor’s property. While there are two possible paths that may be created at different times, they will be discussed at the same time. There will likely be construction noises and traffic impacts during the construction of the Path. You have confirmed that Supervisor Hopkins has not participated in any decisions concerning the project since she moved within 500 feet of the proposed Path.

ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official’s position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests, including “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial 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 financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where, as here, an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).)

In this case, Supervisor Hopkins has a financial interest in the real property owned within 500 feet of the proposed Path. In 2022, Supervisor Hopkins purchased a home located within 500 feet of a portion of the Path. You have confirmed that Supervisor Hopkins has not participated in any decisions concerning the project since she moved within 500 feet of the proposed path. The construction of the Path will likely result in some temporary inconveniences such as noise and traffic concerns. Long-term the Path will result in pedestrian and bicycle traffic within close proximity of the Supervisor’s home and potential impacts from that usage. Moreover, there have been no facts provided evidencing sufficient mitigating factors to indicate there would not be a measurable impact on the Supervisor’s property as a result of the Path. As the property is within 500 feet of the Path, it is presumed that the financial effect on Supervisor’s interest in material. Further, there are insufficient facts to show through clear and convincing evidence that the Path would not have any measurable impact on the property. Accordingly, Supervisor Hopkins is

prohibited from making, participating in making, or using her position to influence decisions regarding the Path.

Additionally, you have asked whether a prohibition on Supervisor Hopkins taking part in a decision extends to communications by her staff or her communications at a community event. A public official makes a decision when “the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency.” (Regulation 18704(a).) An official participates in a decision when “the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.” (Regulation 18704(b).) An official uses their position to influence a decision when the official “(1) Contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision; or (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official’s authority or on behalf of the official’s agency in making the contact.” (Regulation 18704(c).)

Pursuant to the rules above, Supervisor Hopkins is prohibited from not just making decisions regarding the Path but also participating in or attempting to influence decisions of any county official including any county employee. Thus, the conflict of interest rules prohibit Supervisor Hopkins from making any communications with a member of her staff to influence a decision regarding the Path. In other words, Supervisor Hopkins may not direct members of her staff to make any communications on her behalf or attempt to influence a member of her staff in any other way should the staff member take part in the decision.

Turning to communications made at a public event. Regulation 18704(d)(4) clarifies that a public official who is disqualified from taking part in a governmental decision, is not prohibited from speaking to the general public or the media. In interpreting this regulation, we have previously advised that an official is free to discuss a project with the press, friends, neighbors, or other members of the community, even if the official does so to rally support or opposition of an action, unless those individuals are members, officers, employees, or consultants of the official’s agency. (*Mizrahi* Advice Letter, No. A-12-036.) Therefore, while Supervisor Hopkins is prohibited from taking part in decisions surrounding the Path she is not prohibited from talking about it with members of the public, provided there are no members, officers, employees, or consultants of the official’s agency present.

Appearance as Member of the Public

Notwithstanding the conclusion that Supervisor Hopkins is prohibited from taking part in the decision, we note that Regulation 18704(d)(2) provides a limited exception for certain appearances before the official’s agency as a member of the public. This narrow exception allows an official to appear at a public meeting of the governing board, as a member of the public, to address matters related solely to the official’s interest in real property owned entirely by the official or the official and members of the official’s immediate family.

Based on the facts, provided, the Supervisor has an interest in her property located within 500 feet of the Path that falls which may fall under this exception because she owns the property in its entirety with her husband. To invoke the exception, the Supervisor must follow the procedures set forth in Regulation 18707(a)(3). Specifically, the Supervisor must publicly identify each type of financial interest she holds that gives rise to the disqualifying conflict of interest, along with specified details about each interest. The identification must be made after the announcement of the agenda item to be discussed or voted on, but before the discussion or vote commences. (*Willkins* Advice Letter, No. A-18-227.) The Supervisor must also recuse herself from voting on the matter, leave the dais to speak from the same area as the members of the public, and limit her remarks solely to her personal interest. Furthermore, the exception will only apply if the Supervisor makes it clear that she is not acting in her official capacity when she appears as a member of the general public. (*Willkins* Advice Letter, supra; *Albano* Advice Letter, No. A-17-208; *McHugh* Advice Letter, No. 1-98-324.) The Supervisor, however, may listen to public discussion and deliberations on the matter from the same area as other members of the public.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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