



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 26, 2025

Marilyn Vierra
Chief of Staff
County of Monterey District 2
PO Box 155
Moss Landing, CA 95039

Re: Your Request for Informal Assistance
Our File No. I-25-029

Dear Ms. Vierra:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your request for advice is general in nature and does not pertain to a specific governmental decision, we are treating it as a request 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

Under the Act, may you take part in governmental decisions involving the Vistra Battery Energy Storage Plant, a commercial property that recently experienced a major fire and is located directly next to property owned by your family’s trust, of which you are a beneficiary and receive income from in the form of rent?

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.

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).)

CONCLUSION

Based on the proximity of your family trust's property to the Vistra property, you are prohibited from taking part in governmental decisions involving the Vistra property because there is no clear and convincing evidence the decision would have no measurable impact on your family trust's property.

FACTS AS PRESENTED BY REQUESTER

You are Chief of Staff to County of Monterey District 2 Supervisor Glenn Church. You reside on your family property in Moss Landing, California, next to the Vistra Battery Energy Storage Plant ("Vistra"), which recently had a major fire. The Plant lies in District 2 and you are managing a small staff and floods of information as your team fields scores of messages from constituents who have been affected by the fire and its aftermath.

The property on which you live is owned by a trust owned by your mother. Your sister is the trustee and there are six beneficiaries, including you. The trust is revocable. You do not pay rent, but pay a nominal amount to the trust each month to cover a portion of the utilities and insurance paid by the trust. The property is on the market for sale, with an option currently being pursued by another alternative energy company. Post-fire, that option may fall through. The event has affected all the trust's heirs adversely.

You would like guidance regarding potential conflicts of interest between your work and economic interests. To date, you have been making sure that residents on the affected property are updated when the County releases current testing data. You indicate that, all discussions you have had with staff and constituents have been purely factual.³

In a follow-up email, you clarified that the parcels owned by your family and Vistra are directly adjacent to each other.

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. (Section 87103.) Among those specified economic interests are "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more," and "[a]ny source of income, except gifts or loans by a commercial lending institution made in the regular course of business on

³ You have not provided any additional details regarding your interactions with staff and constituents. As discussed below, the Act generally prohibits you from taking part in governmental decisions involving the Vistra property. We do not analyze or otherwise comment on your prior conduct, as we are prohibited from advising on past conduct. (Regulation 18329(b)(6)(A), (c)(4)(A).)

terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(b)-(c).)

An official has an economic interest in the pro rata share of the interests in real property, sources of income, and investments of a trust in which the official has a direct, indirect, or beneficial interest of 10 percent or greater. (Regulation 18234(a).) An official has a direct, indirect, or beneficial interest in a trust if the official is a beneficiary and presently receives income from the trust. (Regulation 18234(c)(2)(A).) “Income” includes “a payment received, including, but not limited to . . . rent” (Section 82030(a).)

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 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.”

Because you have a beneficial interest of 10 percent or greater in your mother’s trust and presently receive income from the trust (in the form of the fair market rental value of your residence), you have a pro rata share of the interests in real property, sources of income, and investments of the trust.

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).)

Given Regulation 18702.2(a)(7)’s reference to “the property line of the parcel,” the relevant distance between a public official’s real property and the real property at issue in a governmental decision, for purposes of the Act, is the distance measuring directly from parcel to parcel or “as the crow flies.”

Because the trust’s real property is located directly next to Vistra’s property, governmental decisions involving Vistra’s property are presumed to have a reasonably foreseeable, material financial effect on your interest in the trust’s real property unless there is clear and convincing evidence the decision will have no measurable impact on the trust’s adjacent property. However,

based on the facts provided, clear and convincing evidence has not been established indicating that decisions relating to the Vistra property—a battery energy storage plant and the site of a major fire—would have no measurable impact on your adjacent property interest. Consequently, you are prohibited from taking part in any governmental decisions involving the Vistra property including making a decision, participating in a decision, or using your official position to influence a decision.

A public official makes a governmental decision if 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.

A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

A public official uses an official position to influence a governmental decision if 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

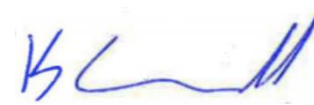
(2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact.

If you have other questions on this matter, please contact me at kcornwall@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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