



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 18, 2025

Derek P. Cole
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City of El Dorado Hills
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661

Re: Your Request for Informal Assistance
Our File No. I-25-013

Dear Mr. Cole:

This letter responds to your request for advice on behalf of El Dorado Hills Community Services District's Director Stephen Ferry and Director Chuck King regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Given that your questions are general in nature and based on limited facts, we treat 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. Finally, the Commission is not authorized and does not provide advice concerning past conduct. (Section 1097.1(c)(2) and 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.

QUESTIONS

1. Does Director Ferry have a disqualifying financial interest in El Dorado Hills Community Services District ("District") decisions regarding the implementation of Measure S and related legal issues due to his assessable real property interest located in the landscape and lighting district ("LLAD") affected by Measure S?

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).)

2. Does Director King have a disqualifying financial interest in District decisions regarding the implementation of Measure R and related legal issues due to his assessable real property interest located in the LLAD affected by Measure R?

3. Where the District will likely make uniform implementation and litigation decisions regarding Measures Q, R, and S and the LLADs, is the official disqualified from participation in all three measures if the official has a disqualifying interest in one measure?

CONCLUSIONS

1. It is reasonably foreseeable that decisions regarding the repeal or modification of the LLAD assessment that applies to Director Ferry's real property parcel will have a material financial effect on his interest and he may not participate in those decisions. This would include decisions to refund any portion of his parcel's assessment. Because the legal challenges described relate to the legality and enforceability of the measures' canceling of the existing assessments and refunds of past assessments, he will also have a disqualifying interest in decisions on whether to pursue post-election legal challenges to the measure as well.

2. Director King will have a disqualifying real property interest in the above-described decisions that apply to his parcel, on the same grounds.

3. Because the decisions about the implementation or legal challenge to one measure would effectively determine the result for all measures, the decisions are inextricably interrelated. Therefore, if the official has a disqualifying interest in one measure's decision, the official is disqualified from participation in all three measures' decisions of that type.

We note that there are additional types of decisions generally described that may result in the officials having a disqualifying interest under the standards in Regulation 18702.2(a)(6)-(8) and (b), discussed below. We do not have the facts necessary to analyze and advise on these decisions. We provide general information for each of these decisions and recommend you seek further advice as needed when the facts regarding the decisions and their potential impacts are more fully known. There are also potential contract decisions that may require an analysis and disqualification under Section 1090. Please seek advice with a full set of facts for any decisions involving a contract.

FACTS AS PRESENTED BY REQUESTER

LLADs & Measures Q, R, and S

The District has formed several LLADs under the Landscape and Lighting Act of 1972. The LLADs finance public improvements such as parks, sidewalks, and common planted and landscaped areas. Each year, the District imposes a special assessment on the assessable properties within each LLAD. Assessments are collected on the County Tax Roll and paid by the owners of the assessed parcels.

In annually levying special assessments, the District must comply with Proposition 218, a

1996 state constitutional ballot measure and successor to Proposition 13. Under Proposition 218, the District may only assess LLAD properties for the “special benefit” they receive.³ The District must finance the “general benefit” the parcels receive through other funding sources, such as property tax revenues.

In recent years, members of the public have criticized the District over its practices in levying annual LLAD assessments. Among the several criticisms, property owner advocates have asserted the District assesses too much special benefit, and too little general benefit, to LLAD properties. As a result, these advocates assert, the District overcharges property owners in levying annual special assessments. Advocates have contended the District should finance more—or even all—the LLAD expenses through other funding sources, such as property tax revenue.

This sentiment led property owners in three of the District’s LLADs to place LLAD-specific ballot measures, Measures Q, R, and S, on the local ballot. Generally, Measure Q directs the District to dissolve LLAD No. 22 (Promontory Subdivision) formed in 2000, cancel the special assessments charged, and refund levied special assessments the District previously collected. Measure R and S have the same provisions applicable to LLAD No. 33 (Valley View Subdivision), formed in 2007, and LLAD No. 39 (Heritage Subdivision), formed in 2015, respectively.

Although the facts provided show that the Board’s Interim General Counsel recommended that it take no action on the measures due to a concern over compliance with the state Elections Code, the Board passed Resolution 2024-18 placing all three measures on the November 2024 General Election.⁴ All measures were approved by the voters in that election.

Now that Measures Q, R, and S have passed, the District may continue to address the legality issues raised by its legal counsel. These legal issues include whether it is proper for an LLAD to be treated as a “district” for purposes of the vote, or if all members of the District must vote on all three measures, and whether to seek a post-election challenge as to the vagueness, statute of limitations on periods for the refund, or for violations of Proposition 218’s provisions. Consideration of these issues may, in turn, require Directors to receive legal advice and give direction in duly noticed closed sessions. Legal counsel has also expressed concern that the District could become a party to litigation concerning one or more of the measures, particularly if the proponents believe the District is not complying with or implementing the measures’ letter and intent.

Should the District conclude legal issues concerning Measures Q, R, and S do not present obstacles to their enforcement, the District will need to determine how to respond to and implement the measures. Among other things, you anticipate the District’s Board of Directors (“Board”) would likely take formal actions to, or give direction to staff regarding, any number of subjects, such as whether to dissolve the three LLADs, refund all or a portion of special assessment revenues and

³ Proposition 218 defines “special benefit” as “a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large.”

⁴ No facts were provided as to Director Ferry’s participation in the decision to place the measures on the ballot or engage in pre-election litigation. We do not provide advice on conduct that has already occurred. Our advice is limited to future decisions only and does not address any past Board decisions regarding the measures.

determine for what period. The Board must also consider the nature and extent of the District's obligation to continue providing parks and improvements in the affected subdivisions in light of any dissolution of the LLADs, and whether to remove and dispose of any LLAD improvements or amenities—such as park fixtures, playground equipment, etc.—due to the loss of special assessment revenue. The Board may also consider whether to request or contract with homeowners associations (“HOAs”) for any or all of the affected subdivisions to assume responsibility for funding or maintenance of the LLAD improvements and whether to dispose of real property the District owns for the benefit of the LLADs if the District determines the property is no longer needed for District purposes or may be declared surplus. The Board may also consider negotiation with initiative proponents or neighborhood representatives regarding alternative methods by which the District might continue to provide and fund the amenities the LLADs have provided, and whether to retain legal counsel, consultants, or professionals to assist in handling the above or related matters. You note that District counsel anticipates that the Board will likely resolve the above issues uniformly for the three measures because the same concerns and circumstances are anticipated to exist for each measure.

District Board Members: Director Ferry & Director King

Elected in 2022, Director Ferry is a property owner in the subdivision affected by Measure S. This is his primary residential property. If this measure were enforced as written, the LLAD in which his property is located, LLAD No. 39, would effectively be dissolved and the Director's property would no longer be subject to annual assessments. Director Ferry, like other subdivision property owners, would also receive a refund for all assessments collected against his property since 2015.

Elected this past November, Director King is a property owner in the subdivision affected by Measure R. Director King was also a formal proponent of that initiative measure. This is his primary residence. If the measure were enforced as written, the LLAD in which his property is located, LLAD No. 33, would effectively be dissolved and the Director's property would no longer be subject to annual assessments. Director King, like other subdivision property owners, would also receive a refund for all assessments collected against his property since 2007.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using their 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, 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, relevant to these facts: an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)

Director Ferry and Director King each have identified a real property financial interest in the decisions at issue. We examine whether it is reasonably foreseeable that the decisions identified will have a material financial effect on the official's respective real property interests.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. Regulation 18701(a) states that a financial interest is “the subject of” a proceeding under certain criteria, including where the decision affects a real property financial interest as described in the regulation setting forth the real property materiality standard, Regulation 18702.2, items (a)(1)-(6), discussed further below. 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 whether “the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical.” If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.” (Regulation 18701(b).)

Inextricably Interrelated

Where a decision in which an official has a disqualifying interest is “inextricably interrelated” to the other decisions that comprise the series of decisions, the official is disqualified from taking part in all of those decisions. (*Mottos* Advice Letter, No. A-16-113.) Regulation 18706(b) provides that “decisions are ‘inextricably interrelated’ when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.”

Legal Challenges to Measures Q, R, & S and LLAD Assessment Decisions: Dissolving, Refunds, Periods for Refunds

Pertinent to the decisions involving the LLAD assessments and refunds of assessments, Regulation 18702.2(a)(3) states that the reasonably foreseeable financial effect of a government decision on a real property parcel is material when the decision would repeal or modify any taxes or assessments that apply to the parcel. Therefore, each official will have a disqualifying financial interest in any decision that would repeal or modify the LLAD assessment that applies to their real property parcel and may not participate in those decisions. This would include decisions to refund any portion of their parcel’s assessment, and the time period involved. Because the legal challenges described relate to the legality and enforceability of the measures’ canceling of the existing assessments as well as the time periods for which refunds of past assessments may be made, the officials will also have a disqualifying interest in decisions on whether to pursue post-election legal challenges to the measures under this standard as well.

Further, the facts indicate that the Board will likely resolve the Measure Q, R, and S issues uniformly for all three measures because the same concerns and circumstances are anticipated to exist for each measure. The result of a decision, for example, to refund assessments to properties located in LLAD No. 33, where Director King owns assessed property, would effectively determine the Board’s decisions to refund assessments in LLAD No. 22, and in LLAD No. 39, where Director Ferry owns assessed property. Therefore, Director Ferry and Director King will have a disqualifying interest in the decisions relating to the legal challenges, dissolution of the LLADs, refund of assessments and modification of assessments decisions for all three measures, because the decisions are inextricably interrelated.

Parks and Improvements Decisions

Pertinent to the Board's decisions on continuing to provide parks and improvements in the subdivisions where its LLAD is dissolved, and whether to remove and dispose of any LLAD improvements or amenities such as park fixtures or playground equipment, we first look to the standard in Regulation 18702.2(a)(6). This provision states that the reasonably foreseeable financial effect on an official's real property parcel is material if it involves construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the official's parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. We have previously advised that the "improvement" standard applies to the removal or closure of improvements. (See *Hill* Advice Letter, A-18-092, [decision option was to close or remove freeway on-ramps].)

A governmental decision may also have a reasonably foreseeable, material financial effect on an official's real property based on the proximity between the official's property and the property at issue in the decision. (Regulation 18702.2(a)(7)-(8), (b).) Under Regulation 18702.2(a)(7), the financial effect of a decision regarding parks, improvements and amenities on an official's parcel is material if it 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. Under Regulation 18702.2(a)(8) the financial effect of these decisions on the official's parcel is material if involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's: development potential; income producing potential; highest and best use; character (by substantially altering traffic levels, the intensity of use, parking, view, privacy, noise levels, or air quality); or its market value. If the decision affects property located more than 1,000 feet from the official's parcel, there is a presumption that the financial effect on the official's parcel is not material unless there is clear and convincing evidence that the decision would have a substantial effect on the official's parcel. (Regulation 18702.2(b).)

The facts specific to these decisions, regarding impacts on services relative to the official's property and the proximity to an official's parcel, are not available at this time, and we cannot provide further analysis for these decisions. We caution that decisions in this category may be "inextricably interrelated," for example, where the decision is whether to remove all park fixtures in a dissolved LLAD subdivision and this effectively will determine how each affected subdivision's park fixtures are treated. We recommend further advice be sought as needed, once the specific decisions are identifiable.

Agreements with an HOA/Negotiations with Stakeholder Groups or to Retain Outside Assistance

The decisions identified regarding negotiating with stakeholder groups (including the HOAs) for alternate methods to maintain or fund the affected LLAD's improvements will be subject to the above-noted Regulation 18702.2 standards, and we caution this may result in an official having a disqualifying interest that will require their recusal from participation as well as from all inextricably related decisions. We cannot provide further analysis until specific facts regarding the potential impacts on the official's financial interest can be provided. Additionally, these decisions involve agreements that are subject to Section 1090's prohibition on public officers

making or participating in making contracts in which the officer has a financial interest. We recommend further advice be sought as needed, once the specific decisions are identifiable.

Public Generally Exception

When an official has a disqualifying financial interest under the Act, an official may still participate under the “public generally” exception. Regulation 18703(a) permits a public official to take part in a governmental decision under the Act that affects one or more of the official’s interests if the decision’s financial effect on the interest is indistinguishable from its effect on the public generally. This standard is met if the official establishes that a significant segment of the public is affected, and the effect on the official’s financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).)

A significant segment of the public is at least 25 percent of all real property, commercial real property, or residential real property within the official’s jurisdiction. (Regulation 18703(b).) Where the *only* interest the official has in the governmental decision is the official’s primary residence, a significant segment of the public is at least 15 percent of residential real property in the official’s jurisdiction. (Regulation 18703(b)(2).) “Jurisdiction” is defined as the jurisdiction of the agency, here the District, or the designated geographical area the official was elected to represent or the area the official has authority over or duties for, if not elected.

A “unique effect” on an official’s financial interest relevant to these facts includes a disproportionate effect on the development potential, or use of the official’s real property or on the income-producing potential of the official’s real property; or a disproportionate effect on the official’s real property due to the proximity of the project. (Regulation 18703(c)(1) and (2).) A unique effect may also be a disproportionate effect on the official’s personal finances. (Regulation 18703(c)(6).) While there is a specific rule for decisions that set or adjust the amount of an assessment for broadly provided public services applied equally or proportionally to all properties subject to the assessment, it does not apply until the decisions to implement and determine the property subject to the assessment have already been made. (Regulation 18703(e)(1).)

Here, each official’s sole interest is in their respective primary residence. To determine if the public generally exception applies, each official must establish that at least 15 percent of all residential real property in the District would be affected by a decision and that the effect is not unique compared to the significant segment. A decision to repeal or refund the assessments would not meet the exception in Regulation 18703(e)(1). No facts were provided regarding the jurisdiction of the Board members or the impacts on the residential properties in the District, so we do not provide advice on this issue at this time.

If you have other questions on this matter, please contact me at KHarrison@FPPC.CA.Gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja