

1 GARY S. WINUK
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
4 428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of) FPPC No. 12/085
12)
13 JAMES KOPSHEVER,)
14)
15 Respondent.) (Gov. Code §11503
16)

17 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
18 Order for consideration at its next regularly scheduled meeting.

19 Respondent James Kopshever has been provided advice by an attorney of his choosing as to his
20 rights to a probable cause conference and an administrative hearing under the Political Reform Act,
21 Administrative Procedure Act, and all other relevant laws. Respondent has chosen to waive all such
22 rights to a probable cause conference and administrative hearing and to allow this matter to proceed to a
23 default decision.

24 In this case, Respondent James Kopshever violated the Political Reform Act as described in
25 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.
26 Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision
27 and Order is submitted to the Commission to obtain a final disposition of this matter.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

DECISION AND ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Three Thousand Dollars (\$3,000) upon Respondent James Kopshever, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent James Kopshever was a member of the Chowchilla City Council, in Madera County, CA, from 2007 through 2012. At all relevant times, Respondent was a public official as defined in Section 82048, of the Political Reform Act (the “Act”),¹ and therefore he was prohibited from making, participating in making, or attempting to use his official position to influence a governmental decision in which he knew, or had reason to know, that he had a financial interest. (Section 87100.)

At all relevant times, in his private capacity, Respondent was the sole proprietor of a real estate and consulting business located in Chowchilla, CA.

In this case, Respondent made a governmental decision as a member of the Chowchilla City Council in which he had a financial interest, by voting to award a five-year farm land lease agreement to Fagundes Brothers Dairy, which was a source of income to Respondent.

For the purposes of this Default, Respondent’s violations are stated as follows:

COUNT 1: On or about October 12, 2009, Respondent James Kopshever, as a member of the Chowchilla City Council, made a governmental decision in which he had a financial interest, when he voted to award a five-year farm land lease agreement to Fagundes Brothers Dairy, which was a source of income to Respondent, in violation of Government Code Section 87100.

PROCEDURAL HISTORY

A. Waiver of Rights Under the Act and the APA

Respondent has been informed of the charges set forth herein and his rights to a probable cause hearing and an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. However, Respondent has agreed to waive these rights, and Respondent is aware that by doing so, the Enforcement Division will proceed with this Default recommendation to the Commission, which, if approved by the Commission, will result in Respondent being held liable for the penalty amount of \$3,000.

A copy of Respondent’s written waiver in this regard is submitted herewith as Exhibit A and incorporated herein by reference as if in full.

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.

NATURE OF DEFAULT PROCEEDINGS

In this situation, where the Respondent has waived his rights to a probable cause conference and an administrative hearing, the Commission may take action based upon the Respondent's express admissions (if any) or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subdivision (a).)

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violation in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to prevent conflicts of interest by public officials. (Section 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Conflicts of Interests

The primary purpose for the conflicts of interests provisions of the Act is to ensure that "public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.

First, the individual must be a public official as defined by the Act. Section 82048 defines "public official" to include "every member, officer, employee or consultant of a state or local government agency... ." (Section 82048.) Local government agency means a "county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing." (Section 82041.)

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a) (1), a public official “makes a governmental decision” when the official votes on a matter.

Third, the official must have an economic interest that may be financially affected by the governmental decision. A public official has an economic interest in any source of income, as defined in Section 82030, aggregating five hundred dollars (\$500) or more in value provided or promised to, the official within 12 months prior to the time when a decision is made. (Section 87103, subdivision (c).)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Regulation 18704.1 provides that a person who is a source of income to a public official is directly involved in a decision before an official’s agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made or; (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of the proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.3, subdivision (a), if a source of income is directly involved in a governmental decision, *any* reasonably foreseeable financial effect on the source of income to a public official is deemed material.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)²

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent’s economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question, and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency. (Regulation 18706, subd. (b).)

///

² The *Thorner* opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

SUMMARY OF THE FACTS

Respondent James Kopshever was a member of the Chowchilla City Council, in Madera County, CA, from 2007 through 2012.

At all relevant times, Respondent was the sole proprietor of Jim Kopshever Real Estate and Business Consulting, a real estate and air/water consulting business located in Chowchilla, CA. In his 2008 and 2009 annual statements of economic interests, Respondent included Fagundes Brothers Dairy (“Fagundes Bros.”), a dairy and farming business in Madera County, CA, as a single source of income over \$10,000.00 to Jim Kopshever Real Estate and Business Consulting.

In July 2009, the City of Chowchilla requested bid proposals for the purpose of leasing City of Chowchilla real property under a farm lease agreement for a five year term. Two interested parties submitted sealed bid proposals, one of which was Fagundes Bros. Since the bid by Fagundes Bros. offered the highest amount in lease payments to the city (\$16,878 per year), staff for the City of Chowchilla recommended that the Fagundes Bros. be awarded the farm lease.

On October 12, 2009, the matter was presented to the Chowchilla City Council on the consent calendar. A staff report detailing the bidding process and proposals received, as well as a copy of the farm lease³ was included in the Agenda Packet. The Chowchilla City Council was asked to award a farm land lease agreement to Fagundes Bros. Respondent seconded the motion to approve the consent calendar, including the farm lease to Fagundes Bros., and the motion carried unanimously by role call vote.

Accordingly, Respondent committed one violation of the Act, as follows:

Count 1

(Making a Governmental Decision in Which the Public Official Had a Financial Interest)

Respondent violated the conflict of interest provisions of the Act by making a governmental decision in which he had a financial interest when he voted to award a five-year farm land lease agreement to Fagundes Bros., which was a source of income to him.

As a member of the Chowchilla City Council, Respondent was a public official. On or about October 12, 2009, Respondent made a governmental decision by voting to award a five-year farm land lease agreement to Fagundes Bros. Respondent had an economic interest in Fagundes Bros. because he received income of \$500 or more from Fagundes Bros. within 12 months prior to the decision on October 12, 2009. Fagundes Bros. was directly involved in the governmental decision because Fagundes Bros. initiated, was a named party and was the subject of the proceeding regarding the farm lease. Because Fagundes Bros. would be obligated to pay \$16,878 per year if awarded the farm lease, the financial effect of the governmental decision upon Fagundes Bros. was material. Additionally, it was reasonably foreseeable that the decision

³ The Farm Lease allowed for the farming of crops, not to include trees, vines or any long term crop.

would have a material financial effect on Fagundes Bros. because the farm lease would allow Fagundes Bros. to grow more crops either to feed their livestock or to sell on the market.

Thus, by making a governmental decision in which he had a financial interest, Respondent violated Government Code Section 87100.

CONCLUSION

This matter consists of one (1) count of violating the Act, carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

1. The seriousness of the violations;
2. The presence or lack of intent to deceive the voting public;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the Respondent demonstrated good faith in consulting with Commission staff;
5. Whether there was a pattern of violations; and
6. Whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

In this matter, Respondent made a governmental decision in which he had a financial interest by voting to award a five-year farm land lease agreement to Fagundes Bros., which was a source of income to him. The investigation in this case revealed that Respondent was an experienced public official, having served on several local boards and commissions, including 13 years on the Chowchilla Planning Commission. Thus, Respondent knew or should have known that he had a conflict of interest in this regard.

In mitigation, Respondent fully cooperated with the investigation of this matter. He has no prior violations of the Act, he does not currently hold public office and he has stated that he does not intend to seek public office in the future. Additionally, at the time of the decision to approve the consent calendar item, Respondent believed that he was not prohibited from voting since it was a sealed bid process based on the specifications in the Request for Proposals, and city staff had recommended that the farm lease be awarded to the highest bidder, Fagundes Bros. He also had no involvement in the Fagundes Bros.' preparation of the bid to the City or any other aspect of the process, and he did not receive any personal financial benefit from the transaction. Thus, the evidence shows that Respondent's failure to recuse himself was, at most, negligent.

Making a governmental decision in which an official has a financial interest is a serious violation of the Act as it may create the appearance that a governmental decision was made on

the basis of an official's financial interest. Recent prior enforcement actions approved by the Commission involving similar violations as in this Stipulation are as follows:

- **In the Matter of Thomas Bartee, FPPC No. 10/581.** Respondent, as a member of the Vallejo Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting on a design contract for a redevelopment project when he owned real property within 500 feet of the boundaries of the project. Penalty per relevant count: \$3,000 (1 count). Approved by Commission August 2012.
- **In the Matter of Claudia Chandler, FPPC No. 10/806.** – Respondent, as Chief Deputy Director of the California Energy Commission, made a governmental decision in which she had a financial interest, by awarding two contracts from the CEC to Cambria Solutions, a company in which she had a personal financial interest through her community property interest in her husband's business. Penalty per relevant count: \$3,000 (2 counts). Approved by Commission December 2011.

RECOMMENDED PENALTY

The facts of this case, including the aggravating and mitigating factors above, justify imposition of an administrative penalty of Three Thousand Dollars (\$3,000) for Count 1.

* * * * *