



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 6, 2024

Lexi Boeger
Planning Commissioner
District 3, El Dorado County
1709 Carson Rd.
Placerville, CA 95667

Re: Your Request for Advice
Our File No. A-24-071

Dear Ms. Boeger:

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 Act’s conflict of interest provisions 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

Are you, as a Planning Commissioner for District 3 in El Dorado County (“Planning Commission”) and an employee at your parents’ winery (the “Winery”), prohibited from taking part in decisions involving “Special Events” provisions of an ordinance impacting the local winery industry and submitting recommended changes to the Special Events provisions to the El Dorado County Board of Supervisors (“Board of Supervisors”)?

CONCLUSION

As a Planning Commissioner and an employee of the Winery, you have interests in the Winery as a source of income and business entity. Considering the winery’s approximate annual gross revenue of \$3,000,000, you are generally prohibited from taking part in a decision if it is reasonably foreseeable that the decision will increase or decrease the Winery’s annual gross revenues, or the value of the entity’s assets or liabilities, in an amount equal to or greater than \$150,000 or cause the Winery to incur, avoid, reduce, or eliminate expenses equal to or greater than

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.

\$30,000. However, based on the facts provided, the proposed Special Events provisions will address the maximum number of weddings a winery can host annually and ensure that venues representing themselves as wineries are engaged in winery related operations and not merely a wedding venue. As the Winery does not currently host weddings, holds only a limited number of Special Events, and is currently engaged in winery related operations, there is no indication that the special events provisions proposed may have a material financial effect meeting the thresholds above. Based on the facts provided, and so long as you have not received any income for legislative goals such as supporting or opposing the ordinance in question, you may take part in decisions regarding the review of an ordinance recently adopted by the Board of Supervisors as it pertains to the Special Events provisions.²

FACTS AS PRESENTED BY REQUESTER

In the County of El Dorado (“County”), there are approximately 80-100 wineries within the County. There are a few hundred commercial farms. The County recently adopted an ordinance (the “Ordinance”) amending and combining the County’s “Ranch Marketing Ordinance” and “Winery Ordinance.” The Ordinance includes standards for commercial wineries, such as minimum acreage, setbacks, limits on ground coverage, and use of non-local produce. Similar standards are established for ranches within the County. The Ordinance also contains standards relating to wineries’ and ranches’ permissible ancillary activities, such as weddings, which the Ordinance refers to as “Special Events.”

Currently, the Ordinance is being reviewed by two County commissions: the Agricultural Commission and the Planning Commission. Both commissions will provide an “Update” to the Board of Supervisors regarding how the Ordinance’s recent amendments are working. The Update may include recommendations for changes to the Ordinance, which could, in turn, result in the Board of Supervisors approving a Resolution of Intent to amend or consider amending the Ordinance.

The two commissions’ review and potential recommendations will pertain to the topic of Special Events and, more specifically, weddings held at wineries and ranches. Under the Ordinance, permissible Special Events include up to 24 weddings per year. In particular, there is a concern about people buying Ag-zoned land and planting the bare minimum amount of crops necessary to open and operate a wedding venue as part of their Ranch Marketing entitlements under the Ordinance. You explain that the County does not have a separate ordinance specifically relating to weddings and Special Events, which are only permitted through such agricultural rights. You also state that wineries are “not really under the microscope” because the development standards that apply to wineries are quite substantial, such that an individual could not easily “fake” operating a winery. The goal is to better define and control weddings at some properties hosting weddings without farming. The commissions’ review will focus on: (1) the Ordinance’s new reporting requirements (where wineries and farms have to submit their Special Events to the Ag

² We caution, however, that we do not have sufficient information to reach a conclusion regarding provisions other than the review of the Special Events provisions. If the discussion extends to topics outside of the Special Events provisions, you should seek additional advice.

Commissioner to post publicly); (2) the enforcement of decibel levels for amplified noise; and (3) the requirement that agriculture be the “primary” business (not events).

Your parents own a winery (the “Winery”), and you are an employee of that business. The Winery does not host weddings. Special Events are not a consistent part of the Winery’s business operations. The Winery almost entirely engages in “Marketing Events,” which are a separate category of events specified in the Ordinance (which you provided a copy of) and are not limited in the number of events that may be held. If the Winery allows its grounds to be used for a non-Marketing Event, such as for non-profit events or retirement parties, it is usually provided free of charge. You note that while the Winery has occasionally held Special Events over the years, it has been a couple of years since the last occurrence. You estimate the Winery has an annual gross revenue of approximately \$3 million.

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:

- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on 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; and
- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103(c)-(d).)

While you have no ownership in the Winery, you are currently an employee; therefore, you have an interest in the Winery as a source of income and business entity interest.

Regulation 18701(a) provides that a decision’s financial effect on an official’s financial interest is presumed to be reasonably foreseeable if the official’s interest is “explicitly involved” in the decision; an official’s interest is “explicitly involved” if the interest is a named party in, or the subject of, the decision; and the 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 interest. A property interest is explicitly involved in any decision affecting the property as described in Regulation 18702.2(a)-(6). Where, as here, the financial interest is not explicitly involved in the decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

Regulation 18702.1 provides the standards for determining whether a financial effect on a business entity's interest is considered material. In relevant part, the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income to the official, is material where the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of the entity's annual gross revenues and at least \$10,000. (Regulations 18702.1(a)(2)(A) and (B), 18702.3(a)(4).) The reasonably foreseeable financial effect of a governmental decision on an official's business entity interest is also material where the decision may cause the entity to incur, avoid, reduce, or eliminate expenses equal to or greater than \$250,000, or one percent of the entity's annual gross revenues and at least \$2,500. (Regulation 18702.1(a)(3)(B).) You have provided that the approximate annual gross revenue for the Winery is \$3 million. You have also indicated that the Winery does not typically host Special Events, has not hosted a Special Event in the last couple years, and does not host weddings. Based on the facts provided, it appears any recommendations the Planning Commission may make to the Board of Supervisors would not affect the Winery's annual gross revenue or assets or liabilities by \$150,000 (i.e., five percent), nor would it affect the Winery's expenses by at least \$30,000 (i.e., one percent).

Regulation 18702.3 provides the standards applicable for determining whether a financial effect on a source of income interest is considered material. Generally, when a source of income is a business entity, the same business entity materiality standards discussed above apply. (Regulation 18702.3(a)(4).) However, Regulation 18702.3(b) also establishes an alternate materiality standard generally referred to as the "Nexus test," which states:

Any reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal.

Though you have indicated you are an employee of the Winery, you have not provided any additional facts regarding your specific job duties. If a Planning Commission decision would achieve, defeat, aid, or hinder a purpose or goal of the Winery and you receive or are promised income for achieving that purpose or goal, the Nexus test would prohibit you from taking part in that decision.

Otherwise, barring additional facts, you do not have a prohibitive financial interest in the decisions relating to reviewing and recommending changes to the Board of Supervisors regarding the Ordinance's Special Events provisions. Consequently, the Act does not prohibit you from taking part in the decision.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to be 'BL' or similar initials, written in a cursive style.

Brian G. Lau for

By: Katelyn L. Baeta-Orick
Counsel, Legal Division

KBO:aja:bc