



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 23, 2024

Brian E. Washington  
County Counsel  
County of Marin  
3501 Civic Center Drive  
Suite 275. San Rafael, CA 94903

Re: Your Request for Advice  
**Our File No. A-24-098**

Dear Mr. Washington:

This letter responds to your request for advice on behalf of Marin County Supervisor Eric Lucan regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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

May Supervisor Lucan participate in the Marin County Board of Supervisors’ decisions regarding regulating electrical bicycles (“e-bikes”) under proposed legislation to enact the Marin Electric Bicycle Safety Pilot Program, including considering regulations and participating as a member of a Board of Supervisors’ subcommittee or working group to make recommendations to implement the program?

### CONCLUSION

No, it is reasonably foreseeable that the described decisions to limit the use or sales of e-bikes and require the use of safety equipment such as helmets will have a material financial effect on Supervisor Lucan’s source of income, Mike’s Bikes, because the decisions would achieve,

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<sup>1</sup> 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.

defeat, aid, or hinder a purpose or goal of the source (to sell e-bikes and safety equipment) and Supervisor Lucan, as Mike's Bikes' Chief Marketing Officer, receives income and is promised income for achieving this purpose or goal. This disqualification would include participation in the Board of Supervisors' working group or ad hoc committee.

### **FACTS AS PRESENTED BY REQUESTER**

Supervisor Eric Lucan was elected to represent Marin County Board of Supervisors District 5 in March of 2022, taking his seat on the Board of Supervisors on January 2, 2023. Prior to taking his seat on the Board, Supervisor Lucan was employed by Mike's Bikes, holding the position of Chief Marketing Officer. Supervisor Lucan has received income from Mike's Bikes totaling \$500 or more in the past 12 months and expects to receive income that meets this threshold over the next 12 months. Supervisor Lucan does not have an investment or ownership interest in Mike's Bikes, and the business is a privately held corporation. Mike's Bikes sells conventional bicycles, e-bikes, helmets, and other bicycle gear. It has 18 locations, 14 in California and four in Colorado. Two of the 14 California locations are in Marin.

Marin County has a population of approximately 260,000 and is home to more than 20 bicycle shops. Other Bay Area Counties surrounding Marin County have a similar wide range of bicycle retail shops.

#### *Potential Regulation of E-Bikes*

Recently, significant concerns have arisen in Marin County surrounding e-bike safety. Concerns have focused on safety issues arising from e-bike accidents, particularly among 10- to 16-year-olds. In response to this concern, Assembly Member Damon Connolly has authored Assembly Bill 1778, currently pending in the Legislature. If adopted, AB 1778 would, among other things, establish the Marin Electric Bicycle Safety Pilot Program that would authorize Marin cities and towns, or the County of Marin in unincorporated areas, to adopt an ordinance or resolution that would prohibit a person under 16 years of age from operating a class 2 e-bike or require a person operating a class 2 e-bike to wear a bicycle helmet.

The Marin County Board of Supervisors is currently evaluating how to promote e-bike safety and is preparing to consider how to implement AB 1778 if the Governor approves it this fall. As part of this process, the Board may create an ad hoc subcommittee pursuant to Government Code Section 54952(b). In addition, one or two Board of Supervisors Members may participate in a city/town/county working group tasked with developing recommendations for coordination of AB 1778 implementation. You state that the Board of Supervisors is considering whether to adopt e-bike regulations to limit sales of certain types of e-bikes to children under 16 years of age and/or adopt other safety regulations, such as helmet requirements. The subject at issue is safety regulations for e-bike use, focusing on minors, not bicycle retail shops generally.

Supervisor Lucan would like to participate in any Board of Supervisor consideration of AB 1778 implementation and in the above-referenced committees/working groups making recommendations on this subject to the Board of Supervisors. You state that the financial impacts of potential regulations or ordinances to implement the Pilot Program on e-bike sales or Mike's Bikes' revenue are not known at this time. Potential regulations that the Board will consider relate to a

narrow segment of e-bike sales, a subcategory of overall bicycle sales. You anticipate that any impact on Mike's Bikes would also be experienced by other Marin bike shops. You indicated that the above information is all that can be provided at this time.

## 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 a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in a source of income to the official or promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

Due to his employment as Mike's Bikes' Chief Marketing Officer, Supervisor Lucan has a business entity interest and source of income interest in Mike's Bikes, a retail bicycle store.

### *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 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). There is no indication from the facts that Mike's Bikes is the "subject of" the decisions identified for analysis.

When an official's economic interest is not explicitly involved in the governmental decision, as here, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b), which states "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."

### *Business Entity and Source of Income of Interest*

A governmental decision's reasonably foreseeable financial effect on an official's interests in a business entity and source of income not explicitly involved in the decision is material if the business will be financially affected under the materiality standards in Regulation 18702.1. (See Regulation 18702.3(a)(4).) Relevant to these facts, under Regulation 18702.1(a), the reasonably

foreseeable financial effect of a governmental decision on an official's interest in a business entity is material if:

- 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 (A) \$1,000,000 or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than (A) \$250,000 or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

In addition to the above standards in Regulation 18702.1, for an interest in a source of income, Regulation 18702.3(b) (generally referred to as the "nexus test") states that the financial effect is material under the following conditions:

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.

The facts indicate that the Pilot Program would authorize the County to adopt an ordinance or resolution that would prohibit a person under 16 years of age from operating a class 2 e-bike or require a person operating a class 2 e-bike to wear a bicycle helmet. Also, the County Board of Supervisors is considering whether to adopt e-bike regulations to limit sales of certain types of e-bikes to children under 16 years of age and/or adopt other safety regulations, such as helmet requirements. The ad hoc committee or working group would make recommendations on these issues to the Board. As relevant to the nexus test, Mike's Bikes sells e-bikes and bicycle equipment, including helmets, and the Supervisor is employed as its Chief Marketing Officer. The decisions described would achieve, defeat, aid, or hinder the sale of bicycles and bicycle equipment, which is a purpose or goal of Supervisor Lucan's source of income, Mike's Bikes. Moreover, Supervisor Lucan receives income to oversee the marketing of bicycles and bicycle equipment and is therefore receiving income for achieving the purpose or goal of selling these products. Accordingly, the nexus test prohibits Supervisor Lucan from taking part in these decisions because it is foreseeable the decisions will have a material financial effect on the Supervisor's interest in his employer and source of income.

If you have other questions on this matter, please contact me at [KHarrison@Fppc.ca.gov](mailto:KHarrison@Fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

*Brian J. Lau*

For:

By: L. Karen Harrison  
Senior Counsel, Legal Division

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