



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 21, 2023

Sandra Maurer  
Sebastopol City Council  
200 Frankel Lane  
Sebastopol CA 95472

Re: Your Request for Informal Assistance  
**Our File No. I-23-008**

Dear Ms. Maurer:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because your inquiry is general in nature, we are treating your request as one for informal assistance.<sup>2</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

Do you have a conflict of interest in City decisions concerning smart water meters and any issues involving electromagnetic fields (“EMFs”)?

### CONCLUSION

Yes. Based on the facts provided, you would likely be disqualified under the Act from taking part in City decisions concerning the use of smart water meters and any issues involving EMFs because of the impermissible nexus between the decisions and income you have received

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

from the EMF Safety Network during the preceding 12 months.<sup>3</sup> However, we cannot determine whether an exception to the Act's conflict of interest provisions, including the Public Generally Rule, allows for your involvement in a specific decision until you can identify the decision. You may wish to seek further advice when a specific decision has been identified. We additionally caution that laws outside the Act may apply including, but not limited to, common law conflicts of interest. We encourage you to review with the City Attorney whether that body of laws, or any other laws outside of the Commission's purview, may apply.

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

You currently serve on the Sebastopol City Council. In a follow up email, you state that you assumed office on December 6, 2022. You have been outspoken and taken a position opposing smart meters and other devices that emit EMFs for many years. During your campaign, you advocated against EMFs, pledging to "uphold Sebastopol's General Plan, smart meter ban and historic policies to reduce EMFs (electromagnetic fields and wireless radiation) to protect public health and safety..."

You were also the founding director and owner of the EMF Safety Network, an organization that opposes smart meters and the use of EMF emitting devices, from 2009 until December 30, 2022, when you sold the EMF Safety Network for \$1. Your annual income from the EMF Safety Network was as follows: 2019 \$9,638; 2020 \$7,031; 2021 \$7,264; and 2022 approximately \$8,500. In a follow up email, you state that you are no longer employed by EMF Safety Network and are not receiving any kind of compensation. However, you are in the process of finishing transferring online social media accounts (Facebook, Twitter, you tube, Vistaprint, etc.) to the new owner. This process has taken longer than expected. You also state that you last received income from the EMF Safety Network on December 29, 2022.

The EMF Safety Network sent a demand letter in June 2022, and a follow up demand letter in September 2022, to the City on the proposed installation of smart water meters threatening legal action if the City moved forward with plans for smart water meters. However, the EMF Safety Network did not file a lawsuit concerning the City's proposed action on the water meters.

In 2013, Sebastopol enacted a temporary moratorium in the installation of smart meters and related equipment within the City. The ordinance states that no smart meter may be installed in or on any home, apartment, condominium, business, or any City property in the City of Sebastopol, and no equipment related to smart meters may be installed in, on, under, or above any public street or public right-of-way in the City. The ordinance specifically states that the City council has adopted the moratorium over concerns regarding "potential risks to the health, safety and welfare of

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<sup>3</sup> Please note that we reach no conclusion at this time regarding your involvement in decisions 12 months from the date you last received compensation from EMF Safety Network. Generally, after 12 months, you will not have an interest in EMF Safety to the extent that you no longer have a direct or indirect interest in the entity and have not received any compensation from the entity for more than 12 months. However, we caution that you may retain a potentially disqualifying interest in EMF Safety to the extent the sale of the entity was conditioned on anyway, whether express or implied, such that you would have any future interest in the entity, including an expectation of repurchasing the entity. If this is the case, you would continue to have an interest in the EMF Safety Network beyond the 12 months following the final payment from this source aggregating \$500.

Sebastopol residents” resulting from smart meters, and EMF exposure in particular. The moratorium remains in effect.

### ANALYSIS

Under Section 87100, a public official may not make, participate in making, or use his or her 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 on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).)

Section 87103 identifies interests from which a conflict of interest may arise and includes:

- A business entity interest, where the public official has a direct or indirect investment worth \$2,000 or more (Section 87103(a).); or 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, 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(c).)
- An interest in his or her personal finances, including those of his or her immediate family. (Section 87103.)

The definition of “business entity” under Section 82005 excludes non-profit organizations. It defines “business entity”, in relevant part, as “any organization or enterprise operated for profit.” Additionally, Section 82034 provides, in pertinent part, that “[a]n asset shall not be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000).”

Thus, a nonprofit entity is not a “business entity” and ownership of a nonprofit does not constitute a disqualifying investment interest within the meaning of Section 87103(a). Moreover, since the nonprofit is not a business entity, Section 87103(d) also does not apply to you. You state that you assumed office December 6, 2022, and that you last received income from the EMF Safety Network on December 29, 2022, prior to selling it on December 30, 2022. Based on the facts provided, you have a financial interest in the EMF Safety Network as a source of income for the 12 months following the final payment from this source aggregating \$500 or more.

#### *Foreseeability*

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."

### *Materiality*

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest.

In the present situation, the reasonably foreseeable financial effect of a governmental decision on your interest in the EMF Safety Network as a source of income will be material if the EMF Safety Network "is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party." (Regulation 18702.3(a)(1).) There are no facts to suggest the EMF Safety Network itself will be a named party in, or the subject of, any future City decisions related to decisions involving Sebastopol's smart water meters.

In addition, the financial effect will be material when a decision may: 1) result in an increase or decrease of the nonprofit's annual gross receipts, or the value of its assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of its annual gross receipts and the increase or decrease is equal to or greater than \$10,000 (Regulation 18702.3(a)(3)(A)); or 2) may cause it to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000, or one percent of its annual gross receipts and the change in expenses is equal to or greater than \$2,500 (Regulation 18702.3(a)(3)(B)). However, considering the EMF Safety Network's goal of opposing smart meters in Sebastopol, it is unnecessary to consider whether the effect on the EMF Safety Network's gross receipts, asset or liabilities, or expenses will meet these thresholds.

As pertinent to the EMF Safety Network's underlying goals, Regulation 18702.3(b) sets forth the "nexus test," an alternative standard for determining the materiality of an official's financial interest in a source of income. Under the nexus test, "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." (Regulation 18702.3(b).)

The rationale for the nexus test is that, when an employee earns a salary to accomplish a purpose that may be advanced by what he or she does as a public official, we presume that the private employer is benefiting from the actions of the employee in his or her official capacity. (*Garza* Advice Letter, No. A-17-207; *Tran* Advice Letter, No. A-16-024; *Maltbie* Advice Letter, No. A-15-243.) Typically, a "nexus" is found in situations where the official is also a high-level employee with direct influence and control over their employer's management or policy decisions. (*Tran* Advice Letter, *supra*; *Moser* Advice Letter, No. A-03-147; *Low* Advice Letter, No. A-99-305.)

Here, as the founding director and owner of the EMF Safety Network, you have received income within the past 12 months to assist the EMF Safety Network in opposing the use of smart meters within Sebastopol. While you have not identified any specific decisions before the City Council, City decisions to either allow the use of smart meters, which are currently prohibited under a temporary moratorium, or maintain or extend the existing moratorium, would appear to aid in or hinder that express goal of the EMF Safety Network. The EMF Safety Network has long opposed smart meters, citing potential risks to the health and safety from EMF exposure in particular, and recently threatened to file a lawsuit against the City should it proceed to reverse the existing ban on smart meters.

Based on the limited facts provided, you would generally be disqualified under the Act from taking part in Council decisions concerning smart meters and EMFs because of the nexus between the decisions and income you have received from the EMF Safety Network. You will continue to have a financial interest in the EMF Safety Network as a source of income for the 12 months following the final payment from this source aggregating \$500 or more.

We do, however, note that we are unable to determine if you may take part in a specific decision under any exceptions to the Act's conflict of interest provision, including the Public Generally Rule, unless you can identify the actual decision. For instance, the Act does not generally prohibit on official from taking part in a decision if the financial effect on a public official's financial interest is indistinguishable from its effect on the public generally. Under Regulation 18703, the Public Generally Rule applies if the official establishes that a significant segment of the public is affected and the official's financial interest is not unique compared to the effect on the significant segment. Generally, a significant segment is defined as at least 25% of all:

- Businesses or non-profit entities in the official's jurisdiction;
- Real property, commercial real property, or residential real property within the official's jurisdiction; or
- Individuals within the official's jurisdiction.

Accordingly, you may wish to seek further advice when a specific decision concerning smart water meters or EMFs has been identified. We also emphasize that this conclusion is limited to the provisions of the Act. Your participation in decisions relating to smart meters may be prohibited by other provisions of law including common law conflict-of-interest laws. We suggest you consult with the city attorney regarding any other laws that may apply.

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

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
Senior Counsel, Legal Division

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