

Liza,

After reviewing the state conflict of interest statutes (ARS 38-501, et seq.) and all state case law construing it, I conclude that your participation as a member of the Cochise County Planning and Zoning Commission in a decision as to whether to recommend adoption of pending proposed water conservation regulations that would amend Article 18 of the Cochise County Zoning Regulations would not constitute a conflict of interest, despite the fact that your husband, Robert Weissler, who is executive director of the Friends of the San Pedro River ("FSPR"), and one of two paid employees of that organization, has spoken in support of those water conservation regulations at a call to the public before the Planning and Zoning Commission on which you sit.

Although I conclude that you are a "public officer" of the County, as defined under ARS 38-502(8), for purposes of proscriptions imposed under terms of ARS 38-503, I conclude that those proscriptions which, at subsection B, prohibit "[a]ny public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency . . . from participating in any manner as an officer or employee in such decision," do not apply to you because neither you nor your husband have any "substantial interest" in those water conservation regulations.

A "substantial interest" is defined by statute as "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." ARS 38-502(11). There are seven categories of "remote interest" defined by statute, at ARS 38-502, including that of a "member of a nonprofit cooperative marketing association," which I conclude the FSPR to be in the nature of.

But I need not rely on my construction of a "remote interest" to reach the conclusion that I have reached. Case law construing the conflict of interest statute makes clear that in order for there to be a "substantial interest" triggering restrictions on official action under ARS 38-503, it must be demonstrated that the official or relative thereof in question has "a pecuniary or proprietary interest, by which a person will gain or lose something, as contrasted to a general sympathy, feeling or bias." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (Ariz. App. Div. 2, 1972).

Subsequent Arizona case law has made it yet clearer that the circumstances presented here do not implicate any restrictions under the state's conflict of interest statute. Specifically, in *Hughes v. Jorgenson*, 203 Ariz. 71, 74, 50 P.3d 821, 824 (Ariz.), re-affirming the state intermediate court's reasoning in *Yetman*, the state Supreme Court concluded that a county sheriff did not have a conflict of interest in investigating the alleged criminal conduct of his sister despite his sister's risk of economic loss if convicted. In reaching this decision, the court concluded that "to violate the conflict of interest statute, a public official must have a non-speculative, non-remote pecuniary or proprietary interest in the decision at issue." *Ibid* (emphasis added).

Two other cases more closely parallel to your circumstances reiterate this reasoning. In *Shepherd v. Platt*, 177 Ariz. 63, 865 P.2d 107 (Ariz. App. Div. 1, 1993), the state court of appeals held that Navajo tribal members who sat on a county board of supervisors had no conflict of interest in voting on expenditures that would benefit their reservation because, while those decisions benefited their reservations, they themselves had no pecuniary or proprietary interest in that benefit. And even more

closely parallel, in *Emmett McLoughlin Realty Inc. v. Pima County*, 212 Ariz. 351, 132 P.3d 290 (Ariz. App. Div. 2, 2006), the state intermediate appellate court ruled that a county employee who sat on the county planning and zoning commission did not have an impermissible bias in favor of the county, even though his salary came from that government agency, when ruling in favor of the county in a land use dispute.

In short, in light of the facts that you have most candidly presented to me, I see no pecuniary or proprietary interest on the part of you or your husband that would preclude you under state law from participating in any decision concerning whether to vote as a member of the Cochise County Planning and Zoning Commission on whether to recommend adoption of proposed water conservation regulations that would amend Article 18 of the Cochise County Zoning Regulations. In fact, I can conceive of no pecuniary or proprietary benefit whatsoever, either direct or indirect, that you or your husband would gain by your voting either way on this question. And frankly, I suspect any other conclusion would raise serious questions about infringement of rights that both you and your husband are entitled to under the first amendment to the United States Constitution, but as that question is not before me, I do not address it herein.

In the interest of complete candor and transparency, however, I would strongly urge that you make a public record, by an oral statement before voting on this issue, of the nature of your husband's employment and the position he has taken on this issue. I hope this opinion adequately addresses the question you have raised. Please don't hesitate to get back to me if you have additional questions or require further elaboration.

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