

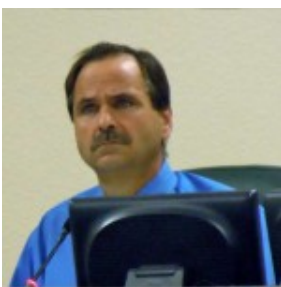
Nutting receives support from FPPC

By Peter Hecht, Sacramento Bee

In a conflicting series of events for embattled El Dorado County Supervisor Ray Nutting, the state's political watchdog agency supported him Monday against a conflict-of-interest allegation at the same time he faced felony prosecution for alleged political malfeasance in his county.

Nutting's troubles stem from a series of state payments he received for clearing brush on his 340-acre timber ranch under a fire safety program. El Dorado County and state prosecutors have charged him with felonies for not disclosing that money as an elected official and voting to fund two local fire districts that distribute the funds on the state's behalf.

After its own review of Nutting's actions at the supervisor's request, the state Fair Political Practices Commission's enforcement division in Sacramento said in an advisory letter Monday that the supervisor did not have a conflict of interest when he voted to fund two fire districts.



Ray Nutting

The enforcement division, however, did determine that Nutting failed to declare \$22,000 of state fire prevention income in 2009 and recommended that commissioners impose a \$400 civil fine at their June 20 meeting.

The FPPC issued its findings Monday in Sacramento as El Dorado Superior Court Judge Daniel B. Proud formally announced in a Placerville courtroom four felony counts against Nutting on charges of filing false documents, perjury and conflict of interest stemming from Nutting's alleged failure to disclose some \$70,000 in state income for brush clearing on a family ranch.

Under a related criminal complaint made public Friday, Nutting faces seven misdemeanors for illegally soliciting money from two county workers and a major construction contractor to bail himself out of jail May 28.

Nutting was scheduled to be formally charged Monday. But in a small county twist, Proud promptly put off the arraignment and withdrew, citing his personal relationship with the supervisor.

"It's my decision to recuse myself," Proud said. "I've known Mr. Nutting for a long time. I think he was the coach for my son's wrestling team."

In its letter, the FPPC noted that Nutting had received fire protection grant awards administered by the California Department of Forestry and Fire Protection and the regional Sierra Coordinated Resources Management Council, which includes the two local fire conservation districts.

The FPPC said Nutting could vote on general funding for the two conservation districts. Adrienne Korchmaros of the political oversight agency's enforcement division wrote that the supervisor acted properly because the board votes didn't involve a direct personal financial gain in violation of the California Political Reform Act.

"Because the decision by the Board of Supervisors to partially fund El Dorado County Resource Conservation District and the Georgetown Divide Resource Conservation District will flow to the public generally and does not uniquely benefit you, the

conflict of interest provisions of the Act will not apply," Korchmaros wrote.

The FPPC letter to Nutting noted that the Sierra council "was indirectly involved" in the Board of Supervisors' decisions to "partially fund two of its member agencies" distributing the fire funds. But it told the supervisor there was no evidence in Nutting's votes of a "material financial effect on your personal finances."

Nutting's defense lawyer, David Weiner, seized upon FPPC correspondence to assert that his client is facing excessive prosecution. "The significance of it is that there is really not much there," Weiner said.

But El Dorado County District Attorney Vern Pierson said Nutting is charged under separate criminal statutes that go beyond the FPPC's civil enforcement. He suggested that Weiner and another Nutting lawyer were trying to provide cover for their client by seeking – and getting – the letter from the FPPC.

"The FPPC is an administrative agency, not a law enforcement agency," Pierson said.

He added that Nutting is facing joint prosecution by the El Dorado County district attorney and the state attorney general's office "related to facts and circumstances far beyond what was provided to the FPPC by Ray Nutting's attorney."

Mary-Beth Moylan, a McGeorge School of Law professor specializing in political law, said the FPPC case and the El Dorado County prosecution may focus on similar alleged conduct but not "the same violation of the law." But Moylan said there were aspects of the FPPC's actions Monday that may help both sides in the criminal case.

On one hand, she said, the FPPC letter asserting Nutting

didn't have a civil conflict of interest in his board vote "could be presented as evidence in a criminal proceeding," adding: "I think that is going to benefit the defendant."

But she said the agency's finding that Nutting had failed to disclose income – and thus should pay a \$400 fine – could help the prosecution "because it suggests there was a violation."

On Monday, Proud said another El Dorado County Superior Court judge, Curt Stracener, will hold a hearing Thursday on a defense proposal to reduce Nutting's bail.

As prosecutor James Clinchard pushed Proud to set a July 16 trial date for Nutting, Proud declined due to the uncertainty over which judge will ultimately handle the case.

He said Suzanne Kingsbury, the presiding judge of the El Dorado Superior Court, will ultimately have to decide.

Weiner said the Nutting prosecution may have to be heard before a judge from another county.

"It could be that every judge in this county who knows him may recuse themselves," he said.