

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)

Opinion requested by)
 Thomas W. Oglesby)
 City Manager, City of Antioch)

No. 75-083

-July 2, 1975

BY THE COMMISSION: We have been asked the following question by Thomas W. Oglesby, City Manager, City of Antioch:

The City Council, City of Antioch, has created a Redevelopment Agency and declared itself to be the Agency. The proposed redevelopment plan includes five projects:

- (1) Construction of a civic center downtown.
- (2) Construction of a freeway off-ramp and related improvements.
- (3) Improvement of a major arterial from two-lane to four-lane.
- (4) Street improvements in Assessment District No. 11.
- (5) Preparation of a commercial and industrial site and circulation plan.

Councilman Mel Whatley, Chairman of the Agency, has disclosed ownership interest in three properties within the project area, several blocks from the proposed civic center. These include his real estate office and two rental properties. The properties have an assessed value of \$18,625. Assessed value of the property within the project area is approximately \$19 million. The assessed value is 25 percent of the fair market value of the property.

Mr. Whatley's real estate business includes participation in the Eastern Contra Costa Board of Realtors multiple listing service. By reason of such participation, Mr. Whatley may offer properties listed in the service to his customers, including properties in the redevelopment area.

We are asked whether these facts disqualify Mr. Whatley from participating in the decision to adopt the redevelopment plan under Government Code Section 87100.^{1/}

CONCLUSION

Based on the facts we have been provided, taken as a whole, Mr. Whatley should be disqualified from participating in the decision to adopt the redevelopment plan.

ANALYSIS

I

Before turning to the merits of the question presented, we must consider the threshold question whether we have jurisdiction to issue an opinion in this matter. The question on the merits arises under Sections 87100, et seq., the conflict of interest provision of the Act. Unlike other portions of the Act, violation of the conflict of interest provision does not subject the violator personally to criminal or civil penalties; the sole remedies for violations are injunctions and orders setting aside the official actions taken in violation of the Act. Sections 87102, 91003.

The authority of the Commission to issue formal opinions is contained in Section 83114, which provides as follows:

Any person may request the Commission to issue an opinion with respect to his duties under this title. The Commission shall, within fourteen days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The Commission's opinions shall be public records and may from time to time be published.

(Emphasis added.)

^{1/}All statutory references are to the Government Code unless otherwise noted.

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On the assumption that a violation of Sections 87100, et seq., gives rise to no criminal or civil penalties under the Act,^{2/} it might be argued that the Commission's opinion will have no effect and is therefore not authorized by Section 83114.

Such a conclusion is not dictated by the language of Section 83114. The section provides that "any person" may request an opinion respecting his duties under the Act. The immunity conferred by a Commission opinion is set forth in a separate sentence. There is nothing in the section suggesting that opinions can be issued only when immunity is conferred. The argument against the Commission's jurisdiction assumes that immunity is the only reason for the Commission's opinions. In fact, immunity is but one of several purposes. Commission opinions provide a valuable service to persons seeking them irrespective of immunity. It may be presumed that most persons at most times would wish to comply with the law, even in the absence of any sanction whatsoever. That is all the more the case when an injunction or order setting aside an official action is a possibility. Even if the Commission's opinion does not provide immunity against such remedies, the opinion is an administrative interpretation that would be given some weight by the courts, and the mere existence of the opinion would probably tend to discourage the seeking of such remedies. Equally important, the issuance of opinions is an essential tool for the Commission in carrying out its responsibility for the "impartial, effective administration and interpretation" of the Act under Section 83111.

For the foregoing reasons, we conclude that the Commission has jurisdiction to issue opinions under Section 83114 interpreting Sections 87100, et seq.^{3/} We turn to the merits of the question presented.

^{2/} It is not necessary for us to consider, and we intimate no views as to whether the setting aside of an official action under Section 91003(b) constitutes a "civil penalty," against which a person who relies in good faith on our opinion is immune. If this question were answered in the affirmative, then the jurisdiction of the Commission to issue opinions interpreting Sections 87100, et seq., would be beyond question.

^{3/} The fact that the Commission has such jurisdiction does not, of course, require the Commission to exercise its jurisdiction in all cases. In the present opinion, for example, we set forth conclusions regarding the effect of the Act on redevelopment programs. Most cities and counties have available the able services of city attorneys or county counsel, and ordinarily, these local officials are best equipped to evaluate the local
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II

Redevelopment has been authorized by California law since 1945.^{4/} The purpose of the statutes is to protect and promote sound development and redevelopment of blighted areas. The benefits from redevelopment are found to accrue to all inhabitants and property owners of the communities in which they exist. See Health and Safety Code Sections 33035 and 33037.

A redevelopment agency becomes empowered to transact business when a resolution is adopted by the legislative body of the community. Members may be appointed to the agency or the legislative body itself may choose to be the agency. In order to designate an area for redevelopment it is necessary first that the community have a planning commission and that it have a general plan which fulfills the requirements of the State Planning Act. The planning commission selects a "project area" which is an area of the community which is blighted. A project area may include lands, buildings or improvements which are not so blighted as to be detrimental to public health, safety or welfare but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part.

If a substantial number of low and moderate income families are to be displaced by the redevelopment project, a representative project area committee must be appointed, including residential owner-occupants, residential tenants, businessmen and members of existing organizations within the project area.

A redevelopment plan must be prepared by the agency and submitted to the planning commission for its report and recommendation. If a project area committee exists, the plan must be submitted to that committee. The agency must hold a public hearing before it approves the redevelopment plan. The agency then submits the plan to the legislative body which also holds a public hearing after which it may adopt, by ordinance, the official redevelopment plan for the project area. The agency and the legislative body, with the consent of both, may hold a joint public hearing on this

^{3/} (continued) realities and practical impact of a proposed plan. Although such local rulings lack the uniformity that would result if the Commission decided all cases, factual analysis of each redevelopment situation would be beyond the capabilities of the Commission and its staff, particularly at this early stage of the Commission's existence.

^{4/} The Community Redevelopment Law is found in Health and Safety Code, Division 24, Part 1, Sections 33000, et seq.

plan. Where the legislative body is also the agency, action to approve and adopt the plan need be taken only by the legislative body.

After the adoption of the plan, participation in the redevelopment of property in the project area by the owners of all or part of such property is encouraged. The agency has authority to acquire by negotiation or other means, real property in the project area. If members or officers of the agency own property, this property may be acquired only by eminent domain proceedings. Feasible methods for relocation of displaced persons are required. Real property acquired by the agency in any project area may be leased or sold. Such sale or lease must be approved by the legislative body by resolution adopted after public hearing.

At any time, the redevelopment plan may be amended after a public hearing. Limitations are placed on legal actions attacking the validity of the redevelopment plan to the period 60 days after the adoption of the ordinance.

The financing method used by redevelopment agencies is based upon the assumption that the assessed value of the property in the redevelopment area will increase. The taxes imposed by all taxing jurisdictions in the area will be limited to that assessed value existing at the effective date of the ordinance adopting the plan. The portion of levied taxes each year in excess of that amount is allocated to the agency. This means the agency is not limited to the taxing rate of the city but includes the revenues raised by all taxing jurisdictions, including school districts and other special districts. This revenue is normally pledged to pay principal and interest on indebtedness incurred by the agency.

The redevelopment procedure involves numerous decisions by public officials, whether agency members or legislative body members. These include the original adoption of the redevelopment plan, any later amendment to the plan, and decisions regarding sale or lease of property within the project area.

III

The basic conflict of interest restriction of the Political Reform Act is set forth in Sections 87100 and 87103 which provide as follows:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100.

An 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:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, ...aggregating two hundred fifty dollars (\$250) or more in value...; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103.

The Community Redevelopment Law contains its own provision with respect to conflict of interest. No restriction is imposed on the ownership of property within the redevelopment area by an officer or an employee of the agency. Such an interest must be disclosed, and therefore by implication it is permitted. In addition, if the agency desires to acquire any interest of an officer or employee, it must be acquired by eminent domain.^{5/} There is no provision regarding a member's business interest which will be affected by the project.

5/ No agency or community officer or employee who in the course of his duties is required to participate in the formulation of or to approve plans or policies for the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in such property, he shall immediately make a written disclosure of it to the agency and the legislative body which shall be entered on their minutes. Failure to so disclose constitutes misconduct in office.

IV

The facts which have been provided to us ^{6/} suggest two types of economic interests which might be held to disqualify Mr. Whatley from participating in a decision to adopt the proposed redevelopment plan: First, his ownership of three lots within the

5/ (continued)

This section shall not prohibit any such officer or employee from acquiring an interest in property within the project area for the purpose of participating as an owner or re-entering into business pursuant to this part provided that such officer or employee has owned a substantially equal interest as that being acquired for the three years immediately preceding the selection of the project area.

Health and Safety Code Section 33130

Notwithstanding any other provisions of law, an officer, employee, consultant, or agent of the agency or community, for personal residential use, may purchase or lease property within a project area after the agency has certified that the improvements to be constructed or the work to be done on the property to be purchased or leased have been completed, or has certified that no improvements need to be constructed or that no work needs to be done on the property. Any such officer or employee who purchases or leases such property shall immediately make a written disclosure to the agency and the legislative body, which disclosure shall be entered on the minutes of the agency. Any such officer or employee shall thereafter be disqualified from voting on any matters directly affecting such a purchase, lease, or residency. Failure to so disclose constitutes misconduct in office.

Health and Safety Code Section 33120.5

An agency shall not acquire from any of its members or officers any property or interest in property except through eminent domain proceedings.

Health and Safety Code Section 33393

6/Facts have been provided to the Commission in writing by officials of the City of Antioch, and in testimony before the Commission by Mr. Whatley and by the City Attorney Gerald Sperry. The Commission does not act as a finder of fact when it issues legal opinions. Our opinion is applicable only to the extent that the facts provided to us are correct and that all of the material facts have been provided.

redevelopment area, one as the headquarters for his own business and two as investments;^{7/} and second, his business as a real estate broker active in the redevelopment area. We have been urged by several witnesses who testified at our hearings in this matter to conclude that one or the other of these types of interest should constitute a per se disqualification from voting to adopt a redevelopment plan. We decline to adopt such a per se rule, because we believe the present case does not require such a rule, and adoption of rules of such wide-ranging scope should, if appropriate at all, follow a more comprehensive consideration of the problem than the Commission has yet undertaken.^{8/}

A rule that ownership of any real property for business or investment purposes within the redevelopment area constituted automatic grounds for disqualification would conflict with the Community Redevelopment Law which, as has been shown, impliedly permits property ownership within the area. If there is a conflict between that law and the Political Reform Act, it must, of course, be resolved in favor of the Political Reform Act. A later statute prevails over an earlier one, Coker v. Superior Court, 70 C.A.2d 199 (1945), and the Political Reform Act expressly provides that it will prevail over conflicting enactments of the Legislature. Section 81013. Nevertheless, correct principles of statutory construction require that if reasonably possible the statutes should be read harmoniously to avoid a conflict and to give meaning to both statutes.

The repugnancy between two statutes should be very clear to warrant a court holding that the later in time repeals the other when it does not in terms purport to do so. This rule has peculiar force in case of laws of special application which are never to be deemed repealed by general legislation except upon the most unequivocal manifestation of intent to that effect.

City of Los Angeles v. Leland,
11 C.A. 302, 305-6 (1909)

^{7/} Mr. Whatley also owns two lots as investments which are outside but within a few blocks of the boundaries of the redevelopment area, and which might be affected by the redevelopment project.

^{8/} A Conflict of Interest Division within the staff of the Commission will be established and operational by mid-August, 1975, and will be expected to develop expertise in such matters. The Commission has instructed its staff to give comprehensive consideration to the application of Sections 87100 and 87103 to redevelopment agencies and suggest regulations to the Commission if it appears that adoption of such regulations would be helpful and appropriate.

Where possible, all parts of a statute should be read together and construed to achieve harmony between seemingly conflicting provisions rather than holding that there is an irreconcilable inconsistency.

Code of Civil Procedure, Section 1858; Wemyss v. Superior Court, 39 Cal.2d 616, 621 (1952); In Re Marriage of Walton, 28 C.A.3d, 108, 117 (1972).

No specific provision of the Political Reform Act directly prohibits ownership of property for business or investment purposes within the project area by an official who votes to adopt the redevelopment plan. Resolving the Antioch question does not require us to determine whether the general language of Sections 87100 and 87103 dictates such a result, notwithstanding the contrary provisions of the Community Redevelopment Law. Nor does a resolution of the Antioch question require us to determine whether a real estate broker who practices in the redevelopment area is automatically precluded from participating in the adoption of the redevelopment plan. We believe that the ownership of several lots in and around the redevelopment area for business or investment purposes and the real estate brokerage each raise significant questions under the Political Reform Act, and the cumulative effects on both types of economic interests which are reasonably foreseeable are sufficient under the circumstances present here to require disqualification under Section 87100.

Judicial guidance to the interpretation of conflict of interest language similar to that of the Political Reform Act is as yet limited to the case County of Nevada v. MacMillan, which considered parallel language in the Moscone Governmental Conflict of Interests Act, 11 Cal.3d 662 (1974):

A "substantial" conflict or a "material" effect upon economic interests is a conflict or effect which could undermine the foregoing goal /an independent, impartial and honest government/ by providing an economic incentive for deciding a particular official matter without regard to its merits, or with regard to its effect upon the official's pocketbook.

Id. at 673-74.

Mr. Whatley's real estate business is the type of financial interest contemplated by Section 87100, because it falls within

each of the paragraphs of Section 87103. He has an investment worth more than \$1,000 in the business; he owns real property above the specified value; his business is a source of income above \$250; and it is a business in which he holds a position of management.

The proposed redevelopment plan will have a foreseeable material financial effect on the Councilman's real estate business. Such a business earns its income from commissions normally based on a percentage of the value of property. When property value increases, the amount of the commission increases.

One of the major goals of a redevelopment plan is increasing property values, in particular within the project area and less directly within the entire community. In redeveloping the blighted areas of the community, all property becomes more valuable, particularly that which has been redeveloped. With regard to the specific plan under consideration in Antioch, the creation of a new civic center will undoubtedly increase the value of property located nearby.^{9/} Improved freeway access will raise the value of the property in the vicinity of the new off-ramp. The widened highway presumably provides a benefit to surrounding property. Street improvements have an obvious and immediate impact on the property in the assessment area. Finally, the preparation of a plan for commercial and industrial sites will, to the extent it is successful, affect property values to various extents throughout the city.

All the parts of the proposed plan before us will result in increased property values. That is the plan's contemplated and proper purpose. The eventual sale or lease transactions involving any properties within or outside the area will result in increased commissions, proportional to the increased values, to Mr. Whatley. There is also a likelihood that the increased attractions added to the downtown area and the upgrading of other neighborhoods by its access and street improvements will result in greater numbers of property transactions. Both these possibilities constitute a reasonably foreseeable material financial effect on Councilman Whatley's real estate business, since both the size and the number of commissions generated by real estate sales in the area are likely to increase. In addition, if the redevelopment plan is adopted, it is possible that Mr. Whatley's official position on the Redevelopment Agency would make available to him inside information which could result in a financial benefit to his real estate business. Even if he did not, as we presume he would not, use confidential information gained from his official activities for private business purposes, potential customers might believe

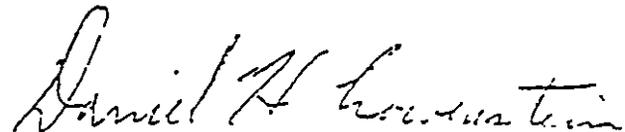
^{9/} The site at present is an abandoned lumber shed.

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he would be privy to such information and thus more effective as a real estate agent.

Without deciding whether these foreseeable effects on Mr. Whatley's real estate business would be sufficient by themselves to require disqualification, we believe they are sufficient when considered in conjunction with Mr. Whatley's ownership of several properties in or near the area.^{10/} A general increase in property values in the area because of the project would have a direct and immediate effect on Mr. Whatley's ownership interest in these properties. We are of the opinion that the decision whether to adopt or reject the redevelopment plan is one that will, foreseeably, have a reasonably material financial effect, distinguishable from its effect on the public generally, on the business and real estate investment of Mr. Whatley, and therefore is a decision in which he may not participate.

Approved by the Commission on July 2, 1975. Concurring.
Brosnahan, Carpenter, Lowenstein and Miller. Commissioner
Waters was absent.


Daniel H. Lowenstein
Chairman

^{10/} Mr. Whatley's properties are held for business or investment purposes. If the property were held for residential purposes the questions raised under the Political Reform Act would, arguably, be less severe.