

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

March 26, 1984

Thomas Haas
Fairfield City Attorney
1000 Webster Street
Fairfield, CA 94533

Re: Your Request for Advice, Our
Advice No. A-84-037

Dear Mr. Haas:

You have written seeking confirmation of my advice to you and Councilmember Gary Walker, rendered at our meeting of February 17, 1984.

Since his election, Councilmember Walker has become employed as a "special projects (non-home) marketing representative" for Founders Title Company in Solano County ("Founders"). Founders currently has offices in Vallejo, Fairfield and Vacaville. Mr. Walker works out of the Solano County headquarters office in Fairfield; there are no special projects marketing employees in the other Solano County offices. Mr. Walker's duties involve bringing prospective sellers and buyers of property together. After that, the parties negotiate independent of Founders' involvement and a transaction may or may not result.

Founders is a title insurance company regulated by the Insurance Code (Sections 12340-12419). It is neither the largest nor the only title insurance company in Fairfield or in Solano County. Mr. Walker is a salaried employee who receives no commissions. While Founders does have a profit-sharing plan which provides payments to all employees of an office if annual goals for that office are met, it is not foreseeable that any governmental decision Mr. Walker might be involved in would affect Founders' Solano County business to an extent that it would trigger a profit-sharing distribution. Your letter specifically states that, for purposes of this advice, we are to assume that "no governmental decision discussed will cause the profit-sharing plan goal to be met in [Mr. Walker's] office."

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Your questions revolve around the tests to be applied in analyzing whether Mr. Walker has a conflict of interest under the Political Reform Act^{1/} in any particular decision which may result in increased title insurance business for Founders.

As we discussed, customers of Founders are not sources of income to Mr. Walker since he is not a 10% or greater owner of Founders and receives only a salary and no commissions. However, Founders is a source of income to Mr. Walker within the meaning of Section 87103(c) and he is an employee of Founders under Section 87103(d). Consequently, he must disqualify himself from any decisions which will have a reasonably foreseeable material financial effect on Founders which is distinguishable from the decisions' effects on the public generally. Sections 87100 and 87103. This effect should be measured against Founders' Solano County operations,^{2/} using the tests set forth in 2 Cal. Adm. Code Section 18702(b) (1) and (3) (C), as stated in your letter.

You have also asked about the applicability of the "nexus" test to Mr. Walker's activities. The "nexus" test as to materiality is found in 2 Cal. Adm. Code Section 18702(b) (3) (B). It states a material financial effect will exist where:

There is a nexus between the governmental decision and the purpose for which the official receives income....

Section 18702(b) (3) (B).

The general purpose for which Mr. Walker receives income is to bring together prospective buyers and sellers of real property. Founders' hope is that if its efforts facilitate an eventual land sales transaction, the title insurance business for that transaction will be given to it. Thus, Mr. Walker could not make, participate in making, or use his official

^{1/} Government Code Sections 81000-91014. All statutory references made are to the Government Code unless otherwise specified.

^{2/} Founders Title Company of Solano County is a wholly-owned subsidiary of Founders Title Company. If a circumstance arises where the reasonably foreseeable effect of a decision would be material when measured against the subsidiary, but not when measured against the parent, please contact us and we will provide further advice on this point.

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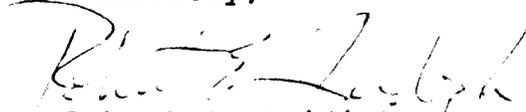
position to influence any governmental decision which would help him accomplish his task of bringing buyer and seller together. For example, if a prospective buyer approached Mr. Walker and asked him to find it a parcel of four acres zoned in a particular manner, he could not then participate in a decision to rezone a likely parcel while engaged in the search for such a parcel.

However, you are correct that the "nexus" rule does not necessarily prevent Mr. Walker from participating in the making of a governmental decision involving a person who, in the course of a matter involving City business, offers the unsolicited^{3/} information that he or she intends to purchase title insurance from Founders. Such decisions would require analysis pursuant to Section 18702(b) (3) (C) and (b) (1), as discussed above, in order to determine if the business thus generated for Founders would have a material financial effect. Obviously, in this circumstance, the effect would be foreseeable; its magnitude ("materiality") is what is in question.

You have also asked a new question, which is what standards are to be applied to subsequent governmental decisions if Mr. Walker has learned, in the course of a title business matter, that a Founders' client may locate in Fairfield. With the exception of the "nexus" type of situation discussed above, the test to be applied for future decisions affecting the client would be whether the decision affecting the client would result in a reasonably foreseeable material financial effect upon Founders. To analyze this, you would again utilize 2 Cal. Adm. Code Section 18702(b) (3) (C) and (b) (1). As you have correctly stated, the Commission's Thorner Opinion, 1 FPPC Opinions 198, No. 75-089, December 4, 1975, is the best source of guidance on the issue of foreseeability, short of writing to the Commission and requesting specific advice.

I trust that this letter has confirmed and clarified our discussions with regard to Mr. Walker's situation. Should you have any further questions on this point, please do not hesitate to contact me at 916/322-5901.

Sincerely,


Robert E. Leidigh
Counsel, Legal Division

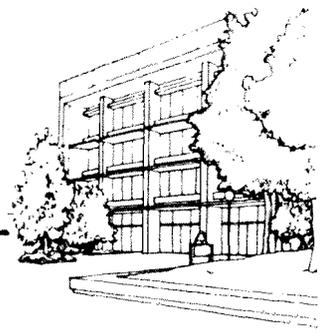
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^{3/} Mr. Walker would not inquire on the subject, but the person might make the statement.

CITY OF FAIRFIELD

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FEB 24 9 16 AM '84
Incorporated December 12, 1903



1000 WEBSTER STREET
FAIRFIELD, CA 94533
[707] 426-5500

February 22, 1984

Mr. Robert Leidigh
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Dear Bob:

Thank you for taking the time to talk with me and Councilman Gary Walker on February 17, 1984. As we discussed, I am writing you to set forth my understanding of the results of our meeting for your confirmation. If I have misunderstood something in this letter, or fail to state something which you believe should be included, please let me know so that I can correct it and return a version of the letter which reflects all of our understandings.

As we discussed, since having been elected, Gary has been employed as a special projects (non-home) marketing representative for Founders Title Company of Solano County. His responsibility is to promote new customers for Founders in Solano County (Founders currently has offices in Vallejo, Fairfield, and Vacaville. Gary works out of the Fairfield office, which is the County headquarters; there are no special projects marketing employees in the other Solano County offices of Founders.) Founders is a title insurer regulated by the Insurance Code. Insurance Code § 12340-12419. Gary is a salaried employee who receives no commissions. (Founders has a profit sharing plan which provides payments to all employees of an office if annual goals for that office are met. We discussed the unlikelihood that it would be foreseeable that any individual governmental decision could kick in this plan, and for purposes of this letter, the assumption is that no governmental decision discussed will cause the profit sharing plan goal to be met in Gary's office.)

We concluded that under the Political Reform Act of 1974, as amended, customers of Founders are not "sources of income"

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Robert Leidigh

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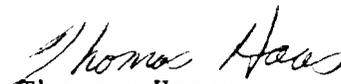
for Gary. Founders is Gary's source of income. The "nexus" requirement of section 18702(b)(3)(B) of your regulations does not prevent Gary from participating in the making of a governmental decision involving a person who in the course of a matter involving City business offers the unsolicited information that she or he intends to purchase title insurance from Founders. Decisions involving such a person would, pursuant to section 18702(b)(3)(C), be subject to review for disqualification under the significant effect test of section 18702(b)(1): whether the decision will increase or decrease 1) Founders' annualized gross revenues by the lesser of \$100,000, or one percent; or 2) Founders' annualized net income by the lesser of \$50,000, or one-half of one percent.

While we did not discuss it, I also assume that if Gary, during the course of a title business matter, learns that the prospective client he is dealing with may locate in Fairfield, subsequent governmental decisions involving the prospective client would be governed by the same regulations as discussed in the last paragraph.

As we also discussed, the "foreseeability" of any particular effect should be evaluated in terms of the Thorner opinion. 1 FPPC 198.

I certainly understand your remarks about the general undesirability of providing answers to hypothetical situations. Hopefully, the two situations discussed above are specific enough to lend themselves to straightforward analysis. Again, please let me know if I can provide more information to make this letter useful to all of us.

Very truly yours,


Thomas Haas
City Attorney

c: Councilman Gary Walker