

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
(916) 322-5662 322-5660 322-5901 322-6441

May 3, 1984

Allen E. Sprague
City of Fremont
City Government Building
Fremont, CA 94538

Re: Your Request for Advice, Our
Advice No. A-84-099

Dear Mr. Sprague:

Thank you for your request for advice on behalf of Fremont City Councilman Bob Reeder. Your question concerns the conflict of interest provisions of the Political Reform Act.

FACTS

A. U.S. Advertising:

Councilman Reeder owns 29.3% of the stock in U.S. Advertising,^{1/} a closely-held corporation. He is one of two managing partners. John Dutra, a Fremont City Planning Commissioner and local estate broker, owns 6.7% of the stock in the corporation.^{2/}

B. Real Estate Transactions:

Between 1983 and the present, Mr. Dutra has listed or sold six pieces of property for Mr. Reeder and his construction business, Reeder/Sutherland. The sales have resulted in Mr. Dutra receiving commissions of between 3% and 4.5%.

On May 8, 1984, the City Council will consider a rezoning application involving approximately 20 acres. Approval of the rezoning application will increase the future residential density of the property from 19 to approximately 26

^{1/} The stock is listed on Mr. Reeder's Statement of Economic Interests as having a value of over \$10,000.

^{2/} The stock is listed on Mr. Dutra's Statement of Economic Interests as having a value of between \$1,000 and \$10,000.

dwellings.^{3/} Although Mr. Dutra is not the actual developer of the proposed project, you stated that he is a "prominent figure in connection with the development proposal."

QUESTION PRESENTED

Does the Political Reform Act require Mr. Reeder to disqualify himself on the decision regarding the rezoning application?

A. Does Mr. Reeder have an investment interest in Mr. Dutra under the analysis in the Nord Opinion (No. 83-004, Oct. 4, 1983)?

B. Is Mr. Dutra a source of income of \$250 or more to Mr. Reeder?

CONCLUSION

Mr. Reeder can participate in the decision concerning the rezoning application. He does not have an investment interest in Mr. Dutra and Mr. Dutra is not a source of income to Mr. Reeder.

DISCUSSION

Government Code Section 87100^{4/} prohibits a public official from making, participating in the making, or using his official position to influence a governmental decision in which he knows or has reason to know that he has a financial interest. 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^{5/} on:

(a) A business entity in which the public official has a direct or indirect investment interest worth more than \$1,000....

* * *

^{3/} High value dwellings will be constructed on large lots.

^{4/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

^{5/} The term "material financial effect" is defined in 2 Cal. Adm. Code Section 18702, copy enclosed.

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(c) Any source of income ... aggregating \$250 or more in value provided to ... the public official within 12 months prior to the time when the decision is made....

Assuming that the decision concerning the rezoning will have a material financial effect on Mr. Dutra, Mr. Reeder must disqualify himself from the decision if he has an investment interest in Mr. Dutra under the analysis in the Nord Opinion, or if Mr. Dutra is a source of income of \$250 or more to Mr. Reeder.

The Nord Opinion provides that, under certain circumstances, a limited partner has an investment interest in a controlling general partner. This Opinion is not applicable in the present case because Mr. Reeder, rather than Mr. Dutra, is a controlling general partner in U.S. Advertising and Mr. Dutra is only a minor stockholder.^{6/}

In addition, although Mr. Dutra has listed and sold property for Mr. Reeder, these activities do not make Mr. Dutra a source of income to him.^{7/} Mr. Reeder is free to participate in the decision regarding the rezoning application.

If I can be of any additional help to you, please feel free to contact me at 916/322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel, Legal Division

JSM:km

^{6/} It is possible that, under the Nord Opinion, Mr. Dutra has an investment interest in Mr. Reeder. Mr. Dutra can contact us for advice if he has any questions on this issue.

^{7/} Mr. Reeder may be a source of income to Mr. Dutra. Mr. Dutra can contact us for advice if he has any questions on this issue.



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City of Fremont

City Government Building
Fremont, California 94538
(415) 791-4120

April 19, 1984

Barbara Milman, Chief Counsel
California Fair Political
Practices Commission
1100 K Street
Sacramento, CA 95814

RE: City of Fremont - Councilman Bob Reeder

Dear Ms. Milman:

I have been requested by Councilman Bob Reeder to request an informal written opinion from your office as to whether or not there is a conflict of interest requiring his abstention on a pending rezoning matter before this City Council. At the City Council meeting of April 17 when this matter was raised by a member of the public the result was that the Council continued the public hearing for two weeks until May 1 in order to provide an opportunity for Mr. Reeder to obtain an opinion from your office. In a telephone conversation with Janice McClain of your office, it was indicated that there is a general turn around time of 21 days for such requests and that your office is presently under a considerable work load. Given recognition of this and the City's desire to move forward on this, it will be appreciated that the matter be given the earliest attention possible.

An application for rezoning has been filed with the City involving approximately 20 acres and the effect of which would be to increase the residential density from 19 to approximately 26 dwellings located upon large lots and planned for a high value structures. The spokesman on this application is a person named John Dutra, a local real estate broker, who also happens to be a Planning Commissioner of the City. Although he would not be the actual developer of the property, Mr. Dutra is unquestionably the most prominent figure in connection with this development proposal. At the Planning Commission hearing on this matter, Mr. Dutra did

abstain from voting and participation in the decision at the Planning Commission level. The proposal received, over considerable opposition from neighboring residents, the endorsement of the Planning Commission and the matter came on for public hearing before the City Council on April 17.

The day before the City Council meeting, a citizen, who was one of the citizen spokespersons opposing the development proposal, left a message with my office that he had contacted Ms. McClain of your office and had been referred to the Nord opinion, 83 FPPC 6. The facts reported to be pertinent were that Councilman Reeder or the businesses with which he is associated had listed several properties with Mr. Dutra's real estate brokerage and also that they both were stockholders in the same corporation. The financial disclosure statements of both Mr. Dutra and Mr. Reeder do reveal that they own stock in the same corporation, apparently a closely held corporation related to the advertising business. Mr. Reeder's interest is listed as over \$10,000 and as constituting more than 10% of the stock ownership. Mr. Dutra's interest is listed as between one and ten thousand and representing under 10% of the ownership. In discussions with both Mr. Dutra and Mr. Reeder it appears that Mr. Reeder owns a large percentage of the stock ownership with other owners (not including Dutra), actually controls the company and that Mr. Dutra is considered to be a minor stockholder without a controlling interest. Apparently the business is not a major item in either persons investment portfolios. In connection with the real estate listings, according to my discussion with both individuals, the listings have been standard conventional real estate listings and have involved property sales, although representing considerable sums, are not a major portion of Mr. Dutra's real estate business. There have been no special agreements or understandings in connection with these listings or the sales. The income received from the sales by Reeder or his companies or businesses have been from the purchasers of the property and not from Mr. Dutra.

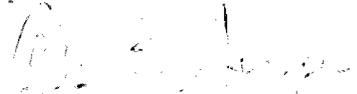
I have been familiar with the Nord opinion and in reviewing it again in connection with these facts which appear to be pertinent, advised on relatively short notice and without extensive analysis, that there was not an apparent conflict of interest which would require Councilman Reeder to abstain from participation in the decision of the City Council on a pending rezoning which Mr. Dutra was advocating (however Mr. Dutra had not personally spoken at the City Council at the time the matter came up on April 17). Notwithstanding this

advice and because of the controversy surrounding the matter, Mr. Reeder agreed that the matter be continued so that he could seek an opinion from the Commission as to whether or not he should abstain or not abstain on this matter.

Bob Reeder's business telephone numbers are as follows: (415), 791-4185 (City hall switchboard), 490-3455, 791-4111. Home telephone number is 656-7231. If documents from Mr. Reeder's files are necessary either he can be contacted or a Debbie Morris from his office has been assigned the responsibility of assisting in this matter. You may also wish to contact Mr. Dutra and his telephone numbers are as follows: 657-8222, 657-6300 work numbers; 657-6871 home.

Thank you very much for your assistance in this matter and we would appreciate being informed as to when we might expect an opinion on this matter especially as to the possible necessity of having to continue the public hearing further beyond May 1.

Sincerely yours,



ALLEN E. SPRAGUE
CITY ATTORNEY

AES/sw

cc: Councilman Bob Reeder