

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

July 30, 1984

Stan T. Yamamoto
Deputy City Attorney
801 - 11th Street
Modesto, CA 95353

Re: Your Request for Advice,
Our Advice No. A-84-183

Dear Mr. Yamamoto:

Thank you for your request for advice on behalf of Modesto Mayor Peggy Mensinger, City Councilmembers Carol Whiteside and John Sutton, and Bette Belle Smith, who is a member of the City's Culture Commission.

On September 29, 1983, I had a telephone conversation with then-City Attorney Roger Picquet concerning Councilwoman Whiteside. Mr. Picquet stated that Mrs. Whiteside's husband was a partner in a law firm. Her husband's partner was opposed to the redevelopment project and was involved in some litigation concerning it. The partner's client owned property across the street from the redevelopment project. Mr. Picquet asked whether the provisions of the Political Reform Act required Mrs. Whiteside to disqualify herself from decisions concerning Modesto's redevelopment project. Because I needed more facts concerning the client's interests and the particular redevelopment decisions involved, I did not give Mr. Picquet any advice or state any conclusions. Instead, I asked him to write for advice and provide us with the complete facts. Our office never received a written request for advice and I have not to my knowledge talked with him since that date.

The advice contained in this letter is based upon only the facts that you provided in your letter and in our telephone conversations. It is not based upon any information provided by Mr. Picquet. My advice also addresses only the future actions of the individuals in question. If, at any time, you become aware of any facts which would alter the advice in this letter, you should contact me so that we can determine whether additional written advice is necessary.

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FACTS PRESENTED

Redevelopment Project:

The members of the Modesto City Council serve on the board of the Modesto Redevelopment Agency. The board designated, as "blighted," a section of downtown Modesto bound by L, K, 8th and 11th Streets. Most of this area has been purchased for redevelopment. The board has determined that a hotel, office, community center (a convention center complex with theaters) and a five-level parking garage will be built in the redevelopment area. Currently, the site contains vacant and occupied commercial properties for such businesses as retail shops, car sales and a warehouse.

Bette Belle Smith sits on the Modesto Culture Commission. The Commission advises the Council in all matters pertaining to art, literature, music and other cultural activities. The Culture Commission often meets with the public regarding the proposed redevelopment project and it makes recommendations to the City concerning the project. The City has determined that the Commission is purely advisory and not subject to the disclosure or disqualification provisions of the Political Reform Act (Government Code Sections 87100 and 87102^{1/}).

On July 31, 1984, the City Council plans to hold a special meeting to discuss the redevelopment project. The Council will review all of the actions which have been taken on the project and they will answer questions from the public and the press.

Mayor Peggy Mensinger:

Mayor Mensinger has an investment interest in American Lumber Company, which is also her husband's employer. She and her husband and four other couples, through American Lumber Company Properties, own the 1200-1300 block of 9th Street in Modesto, which is across the street from the redevelopment project. American Lumber Company rents part of this property (1231 9th Street) for a retail lumber and hardware store. Wells Fargo loaned the money for the purchase of the property and the debt remains outstanding. Wells Fargo has an office at 1120 K Street in Modesto, across from the redevelopment project.

^{1/} Hereinafter all statutory references are to the Government Code, unless otherwise indicated.

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In December 1983, Mayor Mensinger appointed three councilmembers to serve on the Modesto Special Projects Committee. The Committee works closely with the City's staff, the community and the Council to keep the redevelopment project moving forward. You stated in the letter that Mayor Mensinger has disqualified herself on all other decisions concerning the redevelopment project.

Councilwoman Carol Whiteside:

Councilwoman Whiteside's husband is a partner in the law firm of Ulrich & Whiteside. Mr. Whiteside has a 50% investment interest in the firm. The firm's office is located at 1124 11th Street, across from the redevelopment project. The building is owned by an accounting firm and Mr. Ulrich, individually. (Mr. Ulrich owns one-half of the building.) The law firm rents space in the building on a month-to-month basis. The law firm does not represent any individuals or entities which have any interest in the redevelopment project.

Councilman John Sutton:

Councilman Sutton has the following interest in the area of the redevelopment project:

1. A one-half ownership interest in a lot at the corner of 12th & J Streets. In 1960, a bank leased the land for thirty years and constructed a building on the property. In 1990, the bank will have the option of entering into two additional ten-year extensions of the lease.
2. An investment interest in Pacific Valley Bank that is worth more than \$1,000 and a position on the bank's board of directors. Pacific Valley Bank has an office at 1302 J Street.
3. An investment interest in Center State Bank worth over \$1,000. The bank is located at 9th & H Streets.

Councilman Sutton's Statement of Economic Interests states that he has an investment interest in Modesto Banking Corporation. This interest was sold within the last month.

Bette Belle Smith:

Bette Belle Smith is a member of the City's Culture Commission. She is employed by Modesto Banking Corporation as a bank relations officer. She owns stock in the bank that is worth over \$1,000. The bank is located at 1120-11th Street, across from the redevelopment project.

QUESTIONS PRESENTED

1. Did Mayor Mensinger violate the provisions of the Political Reform Act when she appointed the members of the Special Projects Committee?
2. Do the provisions of the Political Reform Act require Mayor Mensinger and City Councilmembers Whiteside and Sutton to disqualify themselves from decisions concerning the redevelopment project?
3. Do the provisions of the Political Reform Act allow Mayor Mensinger and City Councilmembers Whiteside and Sutton to discuss, and answer questions about, the redevelopment project at the July 31, 1984, council meeting?
4. As a member of the Culture Commission, is Bette Belle Smith required to comply with the conflict of interests provisions of the Act?

CONCLUSIONS

1. I cannot advise you on the propriety of Mayor Mensinger's past acts, I can only advise you on how the Act's provisions will apply to her future conduct.
2. The Political Reform Act requires Mayor Mensinger, or Councilmembers White or Sutton, to disqualify himself or herself from a decision concerning the redevelopment project if it is reasonably foreseeable that the decision will have a material financial effect on the individual official's financial interests.
3. The Political Reform Act does not prevent Mayor Mensinger, or City Councilmembers Whiteside and Sutton, from discussing and answering questions about the redevelopment project with the public and press.
4. Bette Belle Smith must comply with the conflict of interest provisions of the Act if the Culture Commission possesses decision-making authority.

DISCUSSION

Section 87100 prohibits a public official from making, participating in the making, or in any way attempting to use his official position to influence^{2/} a governmental decision in which

^{2/} See the enclosed copy of 2 Cal. Adm. Code Section 18700 which defines the terms "making," "participating," and "using your official position to influence."

he knows or has reason to know 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,^{3/} distinguishable from the effect on the public generally,^{4/} on:

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

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

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

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

Response to Question #1:

I cannot provide you with specific advice on whether it was proper for Mayor Mensinger to appoint the members of the Special Projects Committee because I am not authorized to provide advice on past activities. However, under the general conflicts rules, it was proper for Mayor Mensinger to appoint the members of the Special Projects Committee as long as it was not foreseeable that the decision would have a material effect on her financial interests. (See below for a discussion of Mayor Mensinger's financial interests.)

Response to Question #2:

You asked whether Mayor Mensinger or Councilmembers Whiteside or Sutton must disqualify themselves from the decisions concerning the redevelopment project. Under the conflict of interests provisions, the need for disqualification is determined on a decision-by-decision basis and depends upon the facts of the situation. You did not

^{3/} See the enclosed copy of 2 Cal. Adm. Code Section 18702 which defines the term "material financial effect."

^{4/} See the enclosed copy of 2 Cal. Adm. Code Section 18703 which explains the "public generally exception."

provide me with an explanation of any particular redevelopment decision that the officials will be confronted with and so the following is a general explanation of how the conflicts provisions apply to the interests held by the officials. If, in the future, you need help in determining whether disqualification is required on a particular decision, please feel free to request additional, written advice.

Mayor Peggy Mensinger:

Mayor Mensinger has an investment interest in American Lumber Company^{5/} and it is a source of income to her.^{6/} She owns, through American Lumber Company Properties, a real property interest (20%) in the 1200-1300 block of 9th Street.^{7/} In addition, Wells Fargo is a source of income to her because it loaned American Lumber Company Properties money to purchase the 9th Street land and 20% of the loan is treated as personal income to Mayor Mensinger.^{8/}

You stated in your letter that Mayor Mensinger has been disqualifying herself on all decisions concerning the redevelopment project. Under the provisions of the Act, the need for disqualification should be determined on a decision-by-decision basis. Mayor Mensinger must disqualify herself if it is reasonably foreseeable that a decision concerning the redevelopment project will have a material effect on any of her financial interests.

^{5/} The investment interest is held by the Mayor's husband, but, under the Act, Mayor Mensinger's investment interests include those of her husband (Section 82034). The Mayor owns less than 10% of American Lumber Company.

^{6/} Mayor Mensinger has a community property interest in her husband's salary.

^{7/} Interests in real property of an individual include a pro rata share of interests in real property of any business entity in which the individual owns a 10% interest or greater (Section 82033). Mayor Mensinger owns 20% of American Lumber Companies Properties.

^{8/} The term "income" includes loans. Income of an individual includes a pro rata share of any income of any business entity in which the individual owns a 10% interest or greater (Section 82030).

Councilwoman Whiteside:

Councilwoman Whiteside owns a 50% investment interest in her husband's law practice and the firm is a source of income to her.^{9/} Her sources of income also include those clients who pay her husband's firm sufficient fees such that her community property interest in his pro rata share of the fees (50%) amounts to \$250 or more.^{10/} Under the Nord Opinion, No. 84-004, Oct. 4, 1983 (copy enclosed), Councilwoman Whiteside is deemed to have an investment interest in her husband's law partner. In addition, the business entity which owns the building in which Mr. Ulrich has a controlling interest is a "related business entity" with respect to the Whiteside-Ulrich partnership. Councilwoman Whiteside must disqualify herself from a redevelopment decision if it will foreseeably have a material effect on any of her financial interests.

Councilman Sutton:

Councilman Sutton has a one-half ownership interest in a parcel of land at the corner of 12th & J Streets.^{11/} The land is leased to First Interstate Bank which is a source of income to him.^{12/} Councilman Sutton has an investment interest in Center State Bank and Pacific Valley Bank and he is on the board of directors of the latter. He must disqualify himself from any redevelopment decisions which will foreseeably have a material effect on any of his financial interests.

Mayor Mensinger and Councilmembers Whiteside and Sutton are not prohibited from discussing and answering questions about the redevelopment project with the public and the press. In engaging in this activity, the officials will not be making, participating in the making, or in any way attempting to use their official positions to

^{9/} See footnotes 5 and 6.

^{10/} In order for her share to amount to \$250 or more, a client would have to pay the firm \$1,000 or more in fees. (Her husband's share of a \$1,000 fee would be \$500 and Councilwoman Whiteside's community property share would be \$250).

^{11/} The real property interest is owned by his spouse, but, under the Act, Councilman Sutton's real property interests include those of his wife.

^{12/} The term "income" includes rent. See footnote 8.
Response to Question #3:

influence a decision concerning the redevelopment project. (See the enclosed copy of 2 Cal. Adm. Code Section 18700 which defines these terms.)

Response to Question #4:

Bette Belle Smith is a member of the City's Culture Commission. The Commission advises the Council in all matters pertaining to art, literature, music and other cultural activities. The Commission often meets with the public regarding the proposed redevelopment project and it makes recommendations to the City concerning the project.

The members of the Culture Commission are subject to the disclosure and disqualification provisions of the Act if the Commission:

- (A) ... may make a final governmental decision;
- (B) ... may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or
- (C) ... makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

2 Cal. Adm. Code Section
18700(a)(1).

The City should review the actions of the Culture Commission to determine whether they satisfy any of the above criteria. If the Commission is covered by the Act's provisions: 1) its members must begin disclosing pursuant to a conflict of interest code, and 2) Bette Belle Smith must disqualify herself from any decisions which will foreseeably have a material effect on her financial interests. This includes Modesto Banking Corporation in which she has an investment interest and which is a source of income to her.

The above advice is confined to the provisions of the Political Reform Act and it is based solely on the facts that you have provided to me. If, in the future, you want advice on whether these officials must disqualify themselves on a particular decision, you can write to us for additional advice.

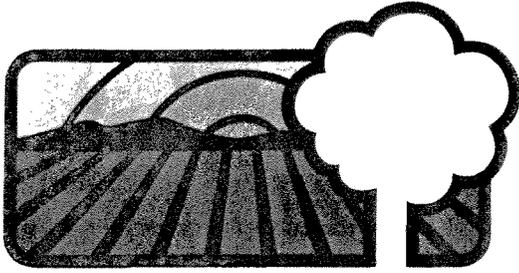
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If you have any questions regarding the contents of this letter,
please feel free to contact me at 916/322-5901.

Very truly yours,


Janis Shank McLean
Counsel, Legal Division

JSM:km
Enclosures



JUL 12 1984

CITY of MODESTO

Office of City Attorney: 801 11th Street, P.O. Box 642, Modesto, CA 95353, (209) 577-5284

July 12, 1984

HAND DELIVERED

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Attention: Mrs. Milman

Re: Whether Certain Members of the Modesto Redevelopment Agency May Participate in Decisions of the Agency Regarding a Project Site and Whether a Member of the Modesto Culture Commission is Subject to the Political Reform Act of 1974

Dear Mrs. Milman:

Pursuant to a telephone conversation with Ms. Janice McLean of your office on July 5, 1984, in follow-up to a similar conversation this office had with her in 1983, I have been advised to request of you an opinion regarding the following:

The members of the City Council of the City of Modesto serve as members of the board of the Modesto Redevelopment Agency. Pursuant to their redevelopment authority, they designated as "blighted" a section of downtown Modesto bounded by L, K, 8th and 11th Streets, and have purchased most of the property for redevelopment. The proposed plans for redevelopment consist of a hotel/office/theater complex designed as a community-conference center. Currently the site consists of both vacant and occupied commercial properties ranging from retail shops to car sales lots to a warehouse. There are currently no plans for renovation of any of the existing buildings located on the site.

Across 11th Street from the proposed theater complex is a professional office building which has as tenants three law offices and an accounting firm. One of the law offices is that of Ulrich and Whiteside, a partnership since 1976, comprised of Mr. Carl Ulrich, Esq. and Mr. John Whiteside, Esq. They have occupied this office for approximately 6 and 1/2 years. The building is owned by the accounting firm which is also a tenant and Mr. Carl Ulrich, individually. The law firm of Ulrich and Whiteside has no interest in either the office building, the property upon which it is situated or any portion of the redevelopment site. Further, except for Mr. Whiteside's partnership interest in the law firm itself, Mr. Ulrich and Mr. Whiteside share no investments of any kind. And still further, the law firm does not represent any persons, firms, organizations or entities having an interest in the redevelopment project.

Mr. Whiteside is married to Mrs. Carol Whiteside, who was elected to the Modesto City Council in March of 1983. As indicated above, as a councilmember, she is also a member of the Redevelopment Agency board. The question posed is whether a redevelopment agency board member whose spouse is engaged in a law practice across the street from the proposed redevelopment site may participate in deliberations and decisions of the redevelopment agency regarding the project site.

A second situation for which your opinion is requested concerns City Councilmember John Sutton, who was elected to the City Council on March 8, 1983. Mr. Sutton's spouse holds an undivided one-half interest as a tenant in common with her sister in commercial property situated on a corner at the intersection of 12th and J Streets. It is physically separated and visually removed from the redevelopment site by other developments, being one block south and one block east of the site. The property is subject to a thirty year ground lease which began in 1960, and the terms of the lease provide the lessee with three consecutive ten year options to extend the lease. The question posed is whether Councilmember Sutton may participate in the deliberations and decisions of the redevelopment agency regarding the project site in light of Mrs. John Sutton's property interest.

A third situation requiring your opinion involves Modesto Mayor Peggy Mensinger. Mrs. Mensinger is the spouse of Mr. John Mensinger, whose family has owned and operated the American Lumber Company for more than sixty years. The business is located on Ninth Street in the City of Modesto, across from the redevelopment site. Mrs. Mensinger was first elected to the City Council in 1973, and was re-elected in 1977. In 1979, she was elected Mayor and was re-elected as Mayor in 1983. In 1978, the City Council, with Mrs. Mensinger not participating, selected the above-described redevelopment site. And, due to the proximity of the lumber business to the site, Mayor Mensinger has consistently declared that a conflict of interest exists as to her and has refrained from taking part in the Redevelopment Agency's deliberations and actions with respect to the redevelopment project.

However, as Mayor of the City of Modesto, she is the presiding officer of the Council (section 601, Modesto City Charter) and the Modesto Municipal Code (section 2-1.17) provides that the presiding officer shall appoint all special committees. On December 8, 1983, a councilmember suggested to the Mayor and the City Council that a Council Committee be created to work closely with City staff, the community and the Council to keep the community center project moving. As there were no objections by any councilmembers to the creation of such a committee, on December 27, 1983, three councilmembers who had volunteered to serve were designated by the Mayor to form the Modesto Special Projects Committee. The question thus raised is whether the Mayor's designation of the committee members is in keeping with the provisions of the Political Reform Act of 1974.

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The final situation of concern involves Mrs. Bette Belle Smith, a member of the Modesto Culture Commission since 1977. Its members are appointed by the Modesto City Council (section 1105, Modesto City Charter), and their function is to serve in an advisory capacity to the Council in all matters pertaining to art, literature, music, and other cultural activities. As this commission serves solely in an advisory capacity, its members have not been held to come within the scope of the Political Reform Act, and in particular sections 87200 and 87302 of said Act. With respect to Mrs. Smith, the question posed is whether persons serving on a solely advisory committee are subject to the Political Reform Act of 1974.

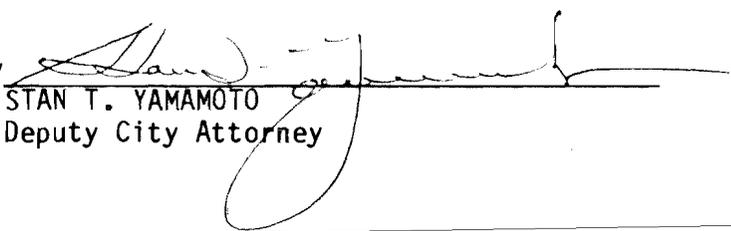
Each of the above-named council and commission members have requested that this office contact you and seek your opinion as to each of the above-described situations.

Your expeditious attention to this matter will be greatly appreciated as the matter is scheduled to be heard before the Modesto City Council on July 31, 1984.

Thank you in advance for your anticipated cooperation. Should further information or clarification of this matter be necessary, please feel free to contact me.

Very truly yours,

ELWYN L. JOHNSON, City Attorney

By 
STAN T. YAMAMOTO
Deputy City Attorney

ELJ/STY/dks
