

# 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) 322-3662 322-3660 322-5901 322-6441

August 3, 1984

Vincent F. Biondo, Jr.  
City Attorney  
1200 Elm Avenue  
Carlsbad, CA 92008-1989

Re: Your Request for Advice,  
Our Advice No. A-84-191

Dear Mr. Biondo:

You requested in your letter a confirmation of our telephone conversation in which we discussed a potential conflict of interest involving Robert Prescott, a Councilmember for the City of Carlsbad. My understanding of the situation is as follows.

The City Council is going to hear a request for a re-zoning. The subject of the request is a 17-acre parcel located on the east side of El Camino Real, a major arterial street that runs in a north-south direction through the middle of Carlsbad. The property owner requested a change in zoning from residential to commercial (C-2) to allow for the construction of a neighborhood shopping center. The proposed center will include a major supermarket and a group of small related retail and service businesses. A major regional shopping center and a large neighborhood shopping center are located approximately 1-1/2 miles north of the proposed center on El Camino Real. One-third of a mile south of the subject property is a commercial retail operation called The Country Store. It consists of a nursery, restaurant, grocery store, and some small service businesses including a beauty shop and a travel agency. Mr. Prescott's wife leases space inside the Country where she owns and operates the travel agency.

As you know, Government Code Section 87100 prohibits public officials from making decisions in which they have a financial interest in the outcome.<sup>1/</sup> Section 87103 defines the term

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<sup>1/</sup> All statutory references are to the Government Code.

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"financial interest" to mean a reasonably foreseeable material financial effect on:

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

\* \* \*

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$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.

Since Mrs. Prescott owns the travel agency, Mr. Prescott may not make, participate in making, or attempt to influence any city council decisions which could have a material financial effect on the business itself or on any sources of income to the business of \$500 or more in the preceding 12 months.<sup>2/</sup>

With respect to the rezoning decision, it was the view of your office that Mr. Prescott did not have a conflict of interest. In your letter, you listed the reasons for your opinion. Based on these reasons and the facts presented, I agreed with you that the possible financial effects on Mrs. Prescott's travel agency seemed speculative and uncertain.

I was concerned about the fact that some of the other merchants in the Country Store oppose the rezoning primarily based on their concern about potential competition from the proposed center.<sup>3/</sup> This suggests that they anticipate that their businesses will be adversely affected by the rezoning. Normally where the question is whether the effects of a decision on a

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<sup>2/</sup> Section 82030 defines "income" to include the community property interest in the income of a spouse" and a "pro rata share of any income of any business entity or trust in which the individual or spouse owns ... a 10% interest or greater."

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business are foreseeable or material and persons involved in the matter assert that there are potential significant financial effects, we assume that they are right for purposes of our analysis absent countervailing factors. However, Mrs. Prescott has stated that only a small portion of her business results from drop-in or casual customers and that the bulk of her clientele is built up from repeat customers, customer referrals and telephone calls resulting from advertising. Accordingly, at this point, she does not feel that her business would be affected in any way by the proposed center. Based on these representations, it appears that any possible effects on Mrs. Prescott's business are remote and speculative at best, and, therefore, Mr. Prescott does not have a conflict of interest in participating in the re-zoning decision pending before the City Council.

This advice to you that Mr. Prescott does not have a conflict of interest is based solely on the facts that you provided to me. I have not done an independent investigation of the facts and circumstances. If all of the material facts have been truthfully disclosed, this advice shall be a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding. Section 83114(b). If any material facts were omitted, this advice does not provide any immunity against enforcement actions and should be disregarded.

If I can be of further assistance, please feel free to contact me at 916/322-5901.

Sincerely,



Diane Maura Fishburn  
Counsel, Legal Division

DMF:km

# CITY OF CARLSBAD

1200 ELM AVENUE  
CARLSBAD, CALIFORNIA 92008-1989  
(619) 438-5531



VINCENT F. BIONDO, JR.  
CITY ATTORNEY

DANIEL S. HENTSCHE  
ASSISTANT CITY ATTORNEY

July 19, 1984

JUL 22 1984

Legal Department  
Fair Political Practices Commission  
1100 K Street  
Sacramento, California 95814

On July 18, 1984 Diane Fishburn, of your legal department, and I had occasion to discuss a potential conflict of interest situation in Carlsbad. Mr. Robert Prescott, the Council member involved, has asked for an advice letter from the Commission staff to memorialize the conclusion reached during our telephone discussion that no conflict was involved.

The occasion for this inquiry is a requested rezoning pending before the City Council. The site in question is a 17 acre parcel zoned residential located on the east side of El Camino Real, a major arterial street (102') that runs in a north-south direction through the middle of Carlsbad. The property owner has requested a change of zone to C-2, the City's general commercial designation to accommodate the construction of a proposed neighborhood shopping center. Our planning department indicates they contemplate the shopping center will include a major supermarket and a series of smaller related retail and service businesses. Located approximately one and one half miles to the north on El Camino Real is a major regional shopping center consisting of five major stores and over 100 mall stores. Immediately adjacent to that is a large neighborhood shopping center. Approximately one third of a mile to the south of the subject property and on the west side of El Camino Real is located a commercial retail operation, The Country Store. It consists of a nursery, restaurant, grocery store, and some small service businesses including a beauty shop and a travel agency. Council Member Prescott's wife leases space inside The Country Store where she owns and operates a travel agency. For purposes of the Political Reform Act, the travel agency is a source of income to Council Member Prescott.

Our question is whether or not Council Member Prescott may participate in making a decision on the rezoning of the 17 acre parcel. That is, whether or not it is reasonably foreseeable

that the rezoning of the property from residential to commercial will have a material financial effect on Mrs. Prescott's travel agency business.

After reviewing this question it was the view of our office that no conflict existed and that Mr. Prescott could participate in the rezoning decision. Our reasons were as follows:

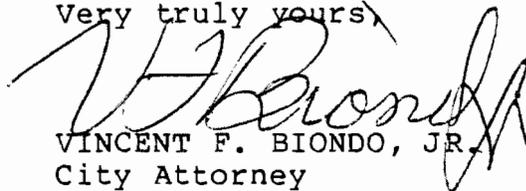
1. The property to be rezoned is some distance (one third of a mile and across a major thoroughfare) from the site of the business.
2. The rezoning will not in and of itself have any effect on the business.
3. The timing and the kind of development contemplated on the site are uncertain at this time.
4. Assuming the property develops as contemplated by the planning department into a neighborhood shopping center there is no indication that the center would contain a competing travel agency. There are already travel agencies located both in the regional shopping center and the neighborhood center approximately one and one half miles to the north of the site.
5. There are at least four other neighborhood shopping centers in Carlsbad which do not have travel agencies.
6. We are aware of no evidence that the construction of a neighborhood center would add or detract from the patronage at The Country Store.
7. Mrs. Prescott has indicated that only a small portion of her business results from drop in or casual customers and that the bulk of her clientele is built up from repeat customers, customer referrals and telephone calls resulting from advertising such as in the yellow pages.
8. Although the planning department expects some opposition to the rezoning request from some of the merchants in The Country Store based on their concerns about competition, Mrs. Prescott, to date, has not made any statements in regard to the rezoning and does not intend to.

July 19, 1984

Based on the eight above described considerations it seemed to us that it was extremely speculative and remote that the rezoning would have any effect on Mrs. Prescott's business. Under those circumstances we could find no conflict.

The rezoning will be heard by the City Council at their regular meeting of August 7, 1984. At that time it is my intention to state that it is my opinion, which was confirmed during the course of my telephone conversation with Diane Fishburn, that there is no conflict of interest and that Mr. Prescott can vote on the rezoning request. We would very much appreciate if we could have your views on the question in writing at your earliest convenience.

Very truly yours,

A handwritten signature in dark ink, appearing to read "V. Biondo, Jr.", written in a cursive style.

VINCENT F. BIONDO, JR.  
City Attorney

rmh

c: Mr. Robert Prescott

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VINCENT F. BIONDO, JR.  
CITY ATTORNEY

DANIEL S. HENTSCHKE  
ASSISTANT CITY ATTORNEY

August 10, 1984

Diane M. Fishburn  
Counsel, Legal Division  
Fair Political Practices Commission  
1100 K Street  
Sacramento, California 95814

Dear Ms. Fishburn:

Thank you for your letter of August 3, 1984 regarding Council Member Prescott.

It is notable that no one who is financially interested in The Country Store appeared to testify. In response to expressions of concern from the neighbors the City Council unanimously denied the general plan amendment.

Thank you again for your prompt reply. It was very helpful and appreciated.

Very truly yours,

VINCENT F. BIONDO, JR.  
City Attorney

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