

State of California



Fair Political Practices Commission

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

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

October 24, 1984

Thomas J. Harron
City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

Re: Your Request for Advice,
Our File No. A-84-244

Dear Tom:

Thank you for your letter requesting confirmation of a telephone discussion we had concerning Councilmember Frank Scott and a potential conflict of interest situation.

FACTS

Councilmember Scott is a stockbroker, and he has received more than \$250 in income from stock transactions during the past 12 months from Bud Chase. Mr. Chase is the manager of Chula Vista Sanitary Service ("CVSS"). CVSS is a subsidiary of SCA, and Mr. Chase has some stock in SCA through an employee stock sharing plan. You stated in your letter that it appears SCA will be taken over in the near future by either Waste Management or Genstar so Mr. Chase will probably have to sell his stock in SCA. However, in the future, he will probably acquire stock options in the new parent company as part of his employee benefit plan.

CVSS has a contract with the City to provide street sweeping services, and Mr. Chase oversees the performance under the contract. Under the terms of the contract, CVSS receives an \$11 per mile increase for all streets added. The City makes decisions on annexations and subdivision developments which increase the number of streets in the City thus providing additional compensation to CVSS.^{1/}

^{1/} All of the fees paid to CVSS are actually paid by the property owners.

QUESTION PRESENTED

May Councilmember Scott participate in City decisions on annexations to the City, on subdivision developments and on other similar matters in view of the fact that Mr. Chase is a source of income to him?

CONCLUSION

Councilmember Scott may participate in City Council decisions on annexations to the City, on subdivision developments and on other similar matters so long as neither the amount of Mr. Chase's income nor the value of his investment in the business will be significantly affected.

DISCUSSION

The Political Reform Act prohibits public officials from making, participating in, or using their official positions to influence a governmental decision when it is reasonably foreseeable that the decision will have a material effect on a source of income to them. Government Code Sections 87100 and 87103(c).^{2/}

Since Bud Chase is a source of income of over \$250 to Councilmember Scott through the commissions on stock transactions, Councilmember Scott must refrain from participating in any City Council decisions which could have a material financial effect on Mr. Chase. In its regulation which defines the term "material financial effect," the Commission states only that a material effect on a source of income who is an individual person is a significant effect on that person. See 2 Cal. Adm. Code Section 18702(b)(3)(D). Significant financial effects on individuals would include significant effects on the amount of income they receive or on the value of their investments or interests in real property.

Insofar as the street sweeping contract with CVSS is concerned, it appears that increasing its business through annexations, etc., will not have a direct effect on the amount of income Mr. Chase receives from CVSS. He receives a salary, and he does not have any arrangement where he receives added compensation based upon an increase in business. The other possible effect on Mr. Chase is a direct increase in the value

^{2/} All statutory references are to the Government Code unless otherwise noted.

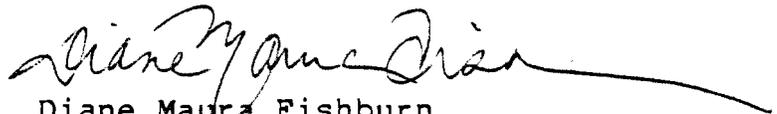
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of his stock in the parent company. We do not have enough facts to determine whether the value of the stock would be significantly affected by any particular increase in business. It seems likely that in many situations the effect will probably not be significant. We would be happy to consult with you on this issue if the need arises.

In your letter, you referred to the so-called "10-percent" rule and its relationship to the determination of materiality. In the Act, a distinction is drawn between persons who own less than 10% of a business entity and those who own 10% or more. See Sections 82030, 82033, 82034 and 87103. It is presumed that when a person owns 10% or more of a business entity, he or she has more control and more interest in a business entity. We have not directly applied this concept to situations such as the one you have described. In any event, it could not affect our advice in this case, since Mr. Chase owns considerably less than 10% of CVSS' parent company.

Please feel free to contact me if you would like to discuss this letter.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:nwm



The City of Chula Vista

Office of the City Attorney (619) 691-5037

September 12, 1984

Ms. Diane Fishburn
Staff Attorney
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA. 95804

Dear Diane:

I wanted to follow up our discussion on the telephone yesterday with a letter. As you recall, I had some concern as to whether Councilman Scott had a conflict of interest which would require him to abstain from voting on large annexations or subdivision improvements because they would increase the amount the City would have to pay to its street sweeping contractor.

The street sweeping contractor is a subsidiary of Chula Vista Sanitary Service which, in turn, is a subsidiary of SCA. Bud Chase is the manager of Chula Vista Sanitary Service and the street sweeping operation falls under his review. The street sweeping contract was actually signed by Chula Vista Sanitary Service. Councilman Scott has received more than \$250 in income from commissions on stock transactions on Mr. Chase's behalf. Bud Chase is not a significant shareholder in SCA although he does have some stock. It appears that either Waste Management or Genstar will be taking over all of SCA in the near future so Mr. Chase will in all probability sell out what stock he has. He would expect in the future to have some kind of stock option as part of his benefit plan for compensation for his services as manager as CVSS. Again, this would not result in his having any more than a minimal share in the company.

Councilman Scott was concerned that when he voted on any annexation or subdivision improvement or any issue which involved adding area to the City, the action would result in a benefit to the street sweeping contractor because there would now be more streets to sweep and their compensation would be greater. Our current agreement calls for an \$11 per mile increase in compensation for all added streets. In addition, the Sanitary Service

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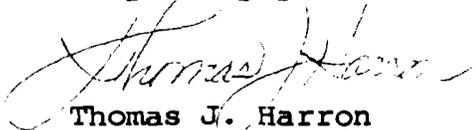
would naturally pick up more customers when we approve a subdivision or annex new property. Although the service is paid for by the residents, Council's decision does result in the Sanitary Service making more money.

Your advice to me was that where the employee does not own more than ten percent of the company, you do not ordinarily consider a benefit to the company to be a benefit to the individual. You said that it would be different if there were some arrangement where the employee actually received a set increase in compensation based upon the increase in business, but without that added fact, there would not be a conflict. I did call Bud Chase to confirm that he has no side arrangement where he receives increased compensation based upon an increase in the business and he confirmed that no such arrangement exists. He informed me that he was an employee of SCA and is paid by them. He thinks it is only logical to assume that the better the companies do, the better chance he has of receiving salary increases, but there is no specific breakdown whereby he receives increased compensation based upon a set increase in either the street sweeping operation or the sanitary service.

Based on all of this information, I informed Mr. Scott that he could participate in a decision last night which did result in an increase in City streets. Councilman Scott informed me that he would prefer to abstain until he can get some written confirmation of this opinion. He had a bad experience in the past when he relied upon an opinion by my predecessor so he tries to be very careful. I would appreciate it if you could provide me with a letter opinion in this matter to put Councilman Scott's mind at rest. If there is anymore information that you might need, please feel free to contact me.

Thank you for your cooperation in this matter.

Very truly yours,



Thomas J. Harron
City Attorney

TJH:lgk

cc: Frank Scott