

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

November 21, 1984

Gordon C. Phillips
City Attorney - Redondo Beach
P.O. Box 270
Redondo Beach, CA 90277

Re: Your Request for Advice on
Behalf of Mary Davis
Our No. A-84-263

Dear Mr. Phillips:

Your letter requests advice on behalf of Harbor Commissioner Mary Davis. Commissioner Davis owns a 100 percent interest in the Portofino Inn, a 125-room hotel which caters to business visitors. She is also the president of the corporation. It also has a restaurant, coffee shop, and a few apartments. It is situated on land leased from the City of Redondo Beach within the City's recreational boat harbor. The harbor is divided into several leaseholds, one of which is the Portofino's, another of which is Marina Cove, Ltd.

Marina Cove, Ltd., recently made application to the City of Redondo Beach to construct a 156-room hotel on its leasehold. The hotel is designed to cater to the athletic business visitor, and would hopefully be the home of the U. S. Water Polo Team and the training base for other swim teams. The Marina Cove leasehold also accommodates two restaurants. The Portofino Inn and the proposed Marina Cove hotel are both within the harbor area and within one-half mile of each other.

The application has been approved by the City and the Coastal Commission, with conditions. One of these conditions requires development of an adjacent city-owned parcel. This matter requires that the application now be acted upon by the Harbor Review Board, of which Commissioner Davis is a member. The ordinance creating the Harbor Review Board dictates that one of its members is to be the appointee of the lessees of the Marina. Currently, Commissioner Davis is that member. The Board can determine whether to grant the use permit necessary to allow Marina Cove, Ltd., to meet the conditions placed upon its

Gordon C. Phillips
November 21, 1984
Page 2

proposal by the City and the Coastal Commission, or it can decide to deny the use permit, thereby effectively rejecting the project.

You have stated that it is likely that the construction of the Marina Cove, Ltd., hotel could either cause the Portofino Inn to lose business due to the stiff competition or cause an increase in business because of the multiple attractions offered.

QUESTION

May Commissioner Davis participate in the decision by the Harbor Review Board relating to the Marina Cove, Ltd., application?

CONCLUSION

Commissioner Davis may not make, participate in making or use her official position to influence the decision of the Harbor Review Board on this project if it is reasonably foreseeable that it will have a material effect on the Portofino Inn.

ANALYSIS

Government Code Section 87100^{1/} provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 provides:

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, distinguishable from its effect on the public generally, on:

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

^{1/} All statutory references will be to the Government Code.

Gordon C. Phillips
November 21, 1984
Page 3

(b) Any real property in which the public official has a direct or indirect interest 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.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

As can be seen, Commissioner Davis has every conceivable manner of economic interest in the Portofino Inn.^{2/} From the facts given, it seems clear that it is reasonably foreseeable that a decision permitting construction of the Marina Cove, Ltd., hotel will have some financial effect upon Commissioner Davis' various economic interests. The question is whether the effect will be material. The standards to be applied are found in 2 Cal. Adm. Code Section 18702. You have provided information to the effect that the Portofino's annualized gross receipts were \$5,192,000 in 1983. Using the formula in 2 Cal. Adm. Code Section 18702(b)(1), we can see that if it is reasonably foreseeable that the decision affecting the Marina Cove, Ltd., hotel project will cause Portofino's annualized gross receipts to rise or to fall by \$51,920 or more, that effect will be material. Assuming a year-round, every-day operation, that means a change in gross receipts of approximately \$150 per day, up or down. You have advised that

^{2/} She has an investment valued at more than \$1,000; because she owns more than 10 percent of the Portofino Inn, she also shares the Inn's interests in real property, which includes the leasehold; the Inn is a source of income to her; and she is an officer of the Portofino Inn.

room rates at the Portofino Inn range from \$80 to \$100 per night, consequently an increase or decrease of only one or two patrons on the average each day would cause a material financial effect.

With regard to Portofino's leasehold interest,^{3/} the standard is:

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

. . .

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or

2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

2 Cal. Adm. Code Section
18702(b)(2).

^{3/} Since Commissioner Davis owns a 10 percent or greater interest in Portofino Inn, she has an indirect interest in any real property interests held by it; this includes its leasehold interest. The analysis for materiality is the same as if she held a direct real property interest.

Gordon C. Phillips
November 21, 1984
Page 5

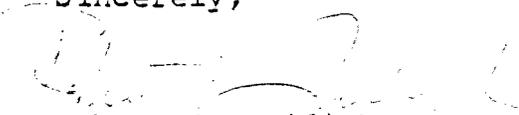
Thus, if the value of the Portofino's leasehold will increase or decrease by \$10,000 or more, the effect of the decision will be material. If the value of the leasehold is less than \$5,000,000, an effect of one-half of 1 percent is sufficient to be material. Likewise, an increase or decrease in the income-producing potential of the leasehold of \$1,000 per month or more (approximately \$30-\$35 per day) would be sufficient to meet the standard of materiality. Since this standard is lower than that in 18702(b)(1), it would be controlling.

Therefore, if it is reasonably foreseeable that the construction of the Marina Cove, Ltd., project, with its attendant improvements, will result in any of the foregoing financial effects upon the Portofino Inn, Commissioner Davis must disqualify herself.

Although the ordinance requires a member of the Harbor Review Board to be appointed by the lessees, it does not require that the appointee be a lessee, nor does it provide for the kind of findings and declaration required by 2 Cal. Adm. Code Section 18703(c) or (d). Furthermore, even if such were the case and the "industry" of lessees were held to be a significant segment of the public generally, all of that industry would have to be affected in "substantially the same manner" as the Portofino Inn in order for the "public generally" exception to apply. No facts have been presented to us to suggest that this would be the case. Consequently, the "public generally" exception would not apply to this situation.

Should you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh



CITY OF REDONDO BEACH
CALIFORNIA

415 DIAMOND STREET
P.O. BOX 270
REDONDO BEACH, CALIFORNIA 90277

October 3, 1984

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Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Written Advice

Gentlemen:

The City of Redondo Beach developed a small craft recreational boat harbor. The harbor was divided into several leaseholds, one of which is Marina Cove, Ltd., and the other of which is Portofino. One of the major developments on the Portofino leasehold is the Portofino Inn, a 125-room hotel which caters primarily to business visitors. The Portofino leasehold also accommodates a restaurant and coffee shop.

Marina Cove, Ltd. recently made application to the City of Redondo Beach to construct a 156-room hotel on its leasehold. The hotel is designed to cater to the athletic business visitor, and would hopefully be the home of the U. S. Water Polo Team and the training base for other swim teams. The Marina Cove leasehold also accommodates two restaurants. The Portofino Inn and the proposed hotel are both within the harbor area and within a half mile of each other.

The City of Redondo Beach approved the Marina Cove, Ltd. hotel, and the project recently received Coastal Commission approval. In approving the project, the Coastal Commission attached certain conditions or mitigation measures. One of the conditions is the development of a piece of city-owned land adjacent to the Marina

Fair Political Practices Commission
October 3, 1984
Page 2

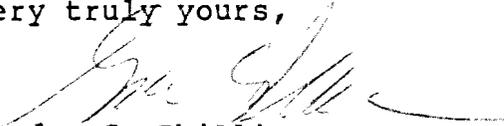
Cove leasehold, commonly know as Mole "B," for public use. The condition for the development of Mole "B" is Special Condition III(1) which is attached.

This matter must come before the Harbor Review Board, which must issue a conditional use permit for the development of Mole "B" in accordance with the condition of the Coastal permit.

By law, one member of the Harbor Review Board which must grant the conditional use permit, must be appointed by the Marina Lessees. Presently serving on the board, as a lessee's appointee, is the president of Portofino Inn, who holds in excess of 10% of the stock of the Inn and which stock is valued in excess of \$100,000. The member receives an annual salary from Portofino in excess of \$10,000 and owns on the interest in the leasehold itself with a value in excess of \$100,000.

Does such member have a conflict of interest pursuant to Government Code § 87100, et seq. which would require the member to disqualify herself.

Very truly yours,


Gordon C. Phillips
City Attorney
