

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

January 11, 1985

Hartley H. Bush
Bush, Ackley, Milich & Hallinan
P.O. Box 486
Oakdale, CA 95361

Re: Your Request for Advice
Our File No. A-84-286

Dear Mr. Bush:

Thank you for your letter requesting advice regarding the members of the City of Oakdale Redevelopment Agency and their responsibilities under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

The five members of the City of Oakdale City Council also sit as the members of the City of Oakdale Redevelopment Agency. The Redevelopment Agency is currently refurbishing streets and City parking lots in the downtown core area of the City of Oakdale. These improvements will be paid for with tax increment financing, and the Redevelopment Agency has recently commenced proceedings to issue tax anticipation bonds.

The redevelopment project area in the City of Oakdale encompasses 780 acres, or approximately 50 percent of the area of the City.

All five members of the Redevelopment Agency have financial interests located in or near the redevelopment project area.

DISCUSSION

The Political Reform Act prohibits a public official from making, participating in, or using his official position to

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise specified.

influence a governmental decision in which the official has a financial interest. Section 87100. A public official has a financial interest in a governmental decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any of the following interests:

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

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

(c) Any source of income, other than gifts and 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.

(Section 87103.)

You asked a general question about whether the members of the City of Oakdale Redevelopment Agency must disqualify themselves from decisions concerning the redevelopment project. Under the conflict of interest provisions, the need for disqualification is determined on a decision-by-decision basis and depends on the facts of the situation. The following is a general explanation of how the conflict of interests provisions apply to the interests held by the members of the Redevelopment Agency. If, in the future, you wish to request additional written advice about whether disqualification is required on a particular decision, please feel free to contact us.

Councilmember Elmo Garcia:

Councilmember Garcia owns real property, which is his personal residence, located in the redevelopment project area. Councilmember Garcia is a real estate broker, and his real estate business, Garcia Properties, is located in Modesto.

Councilmember Garcia has an interest in real property, his residence, that may be affected by the decisions of the Redevelopment Agency. Councilmember Garcia must disqualify himself if it is reasonably foreseeable that a decision concerning the redevelopment project will have a material effect, distinguishable from its effect on the public generally, on his personal residence.

In general, the effect of a decision on a financial interest is material if it is significant. 2 Cal. Adm. Code Section 18702 (copy enclosed). In addition to the general test of significance, the Commission has adopted the following monetary guidelines for determining the materiality of an effect on an interest in real property.^{2/}

(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).

^{2/} The Commission is currently considering amendments to these guidelines. The Commission staff will hold a public workshop on January 24, 1985, in Sacramento, regarding possible changes. We will send you a notice regarding this workshop.

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Even if the effect of a decision on Councilmember Garcia's residence were considered material, it is possible that the effect on Councilmember Garcia's personal residence would not be distinguishable from the effect on the public generally. I am enclosing a copy of the Owen Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976), which includes a discussion of the effect of a similar type of decision on the personal residence of a public official, and the application of the public generally exception to that situation.

Councilmember Garcia also has an interest in a business entity, his real estate business, but the business entity is located in Modesto. You have not indicated whether Councilmember Garcia conducts any real estate business which concerns property in the redevelopment project area, or if there is a substantial probability that he will do so. Accordingly, it is not possible to determine whether it is reasonably foreseeable that decisions of the Redevelopment Agency will have a material effect on Councilmember Garcia's real estate business. I suggest you refer to the Commission's discussion of reasonable foreseeability in the Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, December 4, 1975, copy enclosed).

Councilmember Patricia Paul:

Councilmember Paul has a financial interest in real property, her personal residence, located in the redevelopment project area. The same considerations discussed above in relation to Councilmember Garcia's personal residence would apply to Councilmember Paul.

Councilmember Helen Wood:

Councilmember Wood has a deed of trust on two parcels of commercial real property located inside the redevelopment project area. This commercial real property is used for insurance and real estate offices.

Councilmember Wood must disqualify herself from participating in any decision which may foreseeably materially affect her property in a manner distinguishable from its effect on the public generally. Because the Redevelopment Agency is currently refurbishing streets and City parking lots in the downtown core area, I have enclosed copies of three advice letters, one to John Doyle of Palm Springs, and one to Furman B. Roberts of Orange, and one to K. D. Lyders of Oxnard, which discuss specific decisions concerning street and parking improvements and their effects on commercial real property owned

by public officials. I also refer you to the Owen Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976), which discusses the effects of redevelopment on commercial property.

Councilmember De Ann Isenberg:

Councilmember Isenberg has an interest in a business entity, De Ann's Drafting, which occasionally does business with contractors and builders in the redevelopment project area. On the basis of the facts provided, it is not possible to predict how any decisions about the redevelopment project may foreseeably affect Councilmember Isenberg's business or any of her customers or clients who are a source of income to Councilmember Isenberg's business.

In the Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, December 4, 1975), the Commission considered several different factual situations concerning the potential effect of a governmental decision on a small business entity operated by a public official. I suggest you refer to the discussion about Director McPhail in the Thorner Opinion for guidance with respect to Councilmember Isenberg's situation.

The Commission has adopted monetary guidelines for determining whether the effect of a decision on a business entity is material. 2 Cal. Adm. Code Section 18702(b)(1).^{3/} These guidelines are as follows:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

(A) The annualized gross revenues by the lesser of:

^{3/} The Commission is currently considering amendments to these guidelines. A copy of the proposed changes is enclosed. The Commission staff will hold a public workshop on February 7, 1985, in Sacramento to solicit comments and suggestions regarding the proposed regulations.

1. One hundred thousand dollars
(\$100,000); or

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

(B) Annual net income by the lesser of:

1. Fifty thousand dollars (\$50,000); or

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

(C) Current assets or liabilities by the
lesser of:

1. One hundred thousand dollars
(\$100,000); or

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

Current assets are deemed to be
decreased by the amount of any expenses
incurred as a result of a governmental
decision.

If there is a substantial likelihood that the effect of a
decision on Councilmember Isenberg's business, or on the
businesses of the contractors or builders with whom she does
business, would be within these guidelines, and would be
distinguishable from its effect on the public generally,
Councilmember Isenberg must disqualify herself from
participating in that decision. I refer you to the Owen
Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976), for a
discussion of the public generally exception.

Councilmember Ken Pierson:

Councilmember Pierson is a real estate broker and salesman
employed by a real estate company located in the redevelopment
project area.

Councilmember Pierson must disqualify himself from
participating in any decision which would foreseeably have a
material effect on his employer or his income from real estate

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transactions. The monetary guidelines in 2 Cal. Adm. Code Section 18702(b)(1), also mentioned with regard to Councilmember Isenberg's business, would apply to the determination of whether an effect on Councilmember Pierson's employer is material. 2 Cal. Adm. Code Section 18702(b)(3)(C).

In the Oglesby Opinion, 1 FPPC Opinions 71 (No. 75-083, July 2, 1975), the Commission discussed the effect of a redevelopment project on the business of a public official who operated a real estate business in the area. A copy of the Oglesby Opinion is enclosed. I have also enclosed a copy of an advice letter to Raymond M. Haight of Antioch, which includes discussion of the effects of redevelopment decisions on the real estate business of a city councilmember, Raymond Carl.

I hope this general advice is helpful to you. If you wish to request additional written advice with respect to a specific decision pending before the Oakdale Redevelopment Agency, please contact us. My telephone number is (916) 322-5901, and I will be happy to answer any questions you may have about this letter.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosures

LAW OFFICES
BUSH, ACKLEY, MILICH & HALLINAN
A PARTNERSHIP, INCLUDING PROFESSIONAL CORPORATIONS*

ESTABLISHED 1923
DAVID F. BUSH 1923-1955
GEORGE H. ACKLEY 1935-1975

LEO MILICH
HARTLEY H. BUSH*
THOMAS N. HALLINAN
MICHAEL D. MILICH

366 WEST F STREET
P. O. BOX 486
OAKDALE, CALIFORNIA 95361

Nov 15 8 43 AM '84
TELEPHONE
916 847-1756

November 9, 1984

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

Attn: Legal Division

Re: City of Oakdale Redevelopment Agency
Members' Ability to Vote

Gentlemen:

The City of Oakdale has formed and is operating an active Redevelopment Agency. The members of Agency are the five members of the City Council.

The purpose of this letter is to request advice as to whether the following Agency members can vote on any actions of the Agency and if so, what type of actions. The Agency is presently refurbishing streets and City owned parking lots in the down town core area of the City to be paid for with tax increment financing. The Agency has just commenced proceedings to issue tax allocation bonds. The members of the Agency and their respective interests are:

ELMO GARCIA, co-owns a residence in the project area;

PAT PAUL, co-owns a residence in the project area;

HELEN WOOD, co-owns a Deed of Trust in commercial real property in the project area;

DEANNE ISENBERG, is a self-employed designer and drafts-person of house plans who works for various builders and contractors, who from time to time construct buildings within the project area;

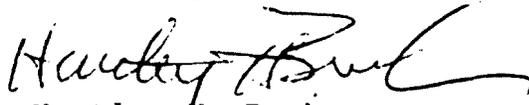
KEN PIERSON, a realtor, works for a real estate company situate in the project area and from time to time, engages in real estate transactions as broker-salesman within the project area; in addition he owns a Deed of Trust on real property within the project area, though this is due to be transferred by him within approximately three weeks.

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The project area for redevelopment in Oakdale is 780 acres in size, or about 50% of this area of the City, and it includes 40% of the assessed value of the City.

Thank you.

Your very truly,

A handwritten signature in cursive script, appearing to read "Hartley H. Bush".

Hartley H. Bush
General Council,
Oakdale Redevelopment Agency

HHB/tmk