

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

February 25, 1985

Manuela Albuquerque
City of Berkeley
Legal Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: Your Request for Advice
Our File No. A-85-010

Dear Ms. Albuquerque:

Thank you for your letter requesting advice regarding the duties of a member of the City of Berkeley's Loan Administration Board under the conflict of interest provisions of the Political Reform Act.^{1/} This advice is based on information you provided in your letter and in telephone conversations.

FACTS

The Loan Administration Board for the City of Berkeley administers the City's Revolving Loan Fund. The Revolving Loan Fund is funded by a grant from the federal Economic Development Administration. The Loan Administration Board makes loans from the Revolving Loan Fund to small businesses in South Berkeley in accordance with guidelines issued by the Economic Development Administration and an administrative plan adopted by the Berkeley City Council and approved by the Economic Development Administration.

The Economic Development Administration guidelines require that at least two of the nine members of the Loan Administration Board be representatives of private lending institutions. The guidelines also require the small business loans from the Revolving Loan Fund to "leverage" private credit. Accordingly,

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

the extension of credit by a private financial institution to an applicant for a small business loan from the Revolving Loan Fund is a factor that the Loan Administration board must consider when acting on applications for small business loans from the Revolving Loan Fund.

QUESTIONS

Is it a conflict of interest for a member of the Loan Administration Board who is a representative of a private financial institution to participate in the Loan Administration Board's decision regarding an applicant for a small business loan from the Revolving Loan Fund when the applicant has received a loan from the private financial institution?

If a Loan Administration Board member who is a representative of a private financial institution must disqualify himself or herself from the Board's decision because of a conflict of interest, may the member of the Loan Administration Board participate in the financial institution's decision to extend credit to a person who is an applicant, or intends to apply, for a small business loan from the Revolving Loan Fund?

CONCLUSIONS

If the Loan Administration Board's decision regarding an applicant for a small business loan from the Revolving Loan Fund would not have a reasonably foreseeable material financial effect on the private financial institution which has made a loan to the applicant, it would not be a conflict of interest under the Political Reform Act for a member of the Loan Administration Board who is a representative of the private financial institution to participate in the Board's decision regarding a small business loan from the Revolving Loan Fund to the applicant.

If a Loan Administration Board member who is a representative of a private financial institution is required to disqualify himself or herself from the Board's decision because of a conflict of interest, the Board member may participate in the financial institution's decision to extend credit to a person who is an applicant, or intends to apply, for a small business loan from the Revolving Loan Fund so long as the official does not attempt to influence the decision of the Loan Administration Board.

DISCUSSION

Section 87100 prohibits any public official from making, participating in, or using his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

* * *

(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.

Therefore, a member of the Loan Administration Board who is an employee or officer of a private financial institution, or who receives income of \$250 or more per year from a private financial institution, must disqualify himself or herself from participating in any decision, either as a member of the Loan Administration board or as a representative of the private financial institution, which would have a reasonably foreseeable material financial effect on the private financial institution.

Commission regulation 2 Cal. Adm. Code Section 18702 specifies when the effect of a decision is considered material. Generally, an effect is material if it is significant. 2 Cal. Adm. Code Section 18702(a). The Commission has also adopted monetary guidelines for determining whether the effect of a decision on a business entity which is a source of income to a public official, or in which a public official is an employee or officer is material. These guidelines specify that the effect

of a decision will be considered material if it would increase or decrease: ✓

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

2 Cal. Adm. Code Section
18702(b) (1) .2/

It is not clear from the information you have provided whether the effect of a decision of the Loan Administration Board would have a material financial effect on a private

2/ The Commission is currently considering amendments to these guidelines (see enclosed copy of notice of proposed action). The Commission's hearing on the proposed amendments is scheduled for April 2, 1985; however, for purposes of interim advice, the Commission has decided to increase the amount in 2 Cal. Adm. Code Section 18702(b) (1) (A) to \$200,000 for corporations listed on the New York and American Stock Exchanges.

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financial institution. You have indicated that the loan by the private financial institutions to an applicant for a small business loan from the Revolving Loan Fund is likely to be conditioned on the applicant obtaining the loan from the Revolving Loan Fund, and that the Loan Administration Board considers whether the applicant for a small business loan from the Revolving Loan Fund has obtained a loan from a private financial institution when the Board acts on the loan application. Thus, the decision of the Loan Administration Board may affect whether the private financial institution loans money to the applicant.

Although the size of the loans made by the private financial institutions may vary, the maximum loan to a small business from the Revolving Loan Fund is \$5,000. The small amount of these loans indicates that the loans from the private financial institutions are also likely to be relatively small, and therefore generally would not have a material effect on the private financial institutions concerned. Therefore, in most instances, a member of the Loan Administration Board who is an employee or officer of a private financial institution, or who receives income from a private financial institution, would not have a conflict of interest regarding the Board's decision regarding an applicant for a small business loan from the Revolving Loan Fund when the applicant has received a loan or the promise of a loan from the private financial institution. However, if the loan is large enough to be considered material, the Loan Administration Board member must disqualify himself or herself from participating in the Board's decision.

If the amount of a loan from a private financial institution is material in a particular case, it is necessary to consider whether a member of the Loan Administration Board makes, participates in, or uses his or her official position to influence the Board's decision on an application for a small business loan from the Revolving Loan Fund when, as an employee or officer of a private financial institution, he or she arranges for a loan from the private financial institution to the applicant.

The Commission has proposed to adopt 2 Cal. Adm. Code Section 18700.1 (copy enclosed) to define use of one's official position to influence a governmental decision. This proposed regulation would provide that the official attempts to use his or her official position if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee, or consultant of the agency.

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If the actions of the public official were only to arrange for, or approve a loan from the private financial institution to the applicant, and transmit evidence of that loan to the Loan Administration Board, the public official's actions would not be for the purpose of influencing the Board's decision, but for the purpose of extending the credit of the private financial institution to the applicant. However, if, for example, the public official were to write to the Loan Administration Board urging the Board to grant or deny the loan to an applicant, the public official would be attempting to influence the Board's decision. Therefore, as long as the actions of the public official on behalf of the private financial institution are not for the purpose of affecting the Loan Administration Board's decision on a loan application, he or she may arrange for, or make decisions on loans from the private financial institution to applicants for small business loans from the Revolving Loan Fund.

This advice is limited to the interpretation of the Political Reform Act. I have not considered any possible duties imposed by the Economic Development Administration on Loan Administration Board members.

Please contact me at (916) 322-5901, if you have any questions regarding this letter.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure



City of Berkeley

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January 18, 1985

Barbara Milman
General Counsel
Fair Political Practices Commission
Box 807
Sacramento, CA 95814

Dear Ms. Milman:

I am writing to seek your advice regarding a conflict of interest issue affecting the City of Berkeley's Loan Administration Board ("LAB") which administers the City's Revolving Loan Fund ("RLF"). The material facts are set out below.

The RLF is funded by a grant from the federal Economic Development Administration ("EDA"). Loans are made to small businesses in South Berkeley in accordance with guidelines issued by EDA and an administrative plan ("Plan") adopted by the Berkeley City Council approved by EDA and incorporated by reference into the grant agreement between EDA and the City.

The Plan and EDA guidelines together require that at least sixty per cent of the membership of the LAB be comprized of persons living or operating a business in South Berkeley with knowledge of and experience in lending procedures. EDA has specified that at least two of these individuals be representatives of lending institutions. EDA also requires that RLF loans "leverage" private credit.

As a consequence, we anticipate that at least two of the nine members of the LAB will be loan officers of lending institutions located in Berkeley, perhaps even in South Berkeley. Moreover, some of the businesses may have obtained private financing from these very lending institutions and the credit is likely to be conditioned on the extension of an RLF loan. In these instances, it is also likely that these private credit packages would have been arranged by the LAB members themselves.

LAB members plan to disqualify themselves from directly influencing any LAB decisions involving customers of these lending institutions. However, we seek your advice as to whether their participation or that of their

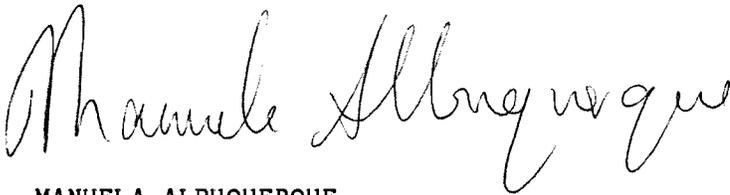
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employer in arranging the private loan would be deemed an attempt to improperly influence the LAB's decision since these employees of the lending institutions are also members of the LAB. We urge you not to find this participation improper because such a conclusion would require us to seek commission members from outside Berkeley in order both to fulfill federal requirements and address your concerns about conflict of interest.

Feel free to call me if you have any further questions regarding this matter.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Manuela Albuquerque". The signature is written in dark ink and is positioned above the typed name.

MANUELA ALBUQUERQUE
Deputy City Attorney

MA:dp

cc: Vicki Elmer, Assistant City Manager,
Planning & Community Development