

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

April 25, 1985

Carl Waggoner
City Attorney
P.O. Drawer T
Turlock, CA 95381-1526

Re: Your Request for Advice
Our File No. A-85-089

Dear Mr. Waggoner:

Thank you for your letter requesting advice on behalf of Turlock City Councilmember Maurice Palmberg, Councilmember James Day, and Turlock Mayor Brad Bates, regarding their duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

Pursuant to the Enterprise Zone Act,^{2/} the governing body of a city or county may propose the designation of an enterprise zone and may apply to the State Department of Commerce for adoption of the proposed designation. Section 7073(a) and (b). The State Department of Commerce may designate up to 10 enterprise zones within the state. Section 7073(c). An enterprise zone offers regulatory, tax, program, and other incentives to attract private sector investment in the zone proposed. Section 7073(d). The city or county which proposes and applies for designation of an enterprise zone determines the types of incentives to be offered to business in the enterprise zone. In addition, employers located in the enterprise zone are eligible for certain state income tax benefits (e.g. Revenue and Taxation Code Section 17053.8 provides a tax credit of 50 percent of the wages paid by an employer to qualified

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

^{2/} Sections 7070-7077.

Carl Waggoner
April 25, 1985
Page 2

disadvantaged individuals during the first year of business in the enterprise zone).

The preliminary application for designation of an enterprise zone must be submitted by May 17, 1985. The State Department of Commerce will, 45 days thereafter, select 20 applicants for the final stage of the enterprise zone designation process. No more than 10 of the 20 finalists will become designated enterprise zones.

The decision before the Turlock City Council is whether to propose the designation of an enterprise zone and file a preliminary application with the State Department of Commerce. The preliminary application would set forth the boundaries of the proposed enterprise zone, the economic problems that exist within that area, and the regulatory, tax, program, and incentives the City would offer to solve those problems. The area the City proposes to designate as an enterprise zone contains 72 percent of the businesses in the City, based on business licenses issued, and 30 percent of the residences. However, according to one Councilmember, Councilmember Tom Howard, a substantial portion of the retail business occurs outside the enterprise zone area where large stores such as Long's, Lucky, and Payless are located.

Two councilmembers operate businesses in the proposed enterprise zone area. They are Councilmember Palmberg, who operates an auto parts store at a leased location, and Councilmember Day, who is a dentist and leases office space. Both businesses would be eligible for the benefits offered to businesses in the enterprise zone.

Councilmember Day also owns residential property located in the enterprise zone. His interests consist of a house and an apartment building, both of which are either recently constructed or recently renovated.

Mayor Bates is a 50 percent partner in an insurance business. The business is located outside of the enterprise zone, but has sold insurance policies to one or more businesses located in the enterprise zone. These businesses which are a source of income to Mayor Bates would be eligible for the benefits offered to businesses in the enterprise zone.

The City's preliminary application focuses on the problems faced by businesses in the enterprise zone and describes generally the types of incentives the City would offer. These incentives include streamlining the process for obtaining necessary permits, developing an information base on the local labor market, available industrial sites, and information on

development procedures and costs, developing a comprehensive plan for economic development, and encouraging the use of assessment districts for funding infrastructure improvements. The preliminary application does not propose the formation of any assessment district for a particular area or otherwise specify how the enterprise zone designation would affect one particular area in the enterprise zone differently than another.

QUESTION

May Councilmember Palmberg, Councilmember Day, and Mayor Bates, participate in the decision to apply for approval to designate an enterprise zone in the City of Turlock?

CONCLUSION

Councilmember Palmberg, Councilmember Day, and Mayor Bates may participate in the decision to submit the preliminary application for approval to designate an enterprise zone in the City of Turlock. Each of those public officials may also participate in other decisions of the City Council relative to the application for designation of an enterprise zone so long as those decisions would not have a reasonably foreseeable material financial effect on any of his financial interests that is distinguishable from the effect on a significant segment of the general public of the City of Turlock.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision within the meaning of Section 87100 if the decision would have a reasonably foreseeable material financial effect,^{3/} distinguishable from the effect on the public generally, on:

(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.

^{3/} See enclosed copy of regulations 2 Cal. Adm. Code Sections 18702 and 18702.2 regarding materiality.

Carl Waggoner
April 25, 1985
Page 4

(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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Section 87103.

The issue you have presented is whether the decision to apply for approval to designate an enterprise zone, and thereby potentially permit 72 percent of the licensed businesses in Turlock to take advantage of tax and other benefits, is a decision which would affect the financial interest of Councilmember Palmberg, Councilmember Day, and Mayor Bates in a manner that is distinguishable from the effect on the public generally.

Commission regulation 2 Cal. Adm. Code Section 18703 provides that a material financial effect of a governmental decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. A decision which affects 72 percent of the licensed businesses in the City of Turlock in substantially the same manner is a decision which affects a significant segment of the public. See Owen Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976) and 2 Cal. Adm. Code Section 18703. Accordingly, we conclude that the decision of the City Council to apply for approval to designate an enterprise zone is a decision which would not affect the economic interests of Councilmember Palmberg, Councilmember Day, and Mayor Bates in a manner that is distinguishable from its effect on the public generally. Therefore, each of those public officials may participate in the decision to apply for approval to designate an enterprise zone.

Carl Waggoner
April 25, 1985
Page 5

I have based this conclusion on the content of the City's preliminary application. As discussed above, the preliminary application contains no specific proposals to benefit one specific area of the proposed enterprise zone in a manner that is different from the benefits proposed for other areas. If, in the future, the City were to modify its proposal so that a specific area within the enterprise zone would receive special benefits that would not be, or could not be, available to other areas in the enterprise zone, then it would be necessary to determine whether any of the Councilmembers have an economic interest located in the area which would receive the special benefits and which would experience a reasonably foreseeable material financial effect as a result of the proposal. For example, a decision to permit the formation of an assessment district which includes property owned by one of the Councilmembers, and which would have a material effect on the Councilmember by requiring the Councilmember to contribute toward the financing of improvements in that area, but would not similarly affect most other businesses in the enterprise zone, would be a decision from which the Councilmember must disqualify himself. See F. MacKenzie Brown Opinion, 4 FPPC Opinions 19 (No. 77-024, February 7, 1978).

It is impossible to predict all of the types of specific decisions which the City Council could face in connection with the final application for designation of the enterprise zone, if it is selected as one of the 20 finalists, or in connection with the administration of the enterprise zone in the event that the City's application is approved. However, if the City Council is confronted with a specific decision that would confine its effect to a certain area within the enterprise zone, and a Councilmember has an economic interest in that area, you should request additional advice.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosures

CITY of TURLOCK

City Attorney

Carl O. Waggoner

P.O. Drawer T, Turlock, Ca. 95381-1526

APR 15 1985

Phone (209) 668-5615

April 15, 1985

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

Attention: Katheryn Donovan, Attorney at Law
Robert Leidigh, Attorney at Law

Re: Enterprise Zones/Conflict of Interest

Dear Ms. Donovan and Mr. Leidigh:

Thank you for meeting with Councilperson Maurice Palmberg, Councilperson Tom Howard, City Manager Steve Kyte and myself last Wednesday. I appreciate the both of you taking time from your busy schedules to meet with us regarding something of such critical importance to the City of Turlock.

During our meeting, we informed you that April 17, 1985 was the last day the City had to file an application to have a project area approved as an enterprise zone. Further, we also informed you that the City Council would be meeting on April 15, 1985 to decide whether or not to file an application.

Since we met with you, the State of California Department of Commerce has extended the time for filing the application from April 17, 1985 to May 17, 1985.

Although you provided us with a detailed analysis of our concerns at our April 10, 1985 meeting, I have been instructed to request an advice letter.

I therefore request that you provide the City with written advice on the following questions:

State of California
Fair Political Practices Commission
Attention: Ms. Donovan and Mr. Leidigh
Page Number Two
April 15, 1985

1. Are City Council persons prohibited from making, participating in the making or in any way using their official position to influence the decision to file an application to establish an enterprise zone when:

(a) A Council person operates a business within the proposed enterprise zone; or

(b) Persons or entitles residing within the District are a source of income to a Council person?

2. If the answer to the foregoing question is no, what particular events or facts such as the establishment of an assessment District, could preclude a Council person from making, participating in the making, or in any way using their official position to influence an action the Council might take?

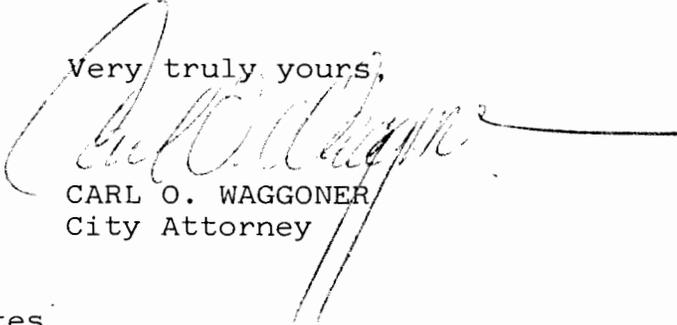
I believe that we have discussed the pertinent facts with you. You have been supplied with a copy of attachment 6 to the Agenda of the Turlock City Council Meeting of April 9, 1985. Further, you have in your possession a map of the City of Turlock and surrounding area showing the proposed enterprise zone. Two Council persons, Dr. James Day and Mr. Maurice Palmberg, operate business within the enterprise zone. Theoretically, although probably not in reality, these two individuals may be able to enjoy some of the benefits of the enterprise zone. Another individual, Mayor Brad Bates, is a partner of an insurance agency, which although is located outside of the zone, business within the District may be a source of income to him.

State of California
Fair Political Practices Commission
Attention: Ms. Donovan and Mr. Leidigh
Page Number Three
April 15, 1985

In the event you need any further information,
please contact me. We are under some time constraints as
the Council will consider whether to file an application at
its meeting of May 14, 1985.

Thank you again for your assistance in this
matter.

Very truly yours,



CARL O. WAGGONER
City Attorney

CW/dr
cc Mayor Brad Bates
City Manager Steve Kyte
Turlock City Council