



California Fair Political Practices Commission

November 1, 1985

Michael B. Montgomery
2460 Huntington Drive
San Marino, CA 91108

Re: Advice Request No. A-85-222

Dear Commissioner Montgomery:

You have asked whether you have to disqualify yourself from consideration of Commission conflict of interest regulations concerning redevelopment in any of the following three possible situations:

- (1) Where you are the owner of an interest in real property within an existing redevelopment project area.
- (2) Where you represent a developer in an existing redevelopment project.
- (3) Where you or your client acquires property in a "to-be-formed" redevelopment project.

CONCLUSION

You do not have to disqualify yourself from consideration of the Commission's redevelopment regulations in any of the situations you describe unless:

- (1) It is reasonably foreseeable that the Commission's action will affect the outcome of a vote on a redevelopment decision, and
- (2) It is reasonably foreseeable that the redevelopment decision in question will have a material financial effect on you, on your real property, or on your client.

DISCUSSION

As a general rule, you must disqualify yourself from a Commission decision if it is reasonably foreseeable that the

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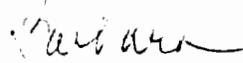
decision will have a material financial effect on you, on one of your clients, or on real property in which you have an interest. Government Code Sections 87100, 87103. In order to determine whether disqualification is required, you should look at two things.

First, you should look at whether it is reasonably foreseeable that any redevelopment decisions will be made by a city council or redevelopment agency which are likely to have a material financial effect on you or on one of your clients. Second, you should look at whether it is reasonably foreseeable that the Commission's regulations will affect the outcome of the vote on any of those decisions. For example, you may know that a particular redevelopment agency member is the swing vote on a redevelopment question which will materially affect you or your client. If it is reasonably foreseeable that the Commission regulation will determine whether that agency member will be able to participate in the vote, you should disqualify yourself from consideration of the Commission regulation.

In the specific situations you describe, you state that the proposed regulations would not affect any vote favorable to you or your client. As you are aware, however, the Act prohibits your participation in any decision which could materially affect you or your clients, whether the reasonably foreseeable effect is beneficial or detrimental. You cannot vote against your own interests any more than you can vote for your own interests.

I assume, for purposes of this letter, that in the situations you describe you know of no facts indicating that the proposed regulations would change a vote either for or against your interests or your clients' interests. Under these circumstances, no disqualification is required. However, if a situation does arise where it is reasonably foreseeable that a vote on a redevelopment matter will materially affect you or your client (whether the effect is beneficial or detrimental), and it is also foreseeable that the outcome of that vote depends on the Commission's action on a proposed redevelopment regulation, you may have to disqualify yourself from participating in the decision on that regulation. In such a case, you should seek further advice.

Very truly yours,



Barbara A. Miiman
General Counsel

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October 15, 1985

Barbara A. Milman
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Question of Disqualification from Redevelopment
Decisions

Dear Ms. Milman:

Following a challenge from a member of the public at the last meeting with respect to my continued participation in redevelopment decisions, I can envision the following three areas where a conflict might exist:

1. Where I am the owner of an interest in real property within an existing redevelopment project area. Parenthetically, I know of no situation where the adoption of a particular rule, i.e., 300 feet versus 500 feet, would enable a board member to cast a vote favorable to me where that member would be disqualified if an alternative rule were adopted.

2. Where I represent a developer in an existing redevelopment project. Again, I know of no situation where I could vote to adopt a rule that would either qualify or disqualify a sitting member to the benefit of my client.

3. Where I acquire property or a client acquires property in a to-be-formed redevelopment project. Again I do not presently know of any situation that would qualify or disqualify a board member to the benefit of my client or myself, depending upon which alternative rule is to be adopted.

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Notwithstanding the foregoing, even if a board member were to be qualified or disqualified as a result of the adoption of one rule or the other, there can be no presumption as to the vote of the qualified member, and in the case of a disqualified member, a commissioner may be appointed pursuant to Health & Safety Code § 33200(a).

Upon reflection, it is clear to me that the challenge is one of philosophy rather than a question of actual or apparent conflict, in that the challenge is raised by an admitted opponent of redevelopment procedures and activities in general, and it is well-known that my law practice is constituted primarily of community development law.

At this time I know of no reason why I should be disqualified.

Very truly yours,


MICHAEL B. MONTGOMERY

MBM/jl