



California Fair Political Practices Commission

December 6, 1985

Marshall C. Scott, Mayor
City of Moreno Valley
P.O. Box 1440
Moreno Valley, CA 92388

Re: Your Request for Advice,
Our File No. A-85-234

Dear Mayor Scott:

It was a pleasure to meet with you, Councilmember Judy Nieburger and City Manager David F. Dixon. To date, I have not received authorizations and supplemental information from Councilmembers Webb, Lynn and Horspool. Therefore, in order to expedite the response to your request and that of Councilmember Nieburger, I will answer your questions now. If the other councilmembers desire written advice, they may request it pursuant to 2 Cal. Adm. Code Section 18329 (copy provided to you at our meeting), and we will respond to their requests separately at that time.

FACTS

Background

A builder/developer, Duane Roberts, is proposing to construct, on approximately 5 acres, several commercial and office buildings. Two of the planned buildings are proposed to be occupied by Cal West National Bank and the City Offices for the City of Moreno Valley. Each entity is to occupy separate buildings of approximately 30,000 sq. ft.

The proposed development raises possible conflicts of interest because of past and current relationships among the Cal West National Bank Board of Directors, its stockholders, and its customers.

Mayor Scott

Mayor Scott is a member of the Board of Directors of Cal West National Bank. In mid-1984, a partnership was formed to purchase property for the development of a headquarters office for Cal West National Bank. The partnership was called CW Investments and included, as general partners, the Directors of

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the Bank and other senior officers of the Bank. As a member of the Board of Directors of the Bank, Mr. Scott became a member of the partnership known as CW Investments. This partnership was created prior to his election as a City Council member and his subsequent selection as Mayor. Mr. Scott withdrew from the partnership upon his election to the City Council. The withdrawal was formalized in a letter from CW Investments, dated January 7, 1985.

During 1984, the partnership did acquire the property that Duane Roberts is planning to use in the development of the aforementioned commercial and office complex. The general partnership, CW Investments, has quitclaimed to Duane R. Roberts that property for the total of \$8,800 which CW Investments had put up to that date. Mr. Scott's total monetary contribution to CW Investments was in the amount of \$800.00, which represented his 1/11th share of closing costs for the purchase of the property that was to be used as a site for construction of the bank headquarters.

In addition to the foregoing relationships, Mayor Scott also owns 3,000 shares of Cal West National Bank stock, currently valued at approximately \$11 per share. Cal West National Bank has issued a total of 300,000 shares of stock; consequently Mayor Scott owns 1% of the bank's stock.

Mayor Scott is also a State Farm insurance agent and, as such, he has an independent contractor relationship with State Farm. This arrangement includes an exclusive sales agreement that he will sell only State Farm's insurance and that State Farm won't sell its insurance except through its authorized agents. The arrangement also includes the manner for calculating the price for his agency should he decide to sell it back to State Farm. Mayor Scott owns the agency and pays all the overhead and employs a staff of seven. In 1985, the agency will earn approximately \$200,000 in gross commissions.

Councilmember Nieburger

Councilmember Judy Nieburger has received a loan from Cal West National Bank which remains outstanding. She received the loan prior to her election to the City Council and on terms which were available to the general public. She has had no dealings with either CW Investments or with Duane Roberts.

QUESTIONS

Mayor Scott and Councilmember Nieburger have asked the following question:

If the issue of renting, leasing, or purchasing one of the commercial buildings for a City Office complex were to come before the City Council for consideration, would there be a conflict of interest with Mayor Scott or Councilmember Nieburger voting on the issue, and would the proposed development of the Cal West National Bank Headquarters in close proximity to the proposed City Offices create a conflict of interest?

In addition, Mayor Scott has asked for general advice with respect to possible disqualification issues arising from his insurance business.

ANALYSIS

General Provisions

The Political Reform Act (the "Act")^{1/} provides as follows:

87100. Public Officials; State and Local. 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 87100

A financial interest in a decision requiring disqualification exists when the criteria of Section 87103 are met.

87103. Financial Interest. 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:

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

(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

We turn now to an analysis of the individual councilmembers' circumstances.

Councilmember Nieburger

Councilmember Judy Nieburger has no investment interest in Cal West National Bank or in CW Investments, nor any economic interest in Duane Roberts or his development company. She does have an outstanding loan from Cal West National Bank which was obtained prior to her becoming a public official and which was made on terms available to the general public (and, obviously, without regard to her official status). Under Section 87103(c), a source of income does not include a commercial lending institution which has made a loan to a public official in the regular course of business on terms available to the public without regard to official status. Thus, Cal West Bank is not a source of income to Councilmember Nieburger; hence there is no basis for disqualification relative to the Bank, as well as relative to CW Investments or Duane Roberts.

Mayor Scott

Cal West National Bank

Mayor Scott clearly has an economic interest in Cal West National Bank. He is a director (Section 87103(d)) and he has an investment of \$1,000 or more (Section 87103(a)). Consequently, he may not make, participate in making, or use his official position to influence any governmental decision which will have a reasonably foreseeable material financial effect upon Cal West National Bank which is distinguishable from the decision's effect upon the public generally.

Consequently, any decisions by the City which will have a reasonably foreseeable material financial impact upon the bank vis-a-vis its headquarters office will require disqualification by Mayor Scott. This could occur if the bank has a commitment to acquire space in the office complex to be developed by Mr. Roberts, since the bank decided a year ago that it needed expanded facilities for its operations and its headquarters. CW Investments was originally formed as a partnership consisting of the bank's directors and its chief officers to acquire the land and construct the building and then lease it to the bank. That role has since been shifted to Mr. Roberts alone.^{2/} On the other hand, if the bank should secure other quarters and has no interest in the project, there would be no reason for Mayor Scott to be disqualified because of his relationship with the bank.

Between these "two ends of the spectrum," there are a number of possible factual scenarios which might or might not give rise to a "reasonably foreseeable material financial effect" upon the bank. In any event, all such effects would clearly be distinguishable from the effects upon the "public generally" or any "significant segment" thereof.^{3/} When the facts become more clearly delineated as to the bank's involvement in the proposed project, Mayor Scott should evaluate all of the factors to determine the potential effects upon the bank, including whether it will be involved in the financing of the project. If Mayor Scott has any further

^{2/} Mr. Roberts was one of the partners in CW Investments and is a director and more than 10% owner in Cal West National Bank.

^{3/} Section 87103; 2 Cal. Adm. Code Section 18703.

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questions as to his participation in the City's decisions on the project, he should request further advice at that time.

Lastly, because Mayor Scott owns less than 10% of Cal West National Bank, sources of income to the bank are not sources of income to Mayor Scott. Section 82030(a). Consequently, a decision which affected a customer of the bank would not require disqualification by Mayor Scott, unless the decision will also affect the bank itself.

CW Investments

Mayor Scott was one of 11 equal, general partners who invested \$800.00 each in CW Investments. The \$800.00 sum represented a 1/11th share of the closing costs involved in acquiring the parcel of property in October 1984 for the site of the bank building. On January 7, 1985, CW Investments bought out Mayor Scott's interest for \$800.00, the amount of his original investment. Subsequently, on October 16, 1985, Duane Roberts bought out the remaining partners' shares (\$8,000.00) in the property. The partnership quitclaimed the property to him; Mr. Roberts now plans to build the project in which the City is considering purchasing office space and in which the bank will be leasing its headquarters office. CW Investments retains no security interest nor any other interest in the property.

The January 7, 1985, letter from Albert C. Sykes on behalf of CW Investments to Mayor Scott indicates that an \$800.00 check would be forwarded to him as the purchase price for his interest in the partnership. The \$800.00 is the proceeds of a sale and is therefore "income" within the meaning of the Act. Section 82030(a). Consequently, CW Investments is a source of income to Mayor Scott of \$250 or more for the 12 months following the sale. Therefore, disqualification would be required as to any decision having the requisite effect upon CW Investments. Since CW Investments has dissolved and no longer has any interest in the real property, it appears unlikely that disqualification based upon the income received from CW Investments would ever be required. Furthermore, as soon as 12 months has passed from the date Mayor Scott received the \$800.00 check, the provisions of Section 87103(c) will no longer apply.

Duane Roberts

Mr. Roberts was not the source of income of Mayor Scott's \$800.00 payment; CW Investments was the source. The mere fact

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that both Mayor Scott and Mr. Roberts are directors of Cal West National Bank does not create any economic interest cognizable under Section 87103. Consequently, there is no basis in that business relationship for requiring disqualification of Mayor Scott with respect to Mr. Roberts' proposed project.

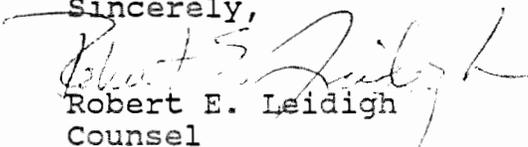
State Farm Insurance Agency

Mayor Scott is the 100% owner of his State Farm insurance agency. As such, both State Farm and his customers are sources of his commission income. See, 2 Cal. Adm. Code Section 18704.3(d), copy enclosed. For disqualification issues, the amount of commission income attributable to any specific customer is the gross amount of the commission earned on that transaction. Thus, customers who purchase State Farm insurance from Mayor Scott's agency which purchases generate commission income of \$250 or more will be sources of income within the meaning of Section 87103(c) for twelve months following the purchase or renewal which triggers the commission income. This economic interest could require disqualification as to decisions affecting those customers. Mayor Scott indicates that most customer families do not generate even \$250 in commission income to his agency and, hence, the provisions of Section 87103(c) are not likely to apply in many instances.

A caveat should be remembered in this regard. Although disqualification may result once the \$250 level has been reached, disclosure of sources of income to his business entity is not required until the \$10,000 level is reached. Hence, Mayor Scott need only disclose on his annual statement of economic interests those customers who generated \$10,000 or more in gross commission income to his agency.

I trust that this letter has responded to your fairly general questions regarding possible disqualification situations arising from the facts presented. As the effects of the decisions surrounding the proposed development become clearer, please do not hesitate to contact us for further advice. If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel

Legal Division

cc: Councilmember Judy Nieburger

City of Moreno Valley

Post Office Box 1440
Moreno Valley, California 92388
NOV 13 3 06 PM '85 (714) 924-7155

November 12, 1985

Fair Political Practices Commission
State of California
428 J. Street, Suite 800
Sacramento, CA 95804

In preparation for our meeting on Friday, November 15, I have taken the opportunity to identify and outline several issues that I think we need to discuss at our meeting. The following are those issues.

A builder/developer, Duane Roberts, is proposing to construct, on approximately 5 acres, several commercial and office buildings. Two of the planned buildings are proposed to be occupied by Cal West National Bank and the City Offices for the City of Moreno Valley. Each entity to occupy separate buildings of approximately 30,000 sq. ft.

The proposed development raises possible conflict of interest because of past and current relationships of Cal West National Bank Board of Directors, Stockholders, and customers.

In mid 1984, a partnership was formed to purchase property for the development of a headquarters office for Cal West National Bank. The partnership was called CW Investments, and included, as general partners, the Directors of the Bank and other senior officers of said Bank. As a member of the Board of Directors of the Bank, I became a member of the partnership known as CW Investments. This partnership was created prior to my election as a City Council member. I withdrew from said partnership upon my election to the City Council. The withdrawal was formalized per the attached letter from CW Investments, dated January 7, 1985. During 1984, the partnership did acquire the property that Duane Roberts is planning to use in the development of the aforementioned commercial and office complex. The general partnership, CW Investments, has quitclaimed to Duane R. Roberts that property. My total monetary contribution to CW Investments was in the amount of \$800.00, which represented my share of closing costs for the purchase of the property that was to be used as a site for construction of the bank headquarters.

The issue as stated centers around the proposed development that would consist of several commercial and office buildings. Those buildings are being proposed to be built on property previously owned by CW Investments, and would consist of Cal West National Bank's headquarters and the City Office complex.

November 12, 1985

The question is: If the issue of renting, leasing, or purchasing one of the commercial buildings for a City Office complex were to come to the City Council for consideration, would there be a problem or a conflict of interest with me (Marshall C. Scott) voting on the issue, and would the proposed development of the Cal West National Bank Headquarters being in close proximity to the City Offices create a conflict of interest?

As a special note, the following City Council members own or have had dealings with either the Bank and/or CW Investments:

Marshall Scott	Member of the Board of Directors of Cal West National Bank. Prior member of CW Investments. Currently owns 3,000 shares of Cal West National Bank.
Steve Webb	Owns 250 shares of Cal West National Bank.
Bob Lynn	Owns 101 shares of Cal West National Bank.
Judy Nieburger	Customer of the Bank with a current loan.
David Horspool	Has done legal work for CW Investments.

Cal West National Bank has issued a total of 30,000 shares of stock.

A second, and related question, deals with professional and normal business dealings. Normal business dealings relate to occupational endeavors.

I am a State Farm insurance agent and have many business dealings with individuals and companies doing business in Moreno Valley and who may, from time to time, bring projects and issues before the City Council. My question is at what point does my private business operation and my official membership on the City Council come into conflict?

In 1985, I will generate more than \$200,000 in gross premiums for my agency. In 1984 there was approximately \$144,000 in gross premiums to the agency.

Also, on the City Council, we have an attorney, David Horspool, who may provide legal service for various individuals and companies doing business in Moreno Valley. At what point would his legal services create a conflict with his official position as a City Council member?

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The questions which have been raised are interesting, but I am sure are not unique to local government. I would appreciate your reviewing these items prior to our meeting on Friday and hope that at some point a written opinion can come forth from your office stating as clearly as possible those areas that are free from a conflict of interest.

Your assistance will be most appreciated.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Marshall C. Scott".

MARSHALL C. SCOTT
Mayor, City of Moreno Valley

MCS:kr

cc: Chuck Bell
Attorney at Law
Nielsen, Hodgson, Parrinello & Mueller
1030 15th Street, Suite 250
Sacramento, CA 95814

Meeting regarding Moreno Valley

November 15, 1985

Marshall C. Scott, Mayor
Judy Nieburger, Councilmember
David F. Dixon, City Manager

current value of share in bank = \$11
originally sold @ \$10

Cal West Bank opened 12/6/82

Within 90 days knew they would need more room so began looking for a place to expand.

Directors and chief officers decided decided to form a partnership, acquire, construct building and then lease building to Bank.

Once they found property formed CW Investments during 1984 to acquire the property October 1984 escrow closed and partnership was formalized and owned property.

November General election -- formed city and elected council 12/3/84 actually took office

Scott decided to withdraw from partnership 1/7/85. Scott was bought out.

Duane Roberts is also a director of bank -- also a partner in CW Investments -- Partnership wanted to expand the size of project to include more office space and also owned then determined they needed more resources to do this (went from 30,000 sq. ft. to 120,000 sq. ft.).

Duane Roberts has much \$ (owned Butcher Boy) so wanted Duane Roberts to take over project himself -- quitclaimed property to him for exactly the costs which they had into the project -- October 16, 1985 -- CW Investments was "cashed out" (but he will check to make sure).

Roberts has property and is proceeding with plans to build complex with two towers -- plus some other buildings.

Cal-West is contemplating renting office space.

The City is also contemplating purchasing office in the complex for city hall -- purchase may be via lease-purchase or whatever, but ultimately if city gives in, it will want to own.

Duane Roberts plans to build complex out one way or the other -- he may take on investors

Roberts owns over 10% of Cal-West

Roberts owned 1/11 (about 9%) of CW Investments

Scott and Roberts are directors of Cal-West -- not officers.

State Farm Agent -- has an independent contractor relationship with State Farm

(1) Exclusive sales arrangements -- he will only sell State Farm and they won't sell except thru him or other agents.

(2) Set price based on policy-count (based on premium) if he wants to sell agency back

He owns agency -- pays all overhead and has staff of seven -- \$200,000 gross commissions

No compensation for serving of Cal-West Bd. of Dir. in 1985

CW Investments was a general and equal partnership

When deeded to Duane Roberts it was \$8,800 - 11 x \$800 (approx. 2 acres) \$235,000

No directors fees in 1985 from Cal-West last received in 1984
(approx. Nov. 84)

Chuck Foster --

Withdrew from Bank and formed partnership

Mac Felines ---

Former Bank Directors

12/3/84 became city
Mt re Moreno Valley

Marshall C. Scott Mayor

Judy Nicholsoner Committeewoman

Dwight Dixon City Manager

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... ..
... ..

Cal West Bank opened 12/6/85.

Within 90 days knew they would need more room -
so began looking for a place to expand.

Directors & chief officers decided to form a
partnership, acquire, construct bldg & then
leave building to Bank

On a property owned property formed partnership
during 84 to acquire the property
Oct. 84 escrow closed & partnership was
formed and entered property

Don Scott also bank - formed city included committee
12/84 actually took office.

Scott decided to withdraw from partnership
1/7/88 Scott was bought out

Because Roberts is also a director of bank -
also a partner in the investments -
Partnership wanted to expand the size of

project to have more office space of which amount
then determined they needed more resources
to do this amount from 3,000 sq ft to 15,000 sq ft

Duane Roberts has much \$ (owned Butcher Bay)
so would Duane Roberts to take over project
himself - quit claim property to him for
exactly the costs which they had into the
project - Oct. 16, 1985 - (Old Investments was
'sold out' but he will stick to make sure)

Roberts has property and is proceeding w/ plans to
build complex w/ 3 towers - plus some other
buildings.

Cal-West is contemplating renting other space

The City is also contemplating purchasing office
in the duplex for city hall - purchase may
be via lease-purchase or whatever, but ultimately
if city goes in, it will want to own.

Duane Roberts plans to build complex out one way
or the other - he may take on investors.

Roberts owns over 10% of Cal-West
Roberts made 1/2 (about 9%) of investments

Roberts are directors of Cal-West - not officers

George Thomas Street - we can independent contract for
redevelopment of State Farm

1. The sale of a commercial - he will initially
take from 1 floor unit sell except from town or
other agents

2. set price based on policy - court (based on premium)
if he wants to sell agency back

the case agency - pay in arrears & back pay
of sever - 1,000,000 per annum

No compensation for serving of Cal-West
Bd of Dir. in 1985

100% of assets were a part of 1984
pay - 100%

When dealt to Diane Roberts it was
\$8,000 - 11 x \$800 (approx. 10 years) \$225,000

No Director's fees in 1985 from Cal-West
last received in 1984 (approx. Nov '84)

100% of
Bank
Directors

Chuck Tester } withdrew from Bank & firm.
Mac Felton } partnerships