



California Fair Political Practices Commission

December 31, 1985

Charles R. Gill
Assistant City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

RE: Your Request for Advice,
Our File No. A-85-252

Dear Mr. Gill:

You have written seeking formal written staff advice regarding the parameters of participation in certain planning decisions by Chula Vista Planning Commissioner Shirley Grasser. You have stated the facts as follows:

FACTS

The City Council of the City of Chula Vista recently appointed Shirley Grasser to the Chula Vista Planning Commission. The Chula Vista Planning Commission acts as the planning agency for the City and considers development proposals, general plans, zoning and capital improvements.

Ms. Grasser is the spouse of a partner in the San Diego law firm of Luce, Forward, Hamilton and Scripps. The law firm of Luce, Forward is the largest legal firm in San Diego and is actively involved in representing a land development company within the City of Chula Vista's jurisdiction. We note that Ms. Grasser's husband is in the litigation section of the law firm and does not actually participate, nor have contact with, the City of Chula Vista or the Planning Commission.

The developer represented by Luce, Forward is building a new community known as EastLake. The EastLake project is being planned and built in phases. EastLake I has received the necessary specific plan approvals by the Planning Commission and several of the tentative maps have been approved. The total area of EastLake I is approximately 900 acres. The ultimate development of EastLake will encompass approximately 3,000 acres and a population in excess of 15,000 people.

A review of the regulations promulgated by the Fair Political Practices Commission relating to "material financial effect" does not expressly address the issues presented by this factual setting. On September 23, 1985, this office wrote a letter to Luce, Forward seeking answers to nine specific questions related to Title 2, Section 18702.2 of the California Administrative Code.

On December 2, 1985 the City received a written response from the law firm which answers the questions in paraphrased form. A review of the firm's response indicates that Ms. Grasser's participation in individual subdivision approvals or plan modifications for the EastLake I phase would not constitute a conflict of interest. The letter, however, indicates that Ms. Grasser could have a conflict of interest in the proposed EastLake II phase.

QUESTIONS

You have asked for our view on whether Ms. Grasser can participate in various types of decisions relating to EastLake I and EastLake II and whether she can participate in hearings where Luce, Forward represents an applicant.

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires public officials to disqualify themselves from making, participating in making, or using their official positions to influence any government decision in which they have a financial interest. Section 87100. A financial interest exists when the reasonably foreseeable financial effects of a government decision will be material as to any one of several economic interests described in Section 87103. One of those interests is any source of income of \$250 or more to the official during the preceding 12 month period. Section 87103(c).

Income to an official is defined to include the official's community property share in the income of his or her spouse. Section 82030(a). Thus, one-half of Ms. Grasser's husband's income from Luce, Forward is attributable to her, with the firm

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

as the source. Her husband is Luther Horton, one of the firm's partners. Because her husband is a partner in the firm, Ms. Grasser also has an indirect investment in the firm, which is undoubtedly worth \$1,000 or more. Section 82034. Hence, the firm is an economic interest of Ms. Grasser under both Section 87103(a) and 87103(c). Since it is our understanding that Mr. Horton does not own 10% or more of Luce, Forward, EastLake Development Company is not a source of income to Ms. Grasser through Luce, Forward. Section 82030(a). Therefore, our inquiry is limited to effects upon Luce, Forward as EastLake's attorneys.

The question then becomes whether any of the decisions which Ms. Grasser will participate in as a Planning Commissioner will have a reasonably foreseeable material financial effect upon Luce, Forward.

You have requested and received information from Luce, Forward regarding the relevant facts as to materiality. Applying the standards set forth in the Commission's regulation, 2 Cal. Adm. Code Section 18702.2 (copy enclosed), the appropriate subsection has been determined to be the first paragraph of (f), based upon Luce, Forward's financial circumstances. Under that subsection, the standard to be applied in determining materiality is as follows:

(f) For businesses not covered by subdivisions (c) or (d) which meet the financial standards for listing on the New York Stock Exchange, the tests in subdivision (d) may be applied. The standards are as follows: The business entity has net tangible assets of at least \$18,000,000 and had pre-tax income for the last fiscal year of at least \$2,500,000.

2 Cal. Adm. Code Section 18702.2(f)

Subsection (d) establishes the following standard:

(d) The effect of a decision on any business entity listed on the National Association of Securities Dealers National Market List (securities of companies on this over-the-counter market list are registered with and subject to the Security and Exchange Commission's rule requiring tape reporting of last sale information [17 CFR Section 240.77 Aa3-1]) will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

2 Cal. Adm. Code Section 18702.2(d)

Having reviewed the applicable standards, Luce, Forward has advised you and Ms. Grasser that decisions on EastLake II will have a reasonably foreseeable financial effect of the magnitude set forth in subdivision (d) of 18702.2. However, it has also been determined that the decisions which remain on EastLake I will not have an impact of such magnitude. Given these facts,^{2/} Ms. Grasser should disqualify herself from decisions involving EastLake II. With respect to EastLake I decisions, disqualification would not be required by application of 18702.2; however, we must also examine the applicability of 2 Cal. Adm. Code Section 18702.1 (copy enclosed). The relevant portions of that regulation read as follows:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or more, or in which the official is an officer, director, partner, trustee, employee, or holds any position of management, appears before the official in connection with the decision;

^{2/} We have neither the ability nor any reason to question the validity of the facts provided. Section 87100 requires disqualification only when the official "knows or has reason to know" of a financial interest of the decision. Here, Ms. Grasser's knowledge is presumably the same facts that we have been provided.

* * *

(4) It is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision; or

* * *

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

* * *

2 Cal. Adm. Code Section 18702.1

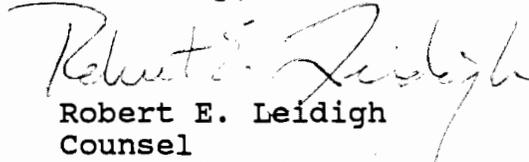
Since Luce, Forward is both a source of income to and an investment of Ms. Grasser, we must determine whether Luce, Forward "appears" before the Chula Vista Planning Commission when it represents EastLake Development Company at a Planning Commission hearing. We conclude it does not. Luce, Forward is the agent of EastLake Development Company, which is the party to the proceeding. EastLake's property is the subject to the proceeding and not Luce, Forward.^{3/} 2 Cal. Adm. Code Section 18702.1(b).

^{3/} It should be pointed out that the standards applied here are analogous to those applied pursuant to Government Code Section 84308 relative to "party" and "participant." There, a contributor of \$250 or more who is a "participant" does not necessitate disqualification unless there will be a reasonably foreseeable financial effect of the nature described in Commission regulations 18702 and 18702.2. On the other hand, a "party" which has contributed \$250 or more would necessitate disqualification. Here, EastLake Development Company is the "party" and Luce, Forward is the "participant."

Charles R. Gill
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I trust that this letter has adequately responded to your questions. Should you have any further questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:nwm
Enclosures

F P C
DEC 9 10 48 AM '85



CITY OF
CHULA VISTA

OFFICE OF THE CITY ATTORNEY

December 4, 1985

Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, CA 95814

Dear Commission:

The City Council of the City of Chula Vista recently appointed Shirley Grasser to the Chula Vista Planning Commission. The Chula Vista Planning Commission acts as the planning agency for the City and considers development proposals, general plans, zoning and capital improvements.

Ms. Grasser is the spouse of a partner in the San Diego law firm of Luce, Forward, Hamilton and Scripps. The law firm of Luce, Forward is the largest legal firm in San Diego and is actively involved in representing a land development company within the City of Chula Vista's jurisdiction. We note that Ms. Grasser's husband is in the litigation section of the law firm and does not actually participate, nor have contact with, the City of Chula Vista or the Planning Commission.

The developer represented by Luce, Forward is building a new community known as EastLake. The EastLake project is being planned and built in phases. EastLake I has received the necessary specific plan approvals by the Planning Commission and several of the tentative maps have been approved. The total area of EastLake I is approximately 900 acres. The ultimate development of EastLake will encompass approximately 3,000 acres and a population in excess of 15,000 people.

A review of the regulations promulgated by the Fair Political Practices Commission relating to "material financial effect" does not expressly address the issues presented by this factual setting. On September 23, 1985, this office wrote a letter to Luce, Forward seeking answers to nine specific questions related to Title 2, Section 18702.2 of the California Administrative Code (Copy attached).

On December 2, 1985 the City received a written response from the law firm which answers the questions in paraphrased form. A review of the firm's response indicates that Ms. Grasser's participation in individual subdivision approvals or plan modifications for the EastLake I phase would not constitute a conflict of interest. The letter, however, indicates that Ms. Grasser could have a conflict of interest in the proposed EastLake II phase.

Pending a written opinion from the Fair Political Practices Commission, the City Attorney's office has advised Ms. Grasser to abstain from participating in any hearing which involves development within the EastLake community. Due to the size and frequency of development applications within the EastLake community, Ms. Grasser has been forced to abstain from a substantial amount of the Planning Commission's work. Accordingly, this office requests that the Fair Political Practices Commission provide a written opinion which addresses the issues outlined in this correspondence and specifically the legality of Ms. Grasser participating in hearings where Luce, Forward represents an applicant.

Should you have any questions about this matter, please do not hesitate to call.

Very truly yours,


Charles R. Gill
Assistant City Attorney

CRG:clb

enc.

cc: Shirley Grasser, Commissioner
Chula Vista Planning Commission

1035a

LUCE, FORWARD, HAMILTON & SCRIPPS

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

FOUNDERS

EDGAR A. LUCE
1881-1958

CHAS. H. FORWARD
1888-1981

F. TUDOR SCRIPPS, JR.
1908-1963

THE BANK OF CALIFORNIA PLAZA

110 WEST A STREET

SAN DIEGO, CALIFORNIA 92101

TELEPHONE: (619) 236-1414

TELECOPIER: (619) 232-8311

LA JOLLA

7817 IVANHOE AVENUE, SUITE 201
LA JOLLA, CALIFORNIA 92037
(619) 459-4011

NORTH COUNTY

GRAHAM INTERNATIONAL PLAZA
2111 PALOMAR AIRPORT ROAD, SUITE 300
CARLSBAD, CALIFORNIA 92008-4815
(619) 438-7333

CRAIG K. BEAM

PARTNER

DIRECT DIAL NUMBER

(619) 699-2482

November 27, 1985

Charles R. Gill
Assistant City Attorney
The City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 92010

Dear Charlie:

In your letter of September 23, 1985, you have asked that the firm of Luce, Forward, Hamilton & Scripps provide certain information regarding its financial status as well as that of one of its partners, Luther Horton. You also inquired whether the loss of Eastlake Development Company as a client would have certain specified financial effects on the firm and on Mr. Horton. These inquiries were made by you because of the potential conflict of interest which arose from the appointment of Ms. Shirley Grasser, Luther Horton's wife, to the Chula Vista Planning Commission.

After review of the applicable statutes and regulations, we are of the opinion that the issue raised by the Fair Political Practices Act and the administrative regulations adopted pursuant to it is the effect upon a business entity of a decision made by an interested public official. Accordingly, we have restated the questions asked of us. Our Controller compiled certain financial data we found to be relevant. That information was used in conjunction with our analysis of the applicable statutes and regulations to formulate the responses which follow:

1. Does Luther Horton hold an investment in the law firm of Luce, Forward, Hamilton & Scripps of \$1,000 or more?

Response: Luther Horton holds a direct investment of at least \$1,000 in the law firm of Luce, Forward, Hamilton & Scripps.

2. Is Mr. Horton's investment in Luce, Forward, Hamilton & Scripps community property?

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Response: "Financial interest" is defined by Section 87103 as one which will have a material financial effect on any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more. Section 87103 G.C. further defines "indirect investment" as any investment owned by, among others, the spouse or dependent child of a public official. Thus, it is our interpretation that under the statutory definition Ms. Grasser "indirectly" has an investment in Luce, Forward, Hamilton & Scripps whether or not Luther Horton's interest is community property.

3. Does Luce, Forward, Hamilton & Scripps have net tangible assets of at least \$18,000,000 and pre-tax income for the last fiscal year of at least \$2,500,000?

Members of Luce, Forward, Hamilton & Scripps, the law partnership, also are members of certain Investment Partnerships. The law partnership has less than \$18 million in assets; the investment partnerships have in excess of \$18 million in assets. The law partnership had pre-tax income of at least \$2.5 million for the last fiscal year whether or not combined with the Investment Partnerships. Membership in the investment partnerships is a requirement of the law partnership agreement, and the interests in the investment partnerships are set according to the interests in the law partnerships at the time each investment partnership is formed. Contributions to the investment partnerships are withheld by the law partnership from partner distributions and are paid directly to the investment partnerships. Thus, the entities are related. Section 18706 of Title 2 of the California Administrative Code defines a financial interest of a public official to include interest in a business entity which is a "parent, subsidiary or is otherwise related to a business entity covered under Section 87103(a)(c) or (d)." Therefore, for purposes of determining how to compute total assets, we have likewise taken all of the partnerships into account.

Response: Based on the foregoing, yes, Luce, Forward, Hamilton & Scripps is a business entity which has net tangible assets of at least \$18,000,000 and pre-tax income for the last fiscal year of at least \$2,500,000 under the applicable definitions of pertinent terms contained in Title 2 of the California Administrative Code.

4. If so, will a decision by Ms. Grasser result in an increase or decrease in gross revenue for the fiscal year of \$150,000 or more; or result in an increase or decrease in the value of assets or liabilities of \$150,000 or more; or in the

Charles R. Gill
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incursion or avoidance of additional expenses or reducing or eliminating existing expenses of \$50,000 or more?

Response: It is reasonably foreseeable that Ms. Grasser's participation in a decision could result in one or more such impacts only if the decision involved approval or denial of Phase II of EastLake.

5.-7. These questions are inapplicable because of the response to Questions 3 and 4.

8. In addition to the overall relationship between EastLake and the firm of Luce, Forward as represented by the previous questions, would the approval or denial of any individual subdivision map for the EastLake I Project affect the firm's income pursuant to any of the above standards?

Response: Because the master subdivision maps for Eastlake I have already been approved, and because the individual re-subdivision maps are the responsibility of Eastlake Development Company's successors-in-interest, such approvals or denials will have no effect on the firm's income or assets. While it is possible that we may be asked to represent an individual builder/owner, such engagement would be entirely at the discretion of the individual builder/owner (and the firm) at that time. No agreement for such representation exists as part of the firm's representation of Eastlake Development Company. Any conflict which might arise on account of such representation would have to be assessed at the time, on a case-by-case basis.

9. Would a decision made by Ms. Grasser affect a source of income for her, i.e. Luce, Forward, Hamilton & Scripps, by an aggregate amount of \$250 or more?

Response: In order to affect Ms. Grasser by \$250 or more, Mr. Horton's compensation from Luce, Forward, Hamilton & Scripps must be affected, at a minimum, by \$500 or more. (The interest of a public official in a source of income is not defined to include "indirect" interests; therefore, if Ms. Grasser has an interest in Luce, Forward as a source of income, the interest is a community property one.) Again, the only decision in which Ms. Grasser might participate which could have such an effect is one involving the approval or denial of the EastLake II project.

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I hope the above adequately responds to the issues you raised and satisfactorily addresses the City's concerns. If there are items of further concern, please do not hesitate to call me.

Very truly yours,



Craig K. Beam
of
Luce, Forward, Hamilton & Scripps



The City of Chula Vista

Office of the City Attorney (619) 691-5037

September 23, 1985

Craig Beam, Esq.
Luce, Forward, Hamilton and Scripps
Bank of California Plaza
110 West "A" Street
San Diego, CA 92101

Dear Craig:

The City Council of the City of Chula Vista recently appointed Shirley Grasser to the Chula Vista Planning Commission. Ms. Grasser's husband, Luther Horton, is a partner at your law firm. I understand that Mr. Horton works in the litigation section of Luce, Forward and does not directly participate in decisions of the real property division.

The purpose of this letter is to obtain information to determine whether or not Ms. Grasser has a conflict of interest in matters involving the EastLake development, whom you represent, and any other matters which Luce, Forward may bring to the Planning Commission for its clients.

Government Code §87100 prohibits a public official from participating in any governmental decision in which the government official knows or has reason to know that he or she has a financial interest. In Title 2, Section 18702.2 of the California Administrative Code, the Fair Political Practices Commission has established a regulation defining material financial effect. Said regulation requires this office to inquire in general terms about the financial effect that the EastLake Development has on the firm of Luce, Forward and specifically Luther Horton. Could you please respond to the following questions:

1. Does Luther Horton hold a direct or indirect investment in the law firm of Luce, Forward in excess of \$2,000?

2. Is Mr. Horton's investment in Luce, Forward community property?*
3. Does Luce, Forward have net tangible assets of at least \$18,000,000 and had pretax income for the last fiscal year of at least \$2,500,000?
4. If the answer to question 3 is positive, would the loss of EastLake as a client of Luce, Forward result in a decrease of gross revenues of \$150,000 or more; or result in a decrease in the value of assets or liabilities of \$150,000 or more?
5. If the answer to question 3 is negative, does Luce, Forward have net tangible assets of at least \$4,000,000 and had pretax income for the last fiscal year of at least \$750,000 with net income from that period of at least \$400,000?
6. If the answer to question 5 is positive, would the loss of EastLake as a client of Luce, Forward; result in a decrease of gross revenues of \$30,000 or more; or result in a decrease in the value of assets or liabilities of \$150,000 or more?
7. If the answer to question 5 is negative, would the loss of EastLake as a client of Luce, Forward result in a decrease in gross revenues of \$10,000 or more; or result in a decrease in the value of assets or liabilities of \$10,000 or more?
8. In addition to the overall relationship between EastLake and the firm of Luce, Forward as represented by the previous questions, would the approval or denial of any individual subdivision map for the EastLake I Project affect the firm's income pursuant to any of the above standards?

*2 CAC 18702.2 (b) places a threshold investment on the public official, in this case Shirley Grasser, of \$1,000 in the business entity. Accordingly, if Luther Horton's investment in the firm is community property, it must be in excess of \$2,000 to affect Ms. Grasser.

Craig Beam
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9. Government Code §87103 also prohibits the participation by a public official when said participation will affect the source of income to the public official. Specifically, if Mr. Horton's income (including salary, ownership participation and bonuses) is community property, could a decision made by Ms. Grasser increase or decrease Mr. Horton's compensation by more than \$100?

Your consideration of these questions will be appreciated. Upon receipt of your written response, I will seek a written opinion from the Fair Political Practices Commission as to the ability of Ms. Grasser to participate in Planning Commission decisions affecting EastLake and the law firm of Luce, Forward. Thank you for your assistance in this matter and please do not hesitate to call if you desire to discuss any of the issues raised in this request.

Very truly yours,


Charles R. Gill
Assistant City Attorney

CRG:clb

cc: Shirley Grasser, Planning Commission
Luther Horton, Esq.

0816a



California Fair Political Practices Commission

December 10, 1985

Charles R. Gill
Assistant City Attorney
276 Fourth Avenue
Chula Vista, CA 92010

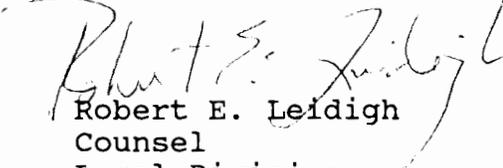
Re: A-85-252

Dear Mr. Gill:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Shirley Grasser