



California Fair Political Practices Commission

January 9, 1986

Georgan M. Vonheeder
6942 Brighton Drive
Dublin, CA 94568

Re: Your Request for Advice,
Our File No. A-85-260

Dear Ms. Vonheeder:

Thank you for your letter requesting advice concerning your duties under the Political Reform Act.^{1/}

FACTS

The following facts are based on information provided in your letter and in a conversation with City Attorney, Michael Nave.

You are a Dublin City Councilmember. The City of Dublin has created a non-profit, public benefit corporation -- called Dublin Information, Inc. -- that will buy property on which a civic center complex is expected to be built, lease the property to the city and allow the city to build the civic center.

The corporation -- whose board of directors will be the City Council -- will sell certificates of participation, which are similar to bonds, to raise funds to finance the land purchase and related improvements and building costs. The city will pay back the corporation over 25 years.^{2/}

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

^{2/} This type of arrangement is commonly known as a "public leaseback."

QUESTION

You are considering purchasing the certificates of participation issued by Dublin Information, Inc. Under the Political Reform Act, would the purchase of certificates of participation require you to disqualify yourself from decisions of the City Council which may affect Dublin Information, Inc.?

CONCLUSION

Under the Political Reform Act, ownership of certificates of participation in Dublin Information, Inc. would not be a basis for disqualification from decisions of the City Council which may effect Dublin Information, Inc. unless it is reasonably foreseeable that the decision will increase or decrease the value of the certificates of participation by \$250 or more.

ANALYSIS

Section 87100 requires disqualification by any public official who knows or has reason to know that he or she has a financial interest in a governmental decision. A public official has a financial interest in a decision if the decision would have a reasonably material financial effect, 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.

(c) Any source of income, ...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(a), (c) and (d)

In the instant situation, you are considering purchasing certificates of participation in a non-profit, public benefit corporation in which you will be a director. Because the corporation is not operated for profit, it is not a "business entity" as defined in the Act. Section 82005. Therefore, Sections 87103(a) and (d) would not apply.

As for Section 87103(c), "income" does not include interest, dividends or premiums on any bond or other debt instrument issued by any government agency. Section 82030(b)(4). The question then is whether Dublin Information, Inc. is a government agency.

The Commission's Siegel opinion^{3/} enunciated "several criteria which should be considered" in addressing this question. Those criteria are:

1. Whether the impetus for formation of the corporation originated with a government agency;
2. Whether it is substantially funded by, or its primary source of funds is, a government agency.
3. Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and
4. Whether the Corporation is treated as a public entity by other statutory provisions.

Examining the facts in the Siegel opinion and comparing them to the instant case, it is our opinion that they are virtually identical.

The four criteria in Siegel are clearly met.

1. The impetus for the formation of Dublin Information, Inc., came from the City of Dublin. The City Council will be the board of directors of the corporation.

2. The funding of Dublin Information, Inc., will come from rental fees paid by the City. The City will "leaseback" the civic center complex and operate it with city employees.

^{3/} Opinion requested by Samuel Siegel, 3 FPPC Opinions 62 (July 6, 1977, No. 76-054); copy attached.

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3. The principal purpose for forming Dublin Information, Inc. was to construct a civic center complex containing a city hall and police station. This function is traditionally carried on by a governmental entity.

4. The certificates of participation to be issued by Dublin Information, Inc., are tax-exempt bonds issued pursuant to statutory provisions for the issuance of municipal bonds.

Consequently, Dublin Information, Inc. is a government agency, and ownership of certificates of participation in Dublin Information, Inc. will not make Dublin Information, Inc. a source of income.

Nonetheless, disqualification will be required if it is reasonably foreseeable that the personal expenses, income, assets, or liabilities of you or your immediate family will be increased or decreased by \$250 or more by any decision. 2 Cal. Adm. Code Section 18702.1(a)(4) (copy enclosed). Therefore, any decision having at least a \$250 effect upon the aggregate value of the certificates of participation will require disqualification.

Should you have any further questions regarding this advice, I may be reached at (916) 322-5901.

Sincerely,



John G. McLean
Counsel
Legal Division

JGM:nwm
Enclosure
cc: Michael Nave, City Attorney

CITY OF DUBLIN

P.O. Box 2340
Dublin, CA 94568

F P

(415) 829-4600

DEC 16 10 03 AM '85

December 12, 1985

California Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

Gentlemen:

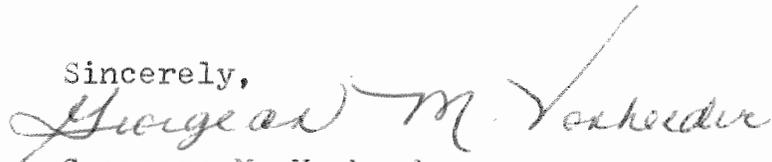
The purpose of my letter is to request an opinion from your office regarding a potential conflict of interest.

The enclosed newspaper article outlines the particulars better than I. I would add that the proposed minimum certificate of participation would be sold for \$5000.00.

Obviously for emotional reasons, my husband and I would like to invest and help finance Dublin's first "piece of the rock".

My question is, being part of the Board of Directors of the non-profit corporation who will issue the certificates, buy the property and lease it to the city and being on the city council that will act as agent for the non-profit corporation and construct the buildings, will I be precluded from any voting by virtue of my husband and myself's \$5000.00 portion of the \$12,000,000.00 certificates?

Sincerely,



Georgean M. Vonheeder
Council Member, City of Dublin
6942 Brighton Dr.
Dublin, CA., 94568



California Fair Political Practices Commission

December 17, 1985

Georgean M. Vonheeder
Councilmember
6942 Brighton Drive
Dublin, CA 94568

Re: A-85-260

Dear Ms. Vonheeder:

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,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean
Counsel
Legal Division

JGM:plh

Land deal to be closed

Dublin officials expect documents to be signed today

By Marlan Green
Times staff writer

DUBLIN — An agreement to sell the city a 10-acre Dublin Boulevard site for a future civic center complex is expected to be completed today.

City Attorney Michael Nave will review documents for the \$5.85 million purchase of the property, owned by Imperial Freehold Corp., and if all goes well those papers could be signed today, said City Manager Richard Ambrose.

Although plans call for building a city hall and police station at the site, design for the complex is still conceptual, Ambrose said on Tuesday.

Once the agreement is signed, the city will move quickly to arrange financing for the project, which will cost \$12 million, he said. Once financing is arranged, the next step will be to hire an architect to develop a master plan for the complex, he said.

The large parcel gives the city

flexibility and room to expand its facilities, Ambrose said.

"We won't need to be considering another site five, 10 or 15 years down the road," he said.

The property, sandwiched between the Dublin Sports Grounds and the proposed location of a food irradiation test plant, also is highly visible from Dublin Boulevard and Interstate 580.

On Monday, the City Council passed a resolution setting a Dec. 18 public hearing on the transaction, approved hiring Robert Haight of Scotts Valley to act as bond counsel and authorized Ambrose to secure a firm to underwrite certificates of participation.

The hearing is set for 7:30 p.m. at the Dublin Library.

City staff have recommended issuing certificates of participation, which are similar to bonds, to raise the approximately \$12 million to finance the land purchase and related improvements and building costs.

Under a complicated arrangement, the city will front only \$110,000 in cash, and the rest of the money will be raised through the sale of 10 certificates.

The city already has created non-profit, public benefit corporation — called Dublin Informatic Inc. — that will buy the property essentially lease it to the city and allow the city to build the civic center.

In return, the corporation — whose board of directors will be the City Council — will sell the certificates and give the money to the city, which will be required to pay back the total cost over 25 years.

Because tax laws may change next year, the city is scrambling to complete the necessary arrangements by Dec. 30, said Ambrose.

The city has been searching for the last 2½ years for a suitable civic center spot and pinpointed this property as the most desirable location in September.