



California Fair Political Practices Commission

April 14, 1986

Byron D. Athan
City Attorney
City of San Ramon
2222 Camino Ramon
San Ramon, CA 94583

Re: Your Request for Advice
Our File No. A-86-094

Dear Mr. Athan:

Thank you for your letter requesting advice on behalf of City of San Ramon Mayor Wayne Bennett, concerning his duties under the conflict of interest provisions of the Political Reform Act ("Act").^{1/}

FACTS

In your letter, you provided the following facts:

The City Council of the City of San Ramon sits as the legislative body for the San Ramon Redevelopment Agency. The City is considering two project areas for potential redevelopment. One project area is known as the Alcosta Area, which consists of approximately 45 acres. One of the alternatives being considered for the Alcosta Area is retail, office, manufacturing, recreational and residential uses. The other project area is known as the Crow Canyon Area, which consists of approximately 325 acres and is located approximately five miles away from the Alcosta Area. One alternative being considered for the Crow Canyon Area is for 730,000 square feet of retail space, 1,000,000 square feet of office space, 400,000 square feet of institutional uses, 650,000 square feet of hotel space, 350,000 square feet of medical office space, and 500 dwelling units. The

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

redevelopment projects are only in the early stages of planning and review.

Mayor Bennett is a director of a full service bank, Bank of San Ramon, which leases real property for its office located in the Crow Canyon Area. Mayor Bennett serves as a director without remuneration. The bank's lease is for a period of ten years, with two possible five year extensions. The current rent is within the range of current rents for the area and the lease provides for an annual inflation adjustment.

The Bank of San Ramon is a single branch bank performing general commercial bank services, such as passbook savings accounts, money market accounts, business savings accounts, regular and special checking accounts, business accounts, and short-term business loans. The bank does not make, or expect to make, real estate or long-term loans.

Mayor Bennett has also invested approximately \$50,000 in Mission Valley Bancorp, the holding company which owns 100 percent of the Bank of San Ramon. The capitalization of Mission Valley Bancorp is \$12,000,000, and the capitalization of the Bank of San Ramon is approximately \$3,000,000. Mayor Bennett's ownership interest in Mission Valley Bancorp, and its wholly owned subsidiary, Bank of San Ramon, is less than ten percent.

At the present time there are seven financial institutions, comprised of five full service banks and two savings and loan associations, within a one-half mile radius of the Crow Canyon Area. One more full service bank is proposed to be located in the Crow Canyon Area, and three more are proposed to be located within a one-half mile radius of the Crow Canyon Area.

Mayor Bennett is a certified public accountant. His offices are located in the City of Pleasanton, approximately four miles from the proposed Alcosta Area and nine miles from the Crow Canyon Area.

QUESTION

May Mayor Bennett participate in decisions concerning the proposed Alcosta Area or the proposed Crow Canyon Area?

CONCLUSION

Mayor Bennett may participate in decisions concerning the proposed Alcosta Area; however, he must disqualify himself from participating in decisions concerning the proposed Crow Canyon Area.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any 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 if it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on any of the following interests:

- (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.
- (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 (a)-(e).

Mayor Bennett has an investment interest in the Bank of San Ramon valued at \$1,000 or more due to his \$50,000 investment in Mission Valley Bancorp. Section 82034; 2 Cal. Adm. Code Section 18236(a). Mayor Bennett also serves as a director of the Bank of San Ramon. Accordingly, Mayor Bennett is required to disqualify himself from participating in any governmental decision which could have a material financial effect, distinguishable from the effect on the public generally, on the Bank of San Ramon. Section 87103(a) and (d).

Commission regulation 2 Cal. Adm. Code Section 18702 (a) provides that the effect of a decision on a public official's financial interests will be considered material if it is "significant." Regulations 2 Cal. Adm. Code Sections 18702(b), 18702.1, and 18702.2 (copies enclosed) also provide more specific guidance, such as monetary guidelines, for determining materiality.

In considering Mayor Bennett's situation, it is important to note that the purpose of redevelopment is to stimulate business and increase real property values in and around the redevelopment project area. Therefore, it is foreseeable that there will be a general increase in business profits and real property values as a result of redevelopment projects, and that the effects of a redevelopment project will be most noticeable as to the properties and businesses located in and near the redevelopment project area. See Opinion requested by Thomas W. Oglesby, 1 FPFC 71, 80 (No. 75-083, July 2, 1975), copy enclosed. In this regard, the fact that the Bank of San Ramon is located in the proposed Crow Canyon Area, the extensive development proposed for the Crow Canyon Area, and the wide range of uses affected by the proposed project, are important considerations in this analysis.

Due to the five-mile distance between the proposed Alcosta Area and the Bank of San Ramon, we conclude that it is unlikely that the effects of decisions concerning the Alcosta Area will result in a material effect on the Bank of San Ramon. However, we conclude that decisions concerning the proposed Crow Canyon Area would have a reasonably foreseeable material financial effect on the Bank of San Ramon.

The decisions of the City of San Ramon City Council/Redevelopment Agency concerning the proposed Crow Canyon Area could affect the Bank of San Ramon in three ways which would be distinguishable from the effect on the public generally: (1) an increase in business and profits due to an increase in the level of business in and around the Crow Canyon Area, (2) an increase in competition as a result of four additional banks (a 50-percent increase) locating in the proposed Crow Canyon Area or within a one-half mile radius of the project area, and (3) an increase in the value of the real property interest held by the Bank of San Ramon under the existing long-term lease.^{2/} If any of these effects could be significant, Mayor Bennett would be required to disqualify himself from participating in decisions concerning the Crow Canyon Area.

Without more information about specific decisions facing the San Ramon City Council/Redevelopment Agency, we cannot attempt to predict the monetary effect of the proposed Crow Canyon Area project on the Bank of San Ramon. Nevertheless, we conclude that the proposed project would have a foreseeable material effect on the Bank of San Ramon due to the variety of ways in which the proposed redevelopment project will foreseeably significantly affect the Bank of San Ramon. In the Oglesby Opinion, supra, the Commission concluded that a combination of effects on a public official's financial interests was sufficient to require the official's disqualification, even though the Commission did not decide whether any particular foreseeable effect would be sufficient, by itself, to be considered material. In our opinion, a similar approach is warranted in Mayor Bennett's situation.

Therefore, we conclude that Mayor Bennett must disqualify himself from participating in decisions of the San Ramon City Council/Redevelopment Agency concerning the proposed Crow Canyon Area. However, we emphasize that this conclusion applies only to the major policy decisions about the project, such as the project boundaries, financing decisions, approval of an environmental impact report, types of uses, and major public improvements in the project area. Once the basic policy decisions have been reached, Mayor Bennett may participate in the decisions which implement, but do not change those policies.

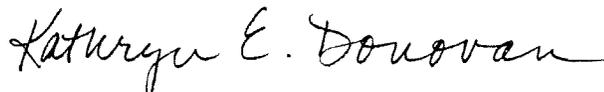
^{2/}Interests in real property include leasehold interests other than a periodic tenancy of one month or less. Section 82033; 2 Cal. Adm. Code Section 18233.

Byron D. Athan
April 14, 1986
Page 6

For example, if the City Council/Redevelopment Agency votes to conduct an environmental impact report (a basic decision from which Mayor Bennett must disqualify himself), Mayor Bennett may participate in the decision to choose the engineer or consultant to whom the City will award the contract to perform the EIR. We caution, however, that most implementing decisions in which Mayor Bennett may participate will not occur until some time after the plans for the Crow Canyon Area project have been approved. Furthermore, although it is unlikely that certain decisions, such as which business should locate on a particular parcel, would have a material financial effect on the Bank of San Ramon, Mayor Bennett must examine each decision to determine if there are specific facts which require a contrary conclusion. For example, we think that Mayor Bennett would be required to disqualify himself from a decision about which banks should locate in or near the Crow Canyon Area, and where those banks should be located.

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

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:sm
Enclosures

City of San Ramon

2222 Camino Ramon
San Ramon, California 94583
(415) 866-1400

MAR 14 8 34 AM '86

March 10, 1986

State of California
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Re: Request for Informal Advice Letter
Your Advice No. A-85-116

Dear Commissioners:

Request an Advice Letter as to whether a City Councilperson is disqualified from participating in governmental decisions regarding a proposed redevelopment project under the following factual situation:

F A C T S

1. The City Council of the City of San Ramon is the legislative body for the redevelopment agency.
2. The City is considering two project areas for potential redevelopment.
 - A. Alcosta Area consisting of approximately 45 acres.
 - B. Crow Canyon Area consisting of approximately 325 acres.
3. The project is only in the early stages of planning and review; however one of the alternatives being considered for the Alcosta Area are retail, office, manufacturing, recreational and residential uses. For the Crow Canyon Area, an alternative being considered is for 730,000 square feet of retail, 1,000,000 square feet of office, 400,000 square feet of institutional uses, 650,000 square feet of hotel space, 350,000 square feet of medical office space, and 500 dwelling units. It is possible that

one or more financial institutions will be located in each of the project areas.

4. The two redevelopment areas are approximately five miles apart.
5. The City Councilperson is one of thirteen directors of a full service bank, Bank of San Ramon, which leases approximately 4205 square feet in the proposed Crow Canyon Survey Area. The Councilperson serves as a director without remuneration. The enclosed map shows in red the location of the bank.
6. The lease was negotiated at arms length and is for a period of ten years with two possible five year extensions. The rental is within the range of current rents for the area and the lease provides for annual CPI adjustments in addition to a second year increase in the basic rent.
7. The Bank of San Ramon is a single branch bank performing general commercial bank services, such as passbook savings accounts, money market accounts, business savings accounts, regular and special checking accounts, business accounts, and short term business loans. The bank does not expect to make real estate or long term loans.
8. The City Councilperson and his wife have invested approximately \$50,000 in the holding company, Mission Valley Bancorp, which owns 100% of the Bank of San Ramon. The capitalization of Mission Valley Bankcorp is \$12,000,000 so that the City Councilperson's interest would be approximately 4/10ths of one percent. The capitalization of the Bank of San Ramon is \$3,000,000. The holding company also owns and operates two other banks; the Bank of Pleasanton and the Commercial Bank of Fremont.
9. At the present time there are five full service banks and

Page 3
Letter - Fair Political
Practices Commission
March 10, 1986

two savings and loan associations within a half mile of the proposed project area. In addition four full service banks (one in the project area) are also planned for this one half mile radius. There is also one other savings and loan association operating in the City.

10. The Councilperson is a Certified Public Accountant with offices in Pleasanton approximately four miles from the proposed Alcosta area and nine miles from the Crow Canyon area.

The Councilperson's name and address is:

Mayor Wayne Bennett
9567 Alcosta Boulevard
San Ramon, CA 94583

Thank you for your cooperation in this matter.

Yours truly,


BYRON D. ATHAN
City Attorney

Encl: a/ss



California Fair Political Practices Commission

March 18, 1986

Byron Athan
City Attorney
2222 Camino Ramon
San Ramon, CA 94583

Re: A-86-094

Dear Mr. Athan:

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 "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh