



California Fair Political Practices Commission

May 19, 1986

Richard Winnie
City Attorney
1 City Hall Plaza
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-86-130

Dear Mr. Winnie:

Thank you for your letter requesting advice on behalf of Oakland City Councilmember Marge Gibson, regarding her duties under the conflict of interest provisions of the Political Reform Act ("Act").^{1/}

FACTS

In your letter you provided the following facts:

1. Councilmember Marge Gibson is an attorney who is in private practice in the City of Oakland.
2. The City Council has decided to consider seriously the development of a major, several-square block proposed downtown retail center.
3. In order to further this goal, the City Council has selected a proposed developer for the project. The City is currently negotiating with this developer for the terms and conditions that would be included in a formal development and disposition agreement between the City and the proposed developer. If the City and the developer are able to reach such an agreement, and if adequate financing is obtained, then the development of the retail center would proceed,

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

consistent with the provisions of the agreement. If the parties are unable to reach such an agreement, then the project will not proceed with the proposed developer.

4. One of the participants in the development team has approached Councilmember Gibson and is interested in utilizing the professional services of the Councilmember. The Councilmember knew this person prior to the City Council's decision to pursue the downtown retail center. However, the Councilmember has never performed any legal services for the prospective client.
5. The prospective client is a partner in a local development group which will participate in the joint venture which would be responsible for development of the downtown retail center, should it proceed to completion.
6. Councilmember Gibson has thus far declined to provide any legal services to the prospective client until the Commission provides guidance as to the appropriateness of her retention.

QUESTIONS

1. May the Councilmember be retained to provide legal advice to the prospective client with regard to the prospective client's financial and legal relationship with other members of the local partnership and with the primary developer and joint venture partner?
2. May the Councilmember be retained to provide legal advice to a nonprofit corporation of which the prospective client is an employee? The legal advice sought would relate to nonprofit corporation tax issues, and would not be related to the proposed downtown retail center.
3. May the Councilmember be retained to provided legal services related to the establishment and incorporation of a business in which the prospective client would be an active participant? The corporation would not be involved in the downtown retail center.

4. Should any conflict of interest exist under any of the circumstances above, and should the prospective client choose to dissolve the partnership discussed above, would such dissolution eliminate the conflict of interest?
5. Would the elimination of the conflict of interest require the passage of a minimum period of time (e.g., one year) after the dissolution of the partnership?

ANALYSIS

The Act does not prohibit a public official from acquiring financial interests, but rather prohibits the official from participating in a decision in which she has a financial interest. Section 87100. Accordingly, Councilmember Gibson is not prohibited from providing legal advice under any of the circumstances you have described, but must disqualify herself from any decision in which she has a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

* * *

(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.

* * *

Section 87103(c).

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. These regulations are contained in 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed) and set forth different guidelines depending on the type of financial interest which would be affected.

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In the first circumstance you describe, the Councilmember would be retained to provide legal advice to the prospective client with regard to the prospective client's financial and legal relationship with other members of the local partnership and with the primary developer and joint venture partner. I have spoken with Ted Lakey from your office and he indicates that in this capacity the Councilmember's client would be the prospective client himself and not the partnership into which the prospective client may enter. In this situation, the prospective client is a source of income to the Councilmember. Accordingly, the Councilmember may not participate in any decision which will have a reasonably foreseeable material financial effect on the prospective client. In this regard, you have asked whether dissolution of the partnership in which the prospective client would be involved would eliminate the conflict of interest. While dissolution of the partnership may be a factor to consider, the question is still whether or not the decision would have a reasonably foreseeable material financial effect on the prospective client. This is a determination which must be made based on the facts and circumstances surrounding each specific decision.

In the second circumstance you describe, the Councilmember would be retained to provide legal advice to a nonprofit corporation of which the prospective client is merely an employee. In this situation, the nonprofit corporation would be a source of income to the Councilmember. Accordingly, the Councilmember would be prohibited from participating in any decision which would have a reasonably foreseeable material financial effect on the nonprofit corporation. Absent other factors, the Councilmember would not be prohibited from participating in decisions involving the prospective client unless the Councilmember had some financial interest in the prospective client as described above.

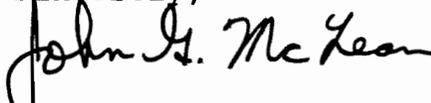
In the third circumstance you describe, the Councilmember would be retained to provide legal services related to the establishment and incorporation of a business in which the prospective client would be an active participant. The corporation would not be involved in the downtown retail center. We do not have enough facts to determine whether the source of income in this situation would be the corporation, the persons seeking to establish the corporation, or all of them. However, once it is established who are the sources of income, the Councilmember may not participate in decisions which will have a reasonably foreseeable material financial effect on those sources of income for a period of one year following receipt of the income. For example, if it is

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established that the prospective client is a source of income, the Councilmember may not participate in a decision involving the downtown retail center if that decision will have a material financial effect on the prospective client.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script that reads "John G. McLean". The signature is written in dark ink and is positioned above the typed name.

John G. McLean
Counsel
Legal Division

JGM:plh
Enclosures

CITY OF OAKLAND



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Office of the City Attorney
Richard E. Winnie
City Attorney

March 27, 1986

State of California
Fair Political Practices Commission
P. O. Box 807
Sacramento, California

Attn: John Keplinger, Executive Director

Re: Request for Advice
Oakland City Councilmember Marge Gibson

Dear Mr. Keplinger:

By this letter I hereby request advice from the Commission on behalf of Oakland City Councilmember Marge Gibson, concerning her obligations under the conflict of interest provisions of the Political Reform Act. Councilmember Gibson has specifically authorized and requested that advice be sought from your Offices on her behalf. Councilmember Gibson can be reached through her office at City Hall, One City Hall Plaza, Oakland, California 94612. Her office telephone number is (415) 273-3266.

The relevant facts in this matter are as follows:

1. Councilmember Marge Gibson is an attorney who is in private practice in the City of Oakland.
2. The City Council has decided to consider seriously the development of a major, several-square block proposed downtown retail center.
3. In order to further this goal, the City Council has selected a proposed developer for the project. The City is currently negotiating with this developer for the terms and conditions that would be included in a formal development and disposition agreement between the City and the proposed developer. If the City and the developer are able to reach such an agreement, and if adequate financing is obtained, then the development of the retail center would proceed, consistent with the provisions of the agreement. If the parties are unable to reach such an agreement, then the project will not proceed with the proposed developer.

4. One of the participants in the development team has approached Councilmember Gibson and is interested in utilizing the professional services of the Councilmember. The Councilmember knew this person prior to the City Council's decision to pursue the downtown retail center. However, the Councilmember has never performed any legal services for the prospective client.
5. The prospective client is a partner in a local development group which will participate in the joint venture which would be responsible for development of the downtown retail center, should it proceed to completion.
6. Councilmember Gibson has thus far declined to provide any legal services to the prospective client until the Commission provides guidance as to the appropriateness of her retention.
7. In order to provide a specific context for this request, the Councilmember is presenting three specific types of legal advice she has been asked, but has so far declined, to provide. The Councilmember requests that she be advised whether she may be retained to provide the particular services indicated below, or any legal services whatsoever, to the prospective client. The Councilmember would receive at least two hundred fifty dollars for each of the below listed services.
 - a. May the Councilmember be retained to provide legal advice to the prospective client with regard to the prospective client's financial and legal relationship with other members of the local partnership and with the primary developer and joint venture partner?
 - b. May the Councilmember be retained to provide legal advice to a non-profit corporation of which the prospective client is an employee? The legal advice sought would relate to non-profit corporation tax issues, and would not be related to the proposed downtown retail center.
 - c. May the Councilmember be retained to provide legal services related to the establishment and incorporation of a business in which the prospective client would be an active participant. The corporation would not be involved in the downtown retail center.
 - d. Should any conflict of interest exist under any of the circumstances above, and should the prospective client choose to dissolve the partnership discussed above, would such dissolution eliminate the conflict of interest?

John Keplinger
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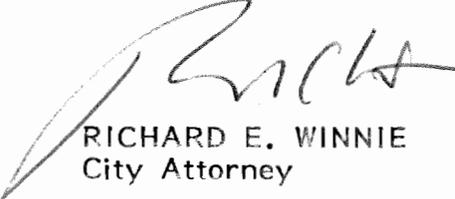
Would the elimination of the conflict of interest require the passage of a minimum period of time (e.g., one year) after the dissolution of the partnership?

Other members of the Oakland City Council are also attorneys and so your response to the questions posed by this letter will be helpful to them also.

Should you need any further information regarding this request, you can write to this Office or call Assistant City Attorney Ted Lakey at telephone number (415) 273-3601.

Your cooperation and courtesy will be greatly appreciated.

Very truly yours,



RICHARD E. WINNIE
City Attorney



California Fair Political Practices Commission

April 22, 1986

Richard E. Winnie
City Attorney
City Hall
14th and Washington Streets
Oakland, CA 94612

Re: 86-130

Dear Mr. Winnie:

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