

QUESTIONS

Based upon the foregoing facts, you have asked the following questions:

1. Do you need to resign as the attorney for the CRA?
2. Does X need to disqualify himself from decisions affecting your compensation as CRA attorney?
3. Is there a third alternative?

These questions are asked in light of a pending proposal before the CRA board, as to which the Mayor of City B has raised some question regarding the relationship between you and X.

CONCLUSION

1. The Political Reform Act does not require that you resign as attorney for CRA.
2. The CRA board member does not need to disqualify himself as to your compensation.
3. Based upon the foregoing, a third alternative is moot.

ANALYSIS

The Political Reform Act ("Act")^{1/} does not require any public official to resign his or her office. In those rare situations where almost continual disqualification persists, resignation may be a pragmatic alternative, but it is never required by the Act. The Act does require disqualification as to those decisions where an official knows or has reason to know that he or she has a financial interest in a governmental decision. Section 87100. A financial interest exists when it is reasonably foreseeable that a decision will have a material financial effect upon the official or his or her immediate family, or on any one of several enumerated economic interests:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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

(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.

You have an investment interest in the partnership joint venture. Section 82034. As a more than 10 percent owner of the partnership, sources of income to the partnership will be sources of income to you on a pro rata basis. Section 82030(a). However, the employee (X) of the other joint venture partner does not become a source of income to you as a result of your one-third ownership interest. Consequently, you have no economic interest in X arising from the above-described relationship.

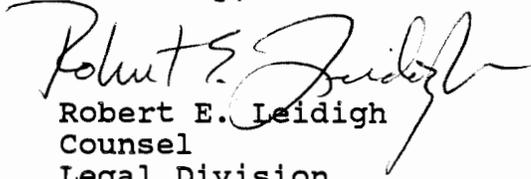
Turning to the other side of the situation, X is employed by your joint venture partnership, working on behalf of the partnership endeavor. If X is being paid out of partnership funds, they are presumably one-third yours. Where, as here, you are only a one-third partner, and not the managing partner, you would not be considered a source of income to X. See, Advice Letter to Daniel Hentschke, No. A-80-069 copy enclosed.

Consequently, you have no economic interest in X and he would appear to have no economic interest in you. See also, Nord Opinion, 8 FPFC Opinions 6, No. 83-004, Oct. 4, 1983, copy enclosed. Without the prerequisite economic interest, there is no basis for disqualification of X as to you or of you as to him.

Commissioner Michael B. Montgomery
July 16, 1986
Page 4

Should you or X desire Formal Written Advice, you have indicated you will write to us providing all the necessary facts, including names, etc., pursuant to our regulation 2 Cal. Adm. Code Section 18329, copy enclosed. If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert E. Leidigh".

Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure



California Fair Political Practices Commission

June 17, 1986

Commissioner Michael B. Montgomery
2460 Huntington Drive
San Marino, CA 91108

Re: Your Request for Informal
Assistance
Our File No. I-86-195

Dear Commissioner Montgomery:

I have reviewed your notes inquiring about possible alternative actions on your part, copy enclosed for your reference. I am unclear as to at least a couple of material facts:

(1) Is the entity which is your joint venture partner the proponent of the development in the other city or is your joint venture with the entity the proponent?

(2) Is the CRA board member employed solely by the entity, or by the joint venture, per question #1, above?

(3) Is the joint venture a 50/50 partnership, or is there a different percentage of ownership? Please be specific.

Thank you for your prompt attention to these questions. I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

6/10/86

JAY-BOB?

I, AS AN INDIVIDUAL, AM A
JOINT-VENTURE PARTNER WITH
AN ENTITY THAT IS PROPOSING
A DEVELOPMENT IN A CITY.

I REPRESENT THE CRA OF A
DIFFERENT CITY. MY JOINT-
VENTURE PARTNER EMPLOYS
ONE OF MY CRA BOARD-MEMBERS
IN FURTHERING THE PROPOSED
PROJECT. IF HE DOES A GOOD
JOB, I WILL BENEFIT, & ABOVE
ANY THRESHOLD.

- 1) DO I RESIGN THE CRA?
- 2) DOES HE ABSTAIN ON MY
COMPENSATION FROM THE CRA? —

3) THIRD ALTERNATIVE:

THANKS,

MBM

P.S. IF I SHOULD RESIGN, I WILL
BEFORE THE PROPOSAL IS SIGNED,
* THAT'S THE END OF IT.

IF NOT, I WILL HAVE THE
CITY ATTORNEY REQUEST AN
ADVICE LETTER -



**California
Fair Political
Practices Commission**

June 17, 1986

F P P C
JUN 27 9 10 AM '86

RECEIVED JUN 19 1986

Commissioner Michael B. Montgomery
2460 Huntington Drive
San Marino, CA 91108

Re: Your Request for Informal
Assistance
Our File No. I-86-195

Dear Commissioner Montgomery:

I have reviewed your notes inquiring about possible alternative actions on your part, copy enclosed for your reference. I am unclear as to at least a couple of material facts:

(1) Is the entity which is your joint venture partner the proponent of the development in the other city or is your joint venture with the entity the proponent?

THE LATTER.

(2) Is the CRA board member employed solely by the entity, or by the joint venture, per question #1, above?

ONE ENTITY TO THE JOINT-VENTURE SOLELY BY (NOT ME)

(3) Is the joint venture a 50/50 partnership, or is there a different percentage of ownership? Please be specific.

3 ENTITIES, 33 1/3 EACH (I OWN 33 1/3%)

Thank you for your prompt attention to these questions. I may be reached at (916) 322-5901.

Sincerely,

Robert E. Leidigh
Robert E. Leidigh
Counsel
Legal Division

6/23

REL:plh
Enclosure

BOB - I DO NOT CONTROL THE CRA BOARD MEMBER, AND HE DOES NOT REPORT TO ME.

plh

(State 026, do 1161 32)

Montgomery (M)

M (MIA) St. Louis Partner w. Liberty (L)

M/E St. Louis

L is preparing a development in a City (C1)

M represents CRIT of a different City (C2).

E employs one of CRIT R1 Members in facilitating the proposed project in City 1 (C1)

If CRIT R1 Member does a good job, M will benefit (above any threshold)

8/1/95

6/10/86

JAY-BOB?

I, AS AN INDIVIDUAL, AM A
JOINT-VENTURE PARTNER WITH
AN ENTITY THAT IS PROPOSING
A DEVELOPMENT IN A CITY.

I REPRESENT THE CRA OF A
DIFFERENT CITY. MY JOINT-
VENTURE PARTNER EMPLOYS
ONE OF MY CRA BOARD-MEMBERS
IN FURTHERING THE PROPOSED
PROJECT. IF HE DOES A GOOD
JOB, I WILL BENEFIT, & ABOVE
ANY THRESHOLD.

- 1) DO I RESIGN THE CRA?
- 2) DOES HE ASCEND ON MY
COMPENSATION FROM THE CRA? —

3) THIRD ALTERNATIVE?

THANKS,

MBM

P.S.

IF I SHOULD RESIGN, I WILL
BEFORE THE PROPOSAL IS SIGNED,
* THAT'S THE END OF IT.

IF NOT, I WILL HAVE THE
CITY ATTORNEY REQUEST AN
ADVICE LETTER -