



# California Fair Political Practices Commission

October 2, 1986

Thomas J. Ward  
City Attorney  
City of Lancaster  
44933 North Fern Avenue  
Lancaster, CA 93534

Re: Your Request for Informal  
Assistance  
Our File No. I-86-272

Dear Mr. Ward:

Thank you for your letter requesting assistance concerning the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> Your letter states only a general question and does not mention any specific decision currently pending before the City Council. In addition, you have not provided the name of the councilmember in question. Therefore, we consider your letter a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). In the future, we will be happy to provide formal written advice with respect to a specific decision. Please refer to Regulation 18329(b) to determine the information we require in order to issue formal written advice.

Additionally, we cannot provide the advice you have requested regarding Section 1090. The Commission's advice-giving function is limited to questions under the Political Reform Act. You should contact your local district attorney or the Attorney General's office regarding interpretation of Section 1090.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Sections 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

QUESTION

A city councilmember is a licensed real estate sales agent employed by a realty office located in Lancaster. He receives a commission only when he is responsible for the listing of property or when he is involved in the actual sale of the property. Under the Political Reform Act, may the councilmember participate in a governmental decision involving clients of the owner of the realty office or clients of other real estate sales agents in that office when the councilmember receives no income from the real estate transactions?

CONCLUSION

The Political Reform Act does not bar the city councilmember from participating in the decision unless it is reasonably foreseeable that the decision would increase or decrease the gross commission revenues of the realty office or its owner by \$10,000 or more.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a 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 will have a material financial effect, distinguishable from its effect on the public generally on, among other things:

(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.

Section 87103(c) and (d).

Therefore, in the councilmember's situation, he may participate in a decision unless the decision would have a reasonably foreseeable material financial effect on (1) any person who is

a source of income of \$250 or more in the preceding 12 months or (2) the realty office which employs him.

Regulation 18704.3 (copy enclosed) specifies the sources of commission income for brokers, agents and salespersons. Regulation 18704.3(c)(3) provides that the sources of commission income for a real estate agent are:

(A) The broker and brokerage business entity under whose auspices the agent works;

(B) The person the agent represents in the transaction; and

(C) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

Under this regulation, the clients of the owner of the realty office and the clients of other agents within the office are not sources of commission income to the councilmember if the councilmember has no involvement in the real estate transaction. Therefore, under the Political Reform Act, there would be no conflict of interest for the councilmember if he participates in a decision involving these clients, absent additional facts concerning the councilmember's financial involvement with those clients.

However, the realty office and its owner are considered sources of income to the councilmember. Regulation 18704.3(c)(3)(A). Presumably, the councilmember has received \$250 or more in income from these sources in the preceding 12 months. Therefore, if a City Council or Redevelopment Agency decision would have a foreseeable, material financial effect on the realty office or its owner, the councilmember would be required to disqualify himself from participating in the decision.

For example, the realty office could be the broker on a sale that is contingent upon the seller obtaining a conditional use permit or other approval from the City Council. In that case, the outcome of the City Council decision would determine whether or not the realty office would receive a commission on the sale. Accordingly, the councilmember would be required to determine whether the effect on the realty office would be material. If he determines that the effect would be material, he must disqualify himself from participating in the City

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Council decision. His disqualification would be required even if he would not personally benefit from the transaction.

Regulation 18702.2 (copy enclosed) contains monetary guidelines for determining whether the effect of a decision will be considered material. Applying these guidelines to a small business, such as a local realty business, a \$10,000 increase or decrease in the gross revenues of the business for a fiscal year is considered material. Regulation 18702.2(g). You should carefully study Regulation 18702.2, however, to verify that the \$10,000 standard in Regulation 18702.2(g) is the appropriate standard for the realty office in question.

If the \$10,000 standard is appropriate for the realty office concerned, the councilmember may participate in a governmental decision unless it is reasonably foreseeable that the gross revenues of the realty office would be affected by \$10,000 or more. In the example discussed above, the sale of property is contingent on City Council approval of a conditional use permit or similar action. If the realty office which employs the councilmember would receive a commission of \$10,000 or more if the sale occurs, the councilmember may not participate in the City Council decision.

You should also note that the commission paid to the realty office or broker in a transaction is that portion of the total commission retained by the realty office or broker after paying any commission due to real estate sales agents. Carey Opinion, 3 FPPC Opinions 99 (No. 76-087, Nov. 3, 1977) (copy enclosed). Overhead expenses paid by the realty office or broker should not be deducted, however, in determining the commission. Carey, supra, at pages 102-103.

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

Sincerely,

Diane M. Griffiths  
General Counsel



By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh  
Enclosures

# City of Lancaster

44933 North Fern Avenue  
Lancaster, California 93534  
805-945-7811



September 2, 1986

Fred M. Hann  
Mayor

Els Groves  
Vice Mayor

Lynn S. Harrison  
Councilwoman

Jack Murphy  
Councilman

Arnie Rodio  
Councilman

James C. Gilley  
City Manager

Executive Director  
Fair Political Practice Commission  
P. O. Box 807  
Sacramento, California 95804

Dear Executive Director:

This request is being submitted to you in my roll as City Attorney for the City of Lancaster, California. A recently elected City Councilmember has requested that I seek written advice concerning potential conflicts of interest relative to his association with a local realty office where he intends to work as a licensed real estate sales agent.

## FACTS

In April of 1986, an individual who is a licensed real estate sales agent was elected to the City Council. That Councilmember works as a sales agent for a realty office with offices located within the City limits of Lancaster. As a real estate sales agent, he will receive commission only for those properties that he is responsible for the listing of, and in addition, for those properties that he is involved in the actual sale.

## QUESTION PRESENTED:

As a City Councilmember, will this individual have to disqualify himself on issues involving clients of either the owner of the realty office or other agents within the office, where he has no monetary interest in them or sales involving their property? An additional question is, will there be a prohibited contract under Government Code §1090 which would prohibit the City Council and/or Redevelopment Agency, which the Councilmember also sits on, from taking action involving his own clients or the clients of the owner of the real estate office or other agents within the office?

Very truly yours,

THOMAS J. WARD  
City Attorney  
City of Lancaster

TJW:jl