



# California Fair Political Practices Commission

January 14, 1987

John E. Brown  
Best, Best & Krieger  
Attorneys for Redevelopment  
Agency, Cathedral City  
c/o P.O. Box 1028  
Riverside, CA 92502

Re: Your Request for Advice  
Our File No. A-86-297 *J*

Dear Mr. Brown:

You have written requesting advice on behalf of four individual members of the Redevelopment Agency of the City of Cathedral City (the "agency"). We have consolidated your four letters. We previously provided a response with regard to one of the two redevelopment projects about which you inquired ("Pace"). This letter discusses the other project ("Kendra") and concludes our response. Your original letters have been supplemented with facts obtained through numerous telephone conversations with yourself and with Dan Olivier of your firm.

### QUESTION

Which, if any, of the four members of the agency must disqualify themselves from participation in certain pending agency decisions?

### CONCLUSION

Agency member Di Grandi may participate in decisions affecting the Kendra project unless her employer, Commonwealth Bank, will be affected in a reasonably foreseeable and material manner by the decision. This could be the case if Commonwealth is involved in the financing of the project or holds real property interests which will be significantly affected by decisions on the project. In any event, she may participate in decisions on design and other similar matters.

Agency member Krings must disqualify himself from major decisions affecting the Kendra project. He may participate in decisions on design and other similar matters.

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Agency member Hillery is likewise disqualified from participating in major decisions regarding the Kendra project. He may participate in decisions on design and other similar matters.

Agency member Pacquette is disqualified from participating in major decisions affecting the Kendra project unless you determine, based upon a review of all the facts, that such decisions will not have a reasonably foreseeable material financial effect upon any of his economic interests. Even if disqualified as to major decisions, he may participate in design and similar decisions.

If agency members Krings, Hillery and Pacquette are all disqualified, a quorum will be lost. However, one of them may be selected by lot to participate so that a quorum can be regained.

#### FACTS AND ANALYSIS

##### General Facts

The agency is currently negotiating with two separate developers on proposed redevelopment projects located in the City of Cathedral City. The proposed project which is the subject of this letter involves redevelopment of a several-block area within Redevelopment Project Area No. 1 in downtown Cathedral City. This proposed development includes mixed-use commercial and residential development consisting of hotels, motels, commercial office buildings and stores, and multi-family residential dwelling units. The agency entered into an exclusive negotiation agreement with Kendra Development, Inc., a California corporation, on March 5, 1986, with respect to this project. This project is referred to as the "Kendra" project.

To assist in our review, you have included a large map detailing the boundaries of the agency's Redevelopment Project Area No. 1, as well as the location of the proposed project. The map also shows the approximate distances from the project to real property held by some of the agency members. Redevelopment Project Area No. 1 encompasses most of the "downtown" portion of the city. Redevelopment Project Areas No. 2 and 3 are not a subject of this particular letter.

Agency Member Sarah E. Di Grandi

Facts

Ms. Di Grandi owns her home at 32-582 Shifting Sands Trail in Cathedral City. This property is located in a residential area within Redevelopment Project Area No. 3. Ms. Di Grandi is a regional vice president of Commonwealth Bank and works at a branch office located at 35-975 Date Palm Drive, approximately 3,300 feet from the proposed Kendra project. The bank owns and occupies the building in which Ms. Di Grandi works.<sup>1/</sup> Her position in the bank is salaried and full time, and it is her primary source of income. Ms. Di Grandi also owns more than \$1,000 of common stock in Commonwealth Bank. Her ownership interest is less than 10 percent.

Ms. Di Grandi has asked whether she can participate as a member of the agency in selection of the successor or participant developer, who would participate in the rehabilitation of the Kendra project site. Similarly, Ms. Di Grandi has inquired whether she can participate on matters relating to financing of the Kendra project, including land acquisition and public improvement financing. These or similar issues may also come before the City Council of the City of Cathedral City, and Ms. Di Grandi would like to know if she must disqualify herself if and when such issues arise in the context of a city council action.

Finally, Ms. Di Grandi has inquired whether she can participate in any of the other discussions relating to these matters, such as exterior designs of the projects, during proceedings of either the agency or the city council.

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<sup>1/</sup> Commonwealth Bank has a ground lease for the property from Mission Hills Associates. The lease began in 1980, and it is for the term of 30 years, with an option to renew for 10 years. The bank constructed and owns the building. The ground lease is adjusted every five years for increases in the Consumer Price Index.

Analysis

The Political Reform Act (the "Act")<sup>2/</sup> provides that:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100.

A public official has a financial interest in a governmental decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official, a member of the official's immediate family, or on any one of the following 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.

(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.

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

(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).

Ms. Di Grandi's residence is located in Redevelopment Project Area No. 3, which is not the project area in which the Kendra project is situated. We have been provided no information regarding whether tax increment funds generated in Redevelopment Area No. 1 may be used to benefit Redevelopment Area No. 3. However, it appears from the map that a significant segment of all the residences in Cathedral City are also situated in Redevelopment Project Area No. 3, which includes virtually the entire city. (See, Regulation 18703.) Consequently, we need not determine whether there will be a reasonably foreseeable material financial effect upon her real property interest since we have been provided with no facts which indicate that the effect, if any, will be different than the effect of decisions on other residences in Cathedral City. (See, Owen Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976), copy enclosed.) Therefore, disqualification should not be required based upon her interest in her residence.

The bank has a ground lease for its building at 35-975 Date Palm Drive. It is approximately 3,300 feet north and east of the Kendra project. The bank leases the location of its building on a long-term lease. The essential terms of that lease are set forth in footnote 1, supra.

Because the bank owns the structure and holds a long-term lease on the property, these are assets of the bank which could be affected by the decision to develop the Kendra project. Commonwealth Bank has five branches, and it is listed over the counter on the NASDAQ National Market List. Therefore, the standard in Regulation 18702.2(d) will apply in determining materiality. Thus, if the decision will foreseeably result in an increase or decrease in the fiscal year gross revenues of the bank of \$150,000 or more, or will result in an increase or decrease in the value of the bank's assets of \$150,000 or more, its effects will be material. Effects of this magnitude would clearly be distinguishable from the effects upon the public generally. (See, Owen Opinion, supra.)

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We have been provided no information as to the value of the structure or the value of the ground lease. However, the bank's circumstances and proximity to the Kendra project are markedly different from the situation in the Commission's Gillmor Opinion. (See, Gillmor Opinion, 3 FPPC Ops. 38 (No. 76-089 April 6, 1977), copy enclosed.) In that opinion, the Commission concluded that it was reasonably foreseeable that the effects of a nearby redevelopment project (300 feet or so) would affect the economic interests of Mayor Gillmor. The distance is much greater here. Furthermore, the economic interests involved in Mayor Gillmor's situation were subject to much lower standards for gauging materiality. (See, Regulation 18702(b)(1) and (2)). Based on these differences, we conclude that there will be no reasonably foreseeable material financial effect upon the bank's real property interest at Ms. Di Grandi's branch location.

Without further information, it is not possible to accurately assess the other foreseeable effects upon the bank. For instance, will the bank make any loans with respect to the Kendra project? Does the bank hold any security interests in land involved in the Kendra project area or in Redevelopment Project Area No. 1? Either of these could affect the bank's gross revenues or its assets. We leave assessment of the reasonably foreseeable effects upon the bank's other interest to you.<sup>3/</sup>

Agency Member V. Harry Krings

#### Facts

Mr. Krings and his wife, Diana, are the owners and sole shareholders of a closely held corporation known as H & D Krings, Inc. H & D Krings, Inc., operates a gasoline service station at 68-630 East Palm Canyon Drive within the agency's Redevelopment Project No. 1. As shown on the map, the service station is adjacent to the Kendra project. H & D Krings, Inc., leases the service station facilities from Standard Oil Company, and the lease has an unexpired term of approximately three years. Mr. Krings also receives a salary from H & D Krings, Inc., which is Mr. Krings' primary source of income.

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<sup>3/</sup> Reasonable foreseeability does not require certainty, just a substantial likelihood that an effect will occur; however, it is more than a mere possibility. (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1976), copy enclosed.)

Mr. and Mrs. Krings also own their residence at 67905 Carroll Drive in Cathedral City. This property is located within a residential area of Redevelopment Project No. 3, over one mile from the proposed Kendra project.

Mr. Krings has posed the same series of inquiries regarding upcoming decisions about the projects that Ms. Di Grandi has posed.

### Analysis

The analysis with respect to Agency member Krings' home is the same as for Agency member Di Grandi's home. The "public generally" exception applies, and disqualification should not be required.

With respect to Mr. Krings' service station business, we must examine the reasonably foreseeable effects upon both his leasehold interest and his sales. His closely held corporation is subject to the materiality guidelines contained in Regulation 18702.2(g).

(g) For business entities which are not covered by (c), (d), (e) or (f) the effect of a decision will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Consequently, if it is reasonably foreseeable that H & D Krings, Inc., will be financially affected in the specified amounts, disqualification will be required. Again, any such effect will be distinguishable from the effect upon the public generally. (Regulation 18703.) Given that Mr. Krings' service station is located on one of the streets which borders the

Kendra project and that the property on which it is situated is within the same redevelopment project area, it seems reasonably foreseeable that his business will be affected in one way or another by the requisite amount.<sup>4/</sup> (See, Gillmor Opinion, supra.)

In addition, Mr. Krings has an interest in real property, through his wholly-owned business, in the form of a three-year leasehold interest in the property where his service station is located. This interest is subject to the guidelines set forth in Regulation 18702(b)(2), as follows:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;  
or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

If Mr. Krings' real property interest will be affected by any of these amounts, disqualification will be required, unless it is also reasonably foreseeable that all other retail shop/business owners renting space in the downtown business district will be affected in substantially the same manner as Mr. Krings. (See, Owen Opinion, supra.) Certainly, one possibility is that the Kendra project will be nearly "built-out" at about the same time that Mr. Krings' current lease expires, very possibly resulting in a substantial increase in rent, due to the improved surroundings.

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<sup>4/</sup> See footnote 3, supra.

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The other possible economic interest which Agency member Krings might have which could be affected in a material manner would be sources of income to him through his wholly-owned business. As an owner of ten percent or more of that business entity, sources of income to the business entity are sources of income to him on a pro rata basis. (Section 82030(a).) Consequently, if a source of \$250 or more in income to H & D Krings, Inc., within the past 12 months would be affected in a material manner by the Kendra decision, disqualification could be required. You have provided us with no facts in this regard. If you become aware of facts indicating that further inquiry is necessary in this regard, please contact this office.

We conclude that the combination of all of these various economic interests and their location in close proximity<sup>5/</sup> to the site of a large, 16-block, mixed-use development is sufficient to require Mr. Krings' disqualification. (See, Oglesby Opinion, 1 FPPC Ops. 71 at 81 (No. 75-083, July 2, 1975), copy enclosed; Gillmor Opinion, supra, at 42-43 and fn.4.)

#### Agency Member Robert A. Hillery

##### Facts

Robert Hillery and his wife, Nadine Hillery, own interests in real property at several locations within or immediately adjacent to Redevelopment Project Area No. 1 in the City of Cathedral City. Specifically, they own their residence at 68-675 "D" Street, from which Mr. and Mrs. Hillery operate a sole proprietorship for Mr. Hillery's appraisal and life insurance business. The other properties (owned either in fee or pursuant to a contract of sale) by Mr. and Mrs. Hillery within Redevelopment Project Area No. 1 include various improved commercial properties at 68-63 "D" Street, 68-820 Grove Street, 68-798 Grove Street, 68-788 Grove Street, 68-784 Grove Street, 68-772 and 788 Grove Street, and 68-762 East Palm Canyon Drive. These properties, as indicated on the map, are located either adjacent to or within a few blocks of the proposed Kendra project.

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<sup>5/</sup> Mr. Krings station is directly across the street from much of the Kendra project, situated on the corner of Palm Canyon Drive, which runs the length of and forms one side of the project, and Glenn Avenue, which bisects the widest portion of the project.

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The Hillerys also own a mini-storage facility located at 68-734 Perez Road in Redevelopment Project Area No. 3, which property is a substantial distance from the Kendra project. They further own certain vacant land in an undeveloped western portion of the city which is over a mile from the Kendra project.

Finally, Mr. and Mrs. Hillery own a 6.6-acre parcel of land at the corner of Gerald Ford Drive and Date Palm Drive (commonly known as 35-871 and 35-935 Date Palm Drive) within Redevelopment Project Area No. 3. This parcel, as shown on the map, is 3,300 feet from the proposed Kendra project. The land has been ground leased to Mission Hills Associates for a lease term of sixty-five years with three extension options of ten years each. The lease term began in 1979; thus, the length of the unexpired term, excluding the extension options, is approximately 58 years. This land has been improved by the lessee under the ground lease and includes Commonwealth Bank, a savings and loan, a Lucky supermarket, and various retail and commercial stores, some of which are being subleased by the lessee.

Under the terms of the lease, Mr. and Mrs. Hillery, as lessors, receive a base rent during the entire term of the lease in an amount in excess of \$10,000 but less than \$100,000 per year. This base rent is subject to increase based on increases in the Cost of Living Index. In addition to the base rent described above, the Hillerys may be entitled to percentage rent under the lease. However, Mr. and Mrs. Hillery do not believe that it is reasonably foreseeable that they will be receiving any percentage rents under the terms and conditions of the lease in the near future.

Mr. Hillery has posed the same series of inquiries regarding upcoming decisions about the project that Ms. Di Grandi and Mr. Krings have posed.

### Analysis

Mayor Hillery has numerous substantial real property holdings immediately in the vicinity of the proposed Kendra project. Unlike the bank, which holds the real property interests in the case of Ms. Di Grandi, these properties are held directly by the mayor and his wife. Consequently, the

appropriate test to be applied is that found in Regulation 18702(b)(2).

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;  
or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Applying the foregoing test(s) to the facts provided, we conclude that it is reasonably foreseeable that Mayor Hillery's interests will be foreseeably affected in a material manner. (See, Oglesby Opinion, supra; Gillmor Opinion, supra; and Witt v. Morrow (1977) 70 Cal.App. 3d 817, 822; 139 Cal.Rptr. 161.) Therefore, Mayor Hillery must disqualify himself as to the Kendra project.<sup>6/</sup> In addition to his real property interests, he also has sources of income from his business operations. Those sources of income may be affected by the decision as well. The effect on either of these types of interests will clearly be distinguishable from the effect upon the public generally. (See, Owen Opinion, supra, and Legan Opinion, 9 FPPC Ops. 1 (No. 85-001, Aug. 20, 1985), copies enclosed.)

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<sup>6/</sup> See, Biondo Opinion, 1 FPPC Ops. 54 (No. 75-036, July 2, 1975), copy enclosed, for a discussion of the requirements of disqualification, which include not chairing meetings.

Agency Member Gil L. Paquette

Facts

Mr. Paquette and his wife, Janine, own their residence at 68451 Moonlight Drive in Cathedral City. This property is located in a residential section of Redevelopment Project Area No. 3, approximately 3500 feet from the Kendra project. In addition, Mr. Paquette owns one-third of a closely held real estate corporation known as Century 21 Encore Realty, Inc. Mr. Paquette is a realtor associate and derives his primary source of income from commissions received in connection with this real estate business. The corporation leases offices at 68-487 East Palm Canyon in Cathedral City. The offices are within one block of the proposed Kendra project.

Century 21 Encore Realty, Inc., has had no residential or commercial listings within Redevelopment Project Area No. 1 within the past 12 months. Most of Century 21 Encore Realty, Inc.'s real estate listings in Cathedral City are residential properties located in the Cove Community in the western portion of Cathedral City, within Redevelopment Project Area No. 3.

Mr. Paquette has posed the same series of inquiries regarding upcoming decisions about the project that the other three agency members have posed.

Analysis

Mr. Paquette's residence is subject to the same analysis as Ms. Di Grandi's and Mr. Krings' residences. It should not form the basis for disqualification.

Mr. Paquette's employment with and ownership of Century 21 Encore Realty, Inc., could form the basis for disqualification. Mr. Paquette's real estate firm (of which he is a one-third owner) leases offices just down the street from one end of the Kendra project and situated within Redevelopment Project Area No. 1.

Most of his realty business' listings are residential and are situated in other areas of the city. However, the proximity and magnitude of the Kendra project makes it difficult to conclude that it is not reasonably foreseeable that his business will be affected in a material manner, either as to revenues or as to rents. (See, Oglesby Opinion, supra, and Gillmor Opinion, supra, fn.4 at pp. 42-43.)

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In addition, disqualification would be required if any other source of income to Mr. Paquette (i.e., a real estate sales client) would be affected by the Kendra project in a reasonably foreseeable and material manner. (See, Regulation 18704.2(c)(3).)

Without more facts, we are unable to advise that Mr. Pacquette is free to participate. However, if you are able to ascertain that none of his economic interests will be affected in a reasonably foreseeable and material manner, he would be permitted to participate.

#### DESIGN DECISIONS

You have also asked whether agency members may participate in design decisions. Even if disqualified from participating in major decisions, agency members may participate in "detail" decisions on matters which do not affect the overall viability of the project where the specific decision will not have a reasonably foreseeable material financial effect upon their economic interests.

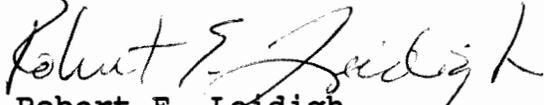
#### QUORUM

If your analysis concludes, based upon all the facts, that Mr. Pacquette is disqualified, a majority of the five-member agency board will be disqualified. Under those circumstances, one of the three should be selected by lot and will then be permitted to participate. (See, Hudson Opinion, 4 FPPC Ops. 13 (No. 77-007, Feb. 7, 1978); and Brown Opinion, 4 FPPC Ops. 19 (No. 77-024, Feb. 7, 1978).)

If you have any questions, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Robert E. Leidigh  
Counsel, Legal Division

DMG:REL:km  
Enclosures

cc: Sarah E. Di Grandi  
V. Harry Krings  
Robert A. Hillery  
Gil L. Paquette