



California Fair Political Practices Commission

March 11, 1987

James A. Cox
City Attorney for San Jacinto
Cox & Donnelly
805 East Florida Avenue
Hemet, CA 92343

RE: Your Request for Advice;
Our File No. I-87-025

Dear Mr. Cox:

You have written requesting advice on behalf of four members of the San Jacinto City Council. In response to our request, you provided additional material facts in a letter which we received February 4, 1987.

QUESTION

May councilmembers who have real estate and business interests in and around the area to be affected by a downtown revitalization project participate in decisions to cooperate with business owners in an application to participate in the California Main Street Program?

CONCLUSION

In general, those councilmembers who have economic interests in and around the area to be affected by the project must disqualify themselves from participating in the decision to pursue the project if it is reasonably foreseeable that any of their economic interests will be affected in a manner which is material as to that particular interest. We do not have sufficient facts to make a specific determination at this point.^{1/}

^{1/} Since we do not have all the material facts necessary to make a specific determination, we have treated your request as a request for informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Adm. Code Section 18329(c)(3).)

FACTS

A group of downtown business owners has requested the City of San Jacinto to cooperate with it in submitting an application to participate in the "California Main Street Program." This program is sponsored by the California Department of Commerce and is designed to revitalize older and deteriorating downtown business districts. Cities of under 50,000 population are competitively selected to participate in the program, and it appears that the City of San Jacinto could be benefited by the program if selected to participate. The group has requested the City Council to adopt a resolution to guarantee one year's salary and travel expenses for the local manager of the program, a sum expected to exceed \$30,000. This expenditure of public funds would necessarily be contingent upon the city being selected to participate in the program.

The City of San Jacinto is an old and relatively small community. The newer and larger neighboring City of Hemet contains most of the major shopping and business areas within the valley. It is believed that the main street project would benefit all citizens within the city, not only through the beautification of the downtown area, but also by the generation of additional tax revenue with the expected increase in business to the city's downtown area. You have received information from the city that approximately 12% of the total licensed businesses in the city are within the affected area.

The four city councilmembers on whose behalf you have made this request have the following economic interests which are material to this question:

R. J. Stevens: Mr. Stevens owns a boat repair business, together with the real estate upon which it is situated, within the area to be affected by the main street program.

Trammel Ford: Mr. Ford is a half owner/shareholder of a corporation which operates a real estate sales office within the affected business district. He also holds an option to purchase the real estate upon which the business is being operated.

Marc Divine: Mr. Divine is a real estate salesperson working as an independent contractor in a sales office within the affected business district. The sales office property as well as several other properties in the affected business district are owned by Mr. Divine's father. Mr. Divine is also a member of the board of the San Jacinto Chamber of Commerce. The Chamber supports the request to the city for the commitment of public funds.

Lester Redding: Mr. Redding is also a member of the Chamber board of directors, but has no economic interests within the downtown district.

ANALYSIS

The Political Reform Act (the "Act")^{2/} prohibits a public official from making, participating in making, or using his or her official position to influence the making of, any governmental decision in which the official has a financial interest. (Section 87100.) 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 the effect upon the public generally, on the official or a member of his or her immediate family, or on:

- (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....

Section 87103(a)-(d).

^{2/} 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.

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The decisions at issue involve two matters. One is the decision to apply to the state for participation in the California Main Street Program. This does not assure that a main street project will be undertaken in San Jacinto, but it is a necessary prerequisite to such a project. The second is the decision to allocate city funds for the support of staff which will be hired if the project is undertaken. This is also a necessary prerequisite to the award of such a project.

Even though neither of these decisions by the council is a final governmental decision to undertake the project, each is a governmental decision. Consequently, the disqualification provisions of Section 87100 apply.

For disqualification to be required, the effect of a decision must be both reasonably foreseeable and material as to an official's economic interest. Foreseeability does not require certainty; however it requires that a result be more than a mere possibility. (See, In re Thorner, 1 FPPC Opinions 198 (No. 75-089), copy enclosed.)

Where decisions involve applications or petitions to other governmental agencies, we have held that those decisions are part of the ultimate decisional process. The effects which would flow from the ultimate decision are foreseeable and intended effects of the component decision.^{3/} Thus, decisions to allocate the funds and to submit the application have the foreseeable effects which would flow from granting the application and implementing the project.

We turn from the general provisions of the law to the specific circumstances of each of the four councilmembers:

Lester Redding

Mr. Redding has no economic interests in the downtown district. We have been provided with no facts regarding any other economic interests. His membership on the board of the Chamber of Commerce does not in itself constitute an economic interest unless the Chamber is a business entity within the meaning of Section 82005. We presume that it is not. Consequently, the provisions of Section 87103(d) do not apply. Therefore, unless the Chamber is a source of income to Mr. Redding, he has no economic interest in the Chamber which would require disqualification.

^{3/} See Advice Letters to: Scott Keene, No. A-81-512; Adriana Gianturco, No. A-81-90; and Jon A. Blegen, No. A-85-176, copies enclosed.

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Consequently, based upon the limited facts provided to us, it appears that Mr. Redding would not need to disqualify himself from any decisions involving the application for participation in the California Main Street Program.

R. J. Stevens

From the facts presented, we presume that Mr. Stevens is the sole owner of his boat repair business. We also presume that his ownership interest is worth \$1,000 or more. We further presume that his ownership interest in the real property where his business is located is worth \$1,000 or more. Our analysis is based upon these presumptions.

As an owner of 10% or more of his boat repair business, any customer of the business will be a source of income to Mr. Stevens on a pro rata basis. (Section 82030(a).) If Mr. Stevens owns 100% of the business (including any ownership interest of his spouse), any customer who has paid \$250 or more to the business in the 12 months preceding the decision will be a source of income to him for purposes of disqualification. (Section 87103(c).)

Mr. Stevens must disqualify himself from participating in any decisions which will have a reasonably foreseeable material financial effect upon his own real property interests, his business, or upon any source of income of \$250 or more to him through his business in the preceding 12 months. Standards for determining whether an effect will be considered material are contained in Regulations 18702, 18702.1 and 18702.2, copies enclosed.

Even if a decision will have a reasonably foreseeable material financial effect upon one of Mr. Stevens' economic interests, disqualification will not be required if the economic interest will be affected in substantially the same manner as a significant segment of the general public. (Regulation 18703, copy enclosed.) This could be the case for a small retail shop owner if virtually all such shops were located within the affected area. (See, In re Owen, 2 FPCC Opinion 77 (No. 76-005) and Advice Letter to Carl Waggoner, No. A-85-089, copies enclosed.)

However, in the instant case, only 12% of the licensed businesses are situated in the affected area. This is insufficient to constitute a significant segment of the general public. Consequently, if businesses in the area, such as Mr. Stevens' boat repair business, will be materially affected in a manner which is distinguishable from the effect upon the public generally, Mr. Stevens must disqualify himself. The same is true if real property owners within the affected area will be

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affected in a material manner, distinguishable from the effect upon other property owners in San Jacinto. Lastly, if any source of income to Mr. Stevens of \$250 or more will be affected in such a manner, disqualification would be required.

We do not have sufficient information to determine what effects are reasonably foreseeable as a result of implementation of the main street project in San Jacinto. You will need to review the enclosed materials to determine whether the effects would be material as to any of Mr. Stevens' economic interests.

Trammel Ford

Mr. Ford is a one-half owner of a real estate business situated in the affected area and holds an option to purchase the real property on which the real estate business is situated. We presume that each of these interests is valued at \$1,000 or more.

As a more than 10% owner of the real estate business, sources of income to the business will be sources of income to Mr. Ford on a pro rata basis.^{4/} (See, In re Carey, 3 FPPC Opinions 99 (No. 76-087), copy enclosed.) In addition, certain clients may be sources of income to him as a result of sales commissions. (See Regulation 18704.3(c), copy enclosed.)

Consequently, Mr. Ford must consider the same factors as Mr. Stevens, albeit for his own economic interests, in order to determine if he must disqualify himself. The likelihood of material financial effects from the main street project upon his real estate business may be greater than the likelihood of such effects upon Mr. Stevens' boat repair business.

Marc Divine

As discussed with respect to Mr. Redding, Mr. Divine's membership on the Chamber of Commerce board could not be a basis for disqualification unless he receives income from the Chamber. (See Section 82030(a) and (b)(2).)

The fact that Mr. Divine's father owns several pieces of real property in the affected area is not an interest in real property on the part of Mr. Divine, unless he has some interest

^{4/} Because he owns 50% of the business, one-half of the gross commission income to the firm will be attributed to him.

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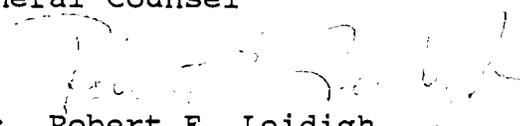
in the property himself. (Section 82033.) Therefore, absent such interests, his father's properties would not be a basis for his disqualification.

The real estate business which employs him and certain of its clients will be sources of income to him. (Regulation 18704.3(c).) Consequently, disqualification would be required if the main street project will have a reasonably foreseeable material financial effect upon either the real estate business or any of his other sources of income.

Should you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

REL:sm
Enclosures

COX & DONNELLY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

805 EAST FLORIDA AVENUE
HEMET, CALIFORNIA 92343

THOMAS M. COX
DANIEL T. DONNELLY
JAMES A. COX

TELEPHONE
AREA CODE 714
652-1400

JAN 15 0 15 AM '87

January 12, 1987

Fair Political Practice Commission
428 J. Street, Suite 800
Sacramento, California 95814

Re: Request for Advice; Gov't. Code 583114
Applicable Section: §§ 87100, 87103

Ladies/Gentlemen:

This office represents the City of San Jacinto. The following situation has arisen wherein we request your written advice:

The San Jacinto Chamber of Commerce has requested the City of San Jacinto to cooperate with it in its application to participate in the "California Main Street Program". This program is sponsored by the California Department of Commerce and is designed to revitalize older and deteriorating downtown business districts. Cities of under 50,000 population are competitively selected to participate in the program and it appears that the City of San Jacinto could be greatly benefited by the program if selected to participate. The San Jacinto Chamber of Commerce has requested the City Council to guarantee by resolution, one year's salary and travel expenses for the local manager of the program, a sum expected to exceed \$30,000.00. This expenditure of public funds would necessarily be contingent upon the city being selected to participate in the program. There appears to be unanimous support of the council and public for making the application and the contingent expenditure of the public funds.

The advice sought is whether a council member would be disqualified from participating in the resolution guaranteeing these public funds by being one of the 15 member board of the local Chamber of Commerce and/or being an owner of property or business within the downtown business district? For your information and reference, enclosed is a copy of the Chamber's letter to the Mayor and the proposed resolution.

We believe that four of the five member council may fall within one or the other of the above conflicts. In the event your advice requires disqualification, any information or memoranda with respect to quorum would be appreciated.

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Your consideration and advise in this matter will be greatly appreciated.

Sincerely,

COX & DONNELLY

By


James A. Cox

JAC:mi
encl.
cc: Ross Nammar

COX & DONNELLY

A PROFESSIONAL CORPORATION

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652-1400

FEB 4 6 54 AM '87

February 2, 1987

Ms. Diane M. Griffiths
California Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Re: Request for Advice - City of San Jacinto

Dear Ms. Griffiths:

Thank you for your letter of January 21, 1987 requesting information supplemental to my letter of January 12, 1987.

I have been authorized to make this request for advice on behalf of four of the five City Counsel members. Their names and specific economic interests are as follows:

R. J. Stevens: Mr. Stevens owns a boat repair business together with the real estate upon which it is situated within the area to be effected by the Main Street program.

Trammel Ford: Mr. Ford is a half owner/shareholder of a corporation which operates a real estate sales office within the effected business district. He also holds an option to purchase the real estate upon which the business is being operated.

Marc Divine: Mr. Divine is a real estate salesperson working as an independent contractor in a sales office within the effected business district. The sales office property as well as several other properties in the effected business district are owned by Mr. Divine's father. Mr. Divine is also a member of the Board of the San Jacinto Chamber of Commerce, which organization supports the request to the City for the commitment of public funds.

Lester Redding: Mr. Redding is also a member of the Chamber Board of Directors, but has no other financial interest within the downtown district.

Ms. Diane M. Griffiths
February 2, 1987
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All of these officials may be reached through the following address:

City of San Jacinto
Post Office Box 488
San Jacinto, California 92383

The City of San Jacinto is an old and relatively small community. The newer and larger neighboring City of Hemet contains most of the major shopping and business areas within the valley. It is believed that the Main Street Project would benefit all citizens within the City, not only through the beautification of the downtown area, but by the generation of additional tax revenue with the expected increase in business to the City's downtown area. I have also received information from the City Offices that approximately 12% of the total City licensed businesses are within the affected area.

I would like to make one correction to my last letter of January 12, 1987. That letter indicated that the request for expenditure of public funds originated from the San Jacinto Chamber of Commerce. Although the request was sent to the City on Chamber stationery, I am informed by the Chamber officials that the request was not approved by the Chamber Board of Directors nor was the request sponsored by the Chamber of Commerce. The Chamber supports the application but the actual sponsors are a group of downtown businessmen who are in the process of forming a Downtown Improvement Association, separate from the Chamber of Commerce. I believe that this new information may resolve the potential conflict of the council members who are Chamber Board members.

Again, I thank you for your consideration and assistance.

Sincerely,

COX & DONNELLY



James A. Cox

JAC/kg

cc: Ross Nammar, City Manager
Marc Divine
Trammel Ford
Lester Redding
R. J. Stevens

San Jacinto Chamber of Commerce

188 EAST MAIN STREET
SAN JACINTO, CALIFORNIA 92383

POST OFFICE BOX 486
714 654-9246

December 30, 1986

Mayor Wayne J. Stuart
c/o San Jacinto City Hall
P.O. Box 488
San Jacinto, CA 92383

Honorable Mayor and City Councilmen:

The San Jacinto Chamber of Commerce has become increasingly concerned about the problems of our downtown; from parking and vacancy factors to lack of an aesthetic appearance and a cohesive marketing strategy.

The California Department of Commerce functions as sponsor and coordinator of a program called The California Main Street Program. This program is designed for cities under 50,000 in population who wish to revitalize older and or deteriorating downtown business districts. In order to do this, extensive technical assistance is offered for a three year period for cities selected to participate in this program. The cities are competitively selected annually.

The Chamber believes that the California Main Street Program offers an appropriate and unique approach to dealing with these issues. Therefore, we, the Main Street Committee for the San Jacinto Chamber of Commerce submit the attached resolution to the City Council. This resolution will authorize the City and Chamber to jointly work together in applying for selection as one of the Main Street Cities for 1987 and authorize the Mayor to sign said resolution on behalf of the city.

Attached are the application forms to be submitted to the Department of Commerce, as well as, information pertaining to cities, which were selected in 1987 and a general information brochure on the program.

One of the key issues in the selection process is the requirement that a specific position be created for a Project Manager, to administer the program. This position cannot be an existing city position, nor can the Project Manager be assigned other tasks outside the Main Street Program. The Chamber is prepared to pledge in-kind contributions to the program needs such as office space, supplies, telephone, and volunteer assistance. However, the salary of approximately \$30,000 and expenses must be funded from the public sector for at least one year.

Mayor Wayne J. Stuart
Page 2
December 30, 1986

We are asking the City of San Jacinto, therefore, to authorize the use of Tax Increment Funds from the San Jacinto Redevelopment Project to pay the Project Manager's salary.

It is our desire and intention that this be an ongoing program; to this end, we are vigorously exploring the implementation of an A.B. 1693 Business Improvement District, as well as, Economic Development administration #302A Program and other grant programs for funding in subsequent years. We will do all we can to find avenues to fund this program outside of Tax Increment Funds, however, due to the timing requirements of the application, it is necessary to have a first year commitment of seed money from the city. The activities involved in the Main Street Program, such as Design, Economic Restructuring, Organization, and Marketing Promotion ultimately enhance the Economic Climate, increase the Tax Base and therefore, the Tax Increment to the city. Expenditure of these revenues now will be returned by further downtown development.

We respectfully request the passage of the attached resolution and the whole hearted cooperation of the city in working with us to restore the best of the past, while moving forward with pride into the future.

Sincerely,



Evelyne K. Burke
Chairperson
Downtown Development

EKB:tj

A RESOLUTION AUTHORIZING PARTICIPATION IN THE "MAIN STREET" PROGRAM AND DESIGNATING THE CITY MANAGER TO COORDINATE ALL PROGRAM ACTIVITIES.

WHEREAS, the California Main Street Program has been established in the California Department of Commerce to assist small cities and towns to develop a public/private effort to revitalize the "Main Street" areas, and whereas, five California cities and/or towns will be selected to participate in the program for a three year period, and

WHEREAS, the City of San Jacinto agrees to participate in the California Main Street Program.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF San Jacinto :

SECTION 1. That the City of San Jacinto applies for selection to participate in the 1987 California Main Street Program with the specific goal of revitalizing the central business district within the context of preserving and rehabilitating of its historic and culturally significant buildings.

SECTION 2. That the City of San Jacinto guarantees that a full-time Main Street Project Manager with a travel and operating budget will be employed for 1 year.

SECTION 3. That the City Manager be designated to submit the application.

ADOPTED THIS _____ DAY OF _____, 1987.

Mayor

ATTEST

CLERK OF COUNCIL



California Fair Political Practices Commission

January 21, 1987

James A. Cox
Cox & Donnelly
Attorneys at Law
805 East Florida Avenue
Hemet, CA 92343

Re: 87-025

Dear Mr. Cox:

Your letter requesting advice under the Political Reform Act was received on January 16, 1987, by the Fair Political Practices Commission. Commission Regulation 18329(b)(2) (copy enclosed) requires a request for formal written advice to include a specific statement that you have been authorized to request the advice by the person whose duties under the Act are in question. Please send us a supplemental letter stating that you are so authorized by the officials on whose behalf you have requested advice. Please also include in your letter the mailing address of the officials.

We have also enclosed copies of several relevant Commission opinions and advice letters which you may find helpful in preparing your supplemental letter. We will need to know the specific economic interests of each of the councilmembers in order to provide you with a full response.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days after we receive your supplemental letter. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
Enclosures

1-20-87
4-01-87
72-0-5
74-0-5
77-0-7