



California Fair Political Practices Commission

April 28, 1987

Anthony J. Garcia
City Attorney for Union City
c/o Garcia, Bruzzone & Galliano
16101 East 14th Street
San Leandro, CA 94578

Re: Your Request for Advice
Our File No. I-87-085

Dear Mr. Garcia:

You have written to request our assistance on behalf of Union City Planning Commissioner James Lamona.^{1/} Mr. Lamona is the majority partner in a management firm which has recently been retained to provide management services for the Union City Chamber of Commerce (the "Chamber"). He will be the Chamber's general manager.

QUESTIONS

Must Mr. Lamona disqualify himself on development proposals brought before the planning commission by: (1) existing members of the Chamber; (2) non-members of the Chamber; or (3) a business which may become a member of the Chamber if it locates in Union City?

^{1/} Your original request was received by our office on March 16. Your letter containing supplemental facts was received on March 24. Consequently, the 21-working day response period for formal written advice runs through April 22, 1987. However, your request is one seeking general guidance; it does not relate to any specific pending decision. Consequently, we will treat it as a request for informal assistance under 2 California Administrative Code Section 18329 (copy enclosed). Informal assistance does not provide the requestor with the immunities provided for in Government Code Section 83114(b). (2 Cal. Adm. Code Section 18329(c)(3).)

CONCLUSIONS

Mr. Lamona must disqualify himself from participating in any decisions where there is a "nexus" between the decision and his role as general manager of the Chamber. We discuss applications of the "nexus" test below. He must also disqualify himself from participating in any decisions which will have a reasonably foreseeable material financial effect on his consulting firm, the Chamber, or any business whose membership in the Chamber results in him receiving \$250 or more in additional income.

FACTS

Mr. Lamona is a partner and 60-percent owner in a firm which provides management services. His firm has recently contracted with the Chamber to provide professional management services to the Chamber for a period of one year. He will serve as the Chamber's general manager.

The Chamber encourages and promotes commercial and industrial business activities within Union City. The Chamber is a non-profit organization, organized pursuant to Internal Revenue Code Section 501(c)(6). Whether or not any business or individual joins the Chamber is a purely voluntary decision made by that business or individual.

Chamber membership dues increase with the size of the business, as measured by the number of employees of the business. For example, an individual member's dues would be \$60 per year. A firm with 21 employees would pay \$250 per year, and a firm with 131-500 employees would pay \$580 per year. The Chamber's income from membership dues has been between \$40,000 and \$45,000 for each of the last three years.

The contract between Mr. Lamona's firm and the Chamber provides for a base fee of \$20,000, plus a "bonus" equal to 25 percent of membership dues received by the Chamber in excess of \$50,000 per year. Thus, if the annual dues increased to \$60,000, Mr. Lamona's firm would receive an additional \$2,500.

ANALYSIS

The Political Reform Act (the "Act")^{2/} prohibits any public official from making, participating in making, or using his or

^{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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her official position to influence, any governmental decision in which he or she has a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official, 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.

* * *

(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(a) and (c).

Mr. Lamona owns 60 percent of the consulting firm. As an owner of 10 percent or more of the firm, sources of income to the firm are sources of income to him, on a pro rata basis. (Section 82030(a).) Consequently, the Chamber is a source of \$12,000 in income "promised to" Mr. Lamona under the consulting contract.^{3/} Therefore, he must disqualify himself from decisions materially affecting the Chamber. (Section 87103(c).)

Mr. Lamona has an investment in his firm, and it is a source of income to him. Therefore, he must also disqualify himself as to decisions which will have a reasonably foreseeable material financial effect upon his consulting firm. (Section 87103(a) and (c).)

Mr. Lamona's firm will receive a "bonus" if there is a sufficient increase in the level of dues paid to the Chamber in the course of a year. Obviously, an important component of his firm's services is the recruitment of additional dues-paying members to the Chamber. Under these circumstances, Mr. Lamona may not make or participate in making any planning commission

^{3/} Where a salary is received, as opposed to reimbursement of expenses and per diem, the non-profit, charitable status of the Chamber does not alter the salary's treatment as income. (Section 82030(b)(2).)

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decisions which will have the practical effect of increasing the number of dues-paying members of the Chamber. Under such circumstances, there would be a "nexus" between the purpose for which he receives his outside income and the governmental decisions. (See, Regulation 18702(b)(3)(B); and Advice Letters to Linda Best, No. A-81-032; Tom Haas, No. A-84-037; and Ronald Stein, No. A-83-230, copies enclosed.)

In addition, because the "bonus" is, in essence, a commission, those businesses whose membership and dues result in the payment of a bonus will be treated as sources of income to the consulting firm. (See, Elam Advice Letter, No. A-82-054, copy enclosed.) This is not the case for those businesses who are currently dues-paying members. Absent special circumstances, we have declined to treat the members of a bona fide association as sources of the payments which the association makes to a third party. (See, for example, Regulation 18239.5, and Sellers Advice Letter, No. A-84-326, copies enclosed.)

Consequently, if any newly recruited business was large enough to pay sufficient membership dues to the Chamber so as to result in a pro rata bonus of \$250 or more to Mr. Lamona, that business would be a source of income to him under Section 87103(c).^{4/} Mr. Lamona would then be required to disqualify himself as to decision's materially affecting that business.

Having provided these general parameters for our discussion, we turn to your specific questions.

(1) Decisions brought before the planning commission by existing members of the Chamber.

The existing members of the Chamber would not be sources of income to Mr. Lamona. Consequently, unless there is some reason to believe that the decision will have a reasonably foreseeable material financial effect upon the Chamber or Mr. Lamona's firm and the effect is distinguishable from the effect upon the public generally, disqualification would not be required.

However, if the decision is likely in any way to enhance the prospects that a current member will remain a member or to increase its dues level it will affect the success of Mr. Lamona's firm in fulfilling the goals of the contract.

^{4/} To result in a pro rata bonus to Mr. Lamona of \$250 or more, the business would need to pay dues of \$1,666 or more to the Chamber.

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Since that contract is for one year, the prospects of its renewal will be reasonably foreseeably affected by the decision. Clearly renewal or nonrenewal of the contract would have a material financial effect upon his firm. Under these circumstances, disqualification would be required.

(2) Decisions brought before the planning commission by non-members of the Chamber.

Absent additional facts, persons in this category are not sources of income to Mr. Lamona. Consequently, the test is the same as stated above. However, if there is a connection between the decision and a business' likelihood of becoming a dues-paying member of the Chamber, the "nexus" standard would apply and disqualification would be required.

(3) Decisions brought before the planning commission by businesses which may become members of the Chamber if the business locates in Union City.

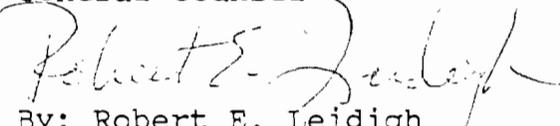
To the extent that a decision will permit a business to locate in Union City and the business has either expressed interest in joining the Chamber or has been recruited by the Chamber to come to Union City, a "nexus" exists between the decision and the purpose for which Mr. Lamona receives his income. As a result, disqualification will be required.

Beyond your specific questions, we would caution that a "nexus" also exists with respect to any planning commission decision as to which the Chamber has taken a position. This is discussed in depth in the Best Advice Letter, No. A-81-032, previously referenced.

Should you have further 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:km
Enclosures



**UNION
CITY**

34009 Alvarado Niles Rd. • Union City, California 94587

(415) 471-8232

PLEASE REPLY TO:
GARCIA, BRUZZONE & GALLIANO
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16101 East 14th Street
San Leandro, CA 94578
(415) 351-6161

MAR 24 5 01 AM '87

March 18, 1987

Legal Division
Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, CA 94804

Attention: Barbara Milman, General Counsel

Re: Request for Advise Re: Conflict of Interest
(Correspondence of March 11, 1987)

Dear Ms. Milman:

Since my correspondence of March 11, 1987, I have learned of further information that may be of help to you. First of all, however, allow me to make two corrections: (a) Mr. Lamona's share in the management firm is sixty percent (60%) not fifty percent (50%) as set forth in my March 11, 1987 letter); and (b) the contract between Mr. Lamona's firm and the Union City Chamber of Commerce provides for a "bonus" over the base fee of twenty-five percent (25%) of membership dues received by the Chamber over \$50,000.00 per annum [not seven percent (7%) as indicated in my letter].

Secondly, allow me to pass along some further information that may be relevant. The Union City Chamber of Commerce's income from membership dues has been between \$40,000.00 and \$45,000.00 over the past three (3) years. The Chamber has a membership dues structure in which the dues increase with the size of the member's business is measured by number of employees. For example, an individual's dues are \$60.00/annum and a member who has 131-500 employees would be charged \$580.00/annum. For dues to exceed \$250.00 per annum, a member must employ more than 21 persons.

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Fair Political Practices Commission
Attention: Barbara Milman, General Counsel
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Although I am not sure how relevant the foregoing may be, I wished you to have as much information as I have at the present time. If you have any questions, please do not hesitate to get in touch with me.

As always, your help and cooperation are much appreciated.

Very truly yours,



ANTHONY J. GARCIA
City Attorney
City of Union City

AJG:dkf

cc: Mr. James Lamona
Ms. Karen Smith, City Manager





UNION CITY

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March 11, 1987

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Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, CA 94804

Attention: Barbara Milman, General Counsel

Re: Request for Advise Re: Conflict of Interest

Dear Ms. Milman:

City Planning Commissioner, James Lamona, has asked us to request your advise on a potential conflict of interest/disqualification problem.

Our understanding of the facts is as follows:

Mr. Lamona is a fifty percent (50%) partner in a firm which has traditionally provided management services to homeowner's associations. His firm has recently contracted with the Union City Chamber of Commerce to provide professional management services for the Chamber for a period of one (1) year. The activities of the Chamber revolve around the encouragement and promotion of commercial and industrial business activities within Union City. The Commissioner will bear the title of "General Manager" of the Union City Chamber of Commerce. His firm's contract with the Chamber provides for a base fee of \$20,000 per annum plus seven percent (7%) of membership dues received by the Chamber over \$50,000 per annum (i.e. if dues received are \$60,000 a "bonus" of \$700 would be payable). It appears that the Commissioner would certainly have a "financial interest" in the Chamber of Commerce per Section 87103(c) and (d).

However, the question that concerns the Commissioner is whether he must disqualify himself on development proposals before the Planning Commission brought by: (a) existing members of the Chamber; (b) non-members of the Chamber; or (c) businesses who may become members of the Chamber in the event that they locate their business in Union City. Although I certainly do not wish to prejudice your analysis, I suspect the question

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may involve the reasonable foreseeability of those planning applications having a material financial effect upon the Chamber of Commerce. The Chamber itself is a non-profit organization - I believe organized per Internal Revenue Code Section 501(c)(6). Whether or not any business or individual joins the Chamber is a purely voluntary decision made by that business or individual.

Should you require further information, I would be happy to attempt to discover what you may need.

Your advise is much appreciated.

Very truly yours,


ANTHONY J. GARCIA
City Attorney
City of Union City

AJG:dkf

cc: Mr. James Lamona
Ms. Karen Smith, City Manager





California Fair Political Practices Commission

March 19, 1987

Anthony J. Garcia
City Attorney, Union City
Garcia, Bruzzone & Galliano
A Law Corporation
1601 East 14th Street
San Leandro, CA 94578

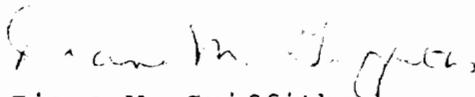
Re: 87-085

Dear Mr. Garcia:

Your letter requesting advice under the Political Reform Act was received on March 16, 1987 by the Fair Political Practices Commission. 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.

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. 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.

Very truly yours,


Diane M. Griffiths
General Counsel

DMG:plh
cc: James Lamona