



California Fair Political Practices Commission

August 20, 1987

Charles T. Kilian
City Attorney
City of Cupertino
852 N. First Street, Third Floor
San Jose, CA 95112

Re: Your Request for Informal
Assistance
Our File No. I-87-200

Dear Mr. Kilian:

You have written requesting informal assistance regarding the appropriate application of Commission Regulation 2 California Administrative Code Section 18702.2.^{1/}

QUESTION

How may planning commissioners determine whether it is reasonably foreseeable that a planning commission decision will have a material financial effect on a business entity under the provisions of Regulation 18702.2?

CONCLUSION

In determining whether the effects of a decision on a particular business entity will be material, a planning commissioner must consider whatever information is reasonably available regarding the financial effects of the decision on the business entity.

FACTS

Some of the members of the Cupertino Planning Commission own stock worth \$1,000 or more in business entities which are listed on the Fortune 500 list published annually in the Commission's Bulletin. While no decisions affecting those companies are currently pending before the planning commission,

^{1/} 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.

you anticipate that such a situation may occur in the future. You wish some guidance on how to analyze the situation once it arises.

ANALYSIS

The Political Reform Act (the "Act")^{2/} provides that no public official shall make, participate in making, or use his or her official position to influence a 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 a business entity in which the official has an investment of \$1,000 or more at the time of the decision. (Section 87103.)

Thus, an official must disqualify himself or herself if the decision in question involves significant effects on a business entity in which the official holds stock worth \$1,000 or more. (Regulation 18702(a).) In the case of a planning commissioner, disqualification will be required if such a business entity is the applicant for a land use permit or zoning change. (Regulation 18702.1(a)(2).)

However, in some cases a land use decision will have a foreseeable effect on a business entity, even though the business entity is not the applicant or claimant. In these situations, the provisions of Regulation 18702.2 would apply. An example of this application is found in the Commission's Legan Opinion, 9 FPCC Ops. 1 (No. 85-001, Aug. 20, 1984, copy enclosed). There, Supervisor Legan worked for and owned stock in Kaiser Cement, which owned land that would be affected by a general plan amendment. The general plan amendment which was under consideration was not initiated at the request of Kaiser Cement. To determine the effect of the amendment on Kaiser's assets (the land owned by Kaiser in the affected area), the Commission consulted with real estate agents familiar with property values in the area. The Commission concluded that the effect of the proposed general plan amendment on Kaiser's assets was both reasonably foreseeable and material under the provisions of Regulation 18702.2.

Some land use decisions will affect companies' revenues as opposed to their assets. An example would be where a developer

^{2/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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who owns a parcel seeks to develop a shopping center. The developer will build the structures and will lease space to various commercial enterprises. The developer is the applicant, not the potential tenants. However, the developer may advise the planning commission that certain major tenants are committed to the project. One of these major tenants might be an entity such as Sears, which is a company on the Fortune 500 list. Obviously, the decision to permit development of the shopping center would not affect Sears' assets. However, it would be expected to affect Sears' revenues from sales. Sears and the developer would undoubtedly have estimates as to what level of sales revenues are expected to be generated by the new store. The increase would be a reasonably foreseeable effect on Sears' revenues. Whether the effect is material depends upon whether the change in expected revenues would be \$1 million per year or greater. If so, disqualification would be required under Regulation 18702.2(c)(1), which describes the standards for determining materiality for Fortune 500 companies.

Your letter mentions a concern regarding "the financial complexities in determining the worth of a given company at any given time." The application of Regulation 18702.2 eliminates the need for making such a determination when the company is listed on one of the major stock exchanges or the Fortune 500. The determination of the company's worth has already been made by the listing entity. Only when a company is not covered by Regulation 18702.2(c), (d), (e) or (g) is it necessary to determine the company's actual worth. (Regulation 18702.2(f).)

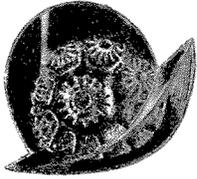
I trust that this guidance and the enclosed Legan Opinion will assist you in advising the planning commissioners if a situation involving one of the companies in which they own stock should arise. If such a situation does occur, please do not hesitate to contact this office for further assistance at that time. If 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

DMG:REL:plh
Enclosure



City of Cupertino

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Office of the City Attorney

852 N. First Street, Third Floor
San Jose, California 95112
(408) 971-6411

July 16, 1987

Fair Political Practices Commission
Legal Department
428 J. Street, Suite 800
Sacramento, CA 95814

Re: Request for Informal Advice
Pertaining to Regulation 2 Cal.
Adm. Code Section 18702.5

Dear Legal Counsel:

The Planning Commission of the City of Cupertino requests informal assistance from the Fair Political Practice Commission (FPPC) regarding regulation 2 Cal. Adm. Code Section 18702.2.

This regulation provides that a conflict of interest would arise if a pending decision is likely to result in a one million dollar or more increase or decrease in the gross revenues of a corporation listed on the "Fortune 500" if the public official has a financial interest in the corporation.

Some of the commissioners own stock in some of the Fortune 500 companies listed in the FPPC Bulletin of June, 1987. While no decision is pending before the commission regarding one of these companies, the commission would like some guidance from the FPPC as to how the Planning Commission can, in the future, determine whether a decision would result in a one million dollar or more change in the gross assets or liabilities of one of these corporations.

Our question of the FCCP is that given the financial complexities in determining the worth of a given company at any given time and the greater complexity in determining the financial impact of a decision on a company's worth, how can a Planning Commissioner know if a

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Planning Commission's decision will have a million dollar impact on the company?

Any guidelines, rules, opinions or other form of assistance which the FCCP can provide regarding how a commissioner can determine whether a pending decision will have a million dollar impact on a corporation would be extremely helpful.

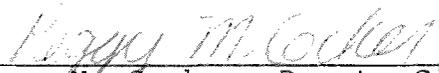
Please do not hesitate to call me should you have any questions regarding this matter.

Submitted by:



Charles T. Kilian, City
Attorney

Prepared by:



Peggy M. Cocker, Deputy City
Attorney

ss

cc: Robert Quinlan
Dorothy Cornelius



California Fair Political Practices Commission

July 21, 1987

Charles T. Kilian, City Attorney
City of Cupertino
852 N. First Street, Third Floor
San Jose, CA 95112

Re: 87-200

Dear Mr. Kilian:

Your letter requesting advice under the Political Reform Act was received on July 20, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

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,

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

Diane M. Griffiths
General Counsel

DMG:jaj