



California Fair Political Practices Commission

November 4, 1987

Jeffrey A. Walter
City Attorney
Waterfall Towers
2455 Bennett Valley Road, Suite 302B
Santa Rosa, CA 95404

Re: Your Request for Advice
Our File No. I-87-242

Dear Mr. Walter:

You have requested advice on behalf of Terry Scott about the application of the Political Reform Act (the "Act") ^{1/} to Mr. Scott's duties as a planning commissioner for the City of Martinez.

In your letters of September 17 and October 16, 1987, you did not ask for advice about a specific decision pending before the planning commission. Therefore we consider your request one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

Your September letter also asked for advice about a member of the city council. Because you have not sent us the additional information we requested, we are providing advice only for Mr. Scott's situation.

QUESTION

Is Mr. Scott disqualified from participating in decisions regarding developers who are sources of income to Mr. Scott's business?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. 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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Mr. Scott is disqualified from participating in decisions that will have a reasonably foreseeable material financial effect on developers who are sources of income to Mr. Scott.

FACTS

Terry Scott is a planning commissioner for the City of Martinez. Mr. Scott has invested more than \$1,000 in and owns 50 percent of a temporary employment agency, which sometimes provides temporary office employees to local developers. Some developers contract for more than \$250 of services during a 12-month period.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way using his official position to influence a governmental decision in which he has a financial interest. Mr. Scott is a public official. (Section 82048.)

A source of income to Mr. Scott's business is a source of income to Mr. Scott on a pro-rata or 50% basis, because Mr. Scott owns more than 10% of his business. (Section 82030(a).) Mr. Scott would have a financial interest in a decision if it were reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on a business entity that paid more than \$500 to his business within 12 months of the decision. (Section 87103(c).)

Regulation 18702.1(a)(1) (copy enclosed) requires Mr. Scott's disqualification if a developer in which Mr. Scott has an economic interest "appears before" the planning commission by applying for a zoning change or a use permit or other land use decision.

For other decisions that may affect a developer, Regulation 18702.2 (copy enclosed) lists factors to consider to determine the material effect of each decision. We do not know the financial size of the developers who may contract with Mr. Scott's firm. Nevertheless, Mr. Scott must ascertain their size and apply the guidelines in Regulation 18702.2 to determine if a decision would have a material effect. If the effect were significant, Mr. Scott would be disqualified from participating in the decision.

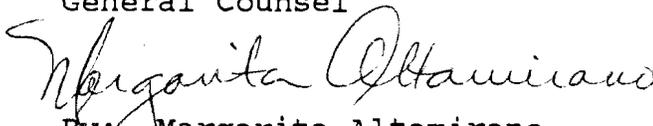
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A decision's effect is foreseeable if there is a substantial likelihood that the decision substantially will affect the developer's gross revenues, expenses, or the value of assets or liabilities. (Regulation 18702.2.) An effect does not have to be certain to be foreseeable. But if an effect were a mere possibility it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198; see Witt v. Morrow (1977) 70 Cal. App. 3d 817.)

I hope I have answered your question about Mr. Scott's duties. Please call me at (916) 322-5901 if you have a question about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:plh

City of Martinez

525 HENRIETTA STREET • MARTINEZ
CALIFORNIA 94553 • (415) 372-

SEP 22 8 19 AM '87

September 15, 1987

Fair Political Practices Commission
428 J Street, Ste. 800
Sacramento, CA 95814

RE: Our File: Conflict of Interest

Dear Sir:

I am the City Attorney for the City of Martinez. I request opinion advice on the following two issues.

1. Does the following described council member of the City Council of Martinez have a conflict of interest which would require him to disqualify himself from participating in any decision concerning the following described developer?

A member of the City Council of the City of Martinez owns an automobile repair shop. The business is owned by a corporation, the shares of which are owned exclusively by the council member and his wife. During any given 12-month period, the shop repairs damaged automobiles owned by a local developer and the corporation receives income from this developer for such work in the amount of \$2,000 to \$5,000 per year. These automobiles that are repaired are owned by the developer or the developer's corporation.

From time to time, this developer comes before the City Council seeking subdivision map approval and other planning use permits for the construction and development of typically residential subdivisions in the City limits. Must the subject council member disqualify himself in such matters being brought before the City Council by this subdivider? To my knowledge, there is no nexus between the governmental decisions involved in these planning situations and the purpose for which the council member receives his income. See 2 C.A.C. Section 18702(b)(3)(B). The subdivider's business is not a publicly traded company, although I do believe it also is a corporation. Is 2 C.A.C. Section 18702(b)(3)(C) and Section 18702.2(g) controlling in this case? Must there be a nexus between the financial benefits that the subdivider would gain as a result of the planning decision and the purpose for which the council member's corporation is paid money by the subdivider?



2. A member of the Martinez Planning Commission is a partner in a business which provides temporary employees to various employers in the Contra Costa County area. The Planning Commissioner has invested more than \$1,000 in the partnership. It is my understanding that he owns a greater than 10% interest in the partnership. From time to time local developers utilize the services of this partnership and during any given 12-month period, pay to the partnership more than \$250 for the temporary employee services provided to the developer.

Must this planning commissioner disqualify himself when such developers come before the planning commission for development approvals?

Your earliest attention to this matter would be greatly appreciated.

Sincerely yours,

WALTER, & PISTOLE, a P.C.

By *Jeffrey A. Walter*
JEFFREY A. WALTER
City Attorney

JAW:df

Please respond to: Waterfall Towers, 2455 Bennett Valley Road,
Suite 302B, Santa Rosa, CA 95404 707/523-0732



California Fair Political Practices Commission

September 28, 1987

Jeffrey A. Walter
Walter & Pistole, a P.C.
Waterfall Towers
2455 Bennett Valley Road, Suite 302B
Santa Rosa, California 95404

Re: Your Request for Advice
Our File No. 87-242

Dear Mr. Walter:

On September 22, 1987, the Fair Political Practices Commission received your letter requesting advice under the Political Reform Act.

Your advice request, however, is incomplete. Our regulations require that you provide us with the names and mailing addresses of the city council and planning commission members on whose behalf you are requesting the advice. (2 Cal. Adm. Code Sec. 18329(b), copy enclosed.) You also should state that these officials have authorized you to request written advice for them.

As soon as you provide the required information, we will be able to begin preparing a response to your request. Unless your request poses particularly complex legal questions, you should expect a response within 21 working days after we receive the supplemental information if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See 2 Cal. Adm. Code Sec. 18329.) If you have any questions about your advice request, you may reach me at (916) 322-5901.

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.

Sincerely,

A handwritten signature in cursive script that reads "Margarita Altamirano".

Margarita Altamirano
Counsel, Legal Division



California Fair Political Practices Commission

September 23, 1987

Jeffrey A. Walter
City Attorney
525 Henrietta Street
Martinez, CA 94553

Re: 87-240

Dear Mr. Walter:

Your letter requesting advice under the Political Reform Act was received on September 22, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, 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,

Diane M. Griffiths
General Counsel

DMG:plh

City of Martinez

Oct 21 9 30 AM '87

525 HENRIETTA STREET • MARTINEZ
CALIFORNIA 94553 • (415) 372-

October 16, 1987

Marguerita Altamirano, Counsel
Legal Division
California Fair Political Practices Commission
428 J Street, Suite 800
PO Box 607
Sacramento, CA

Re: Your File Number: 87-242
Our File: Conflict of Interest

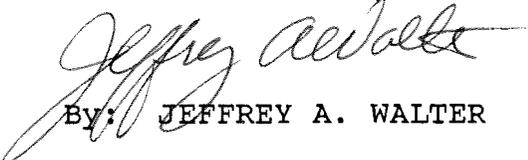
Dear Ms. Altamirano:

This is in response to your letter of September 28, 1987. I have contacted the Planning Commissioner about whom I have requested an opinion as reflected in my letter of September 15, 1987. The Planning Commissioner has authorized me to disclose his name, address, and telephone number and to request the opinion which I have solicited from the Commission. The Planning Commissioner's name is Terry Scott. His address is 1965 Lakeview Place, Martinez, CA. His phone number is (415) 674-8618.

I wish also to supplement my September 15, 1987, letter by telling you that Mr. Scott owns 50% of his partnership and that with respect to the temporary employment services he provides to developers in the Martinez area generates, in any given 12-month period, remuneration being paid to his partnership in amounts in excess of \$250.00.

Sincerely yours,

WALTER & PISTOLE, a. P.C.


By: JEFFREY A. WALTER

JAW/gh
cc: Terry Scott

