



# California Fair Political Practices Commission

February 11, 1988

Allen R. Briggs  
City Attorney  
City of Cathedral City  
68-625 Perez Road  
Cathedral City, CA 92234

Re: Your Request for Advice  
Our File No. I-88-023

Dear Mr. Briggs:

You have requested follow-up advice on behalf of Councilmember Gil Paquette to our previous advice letter No. A-86-297A. Your request stems from a subsequent change in Mr. Paquette's economic interests.

## QUESTION

In light of Mr. Paquette's changed circumstances, may he now participate in certain redevelopment decisions currently pending before the city council and the redevelopment agency?

## CONCLUSION

Based upon the facts which you now present, Mr. Paquette may participate in the pending decisions unless it is reasonably foreseeable that the decisions will materially affect Century 21 Hacienda Realty or one of Mr. Paquette's real estate clients. We do not have sufficient facts to draw a firm conclusion as to these effects at this time.

## FACTS

Mr. Paquette is a member of the city council and is currently serving as the city's mayor. Our previous correspondence, which describes the city and its redevelopment area, is enclosed and is incorporated by reference. However, since the date of that letter, Mr. Paquette's economic interests have changed. He now asks whether these changes alter our advice.

## The Decision

No present proposal for specific redevelopment activity is pending; however, a study focusing on an area is presently

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being considered by the city council and the redevelopment agency.<sup>1/</sup> The area in question is bounded by Date Palm Drive on the east, and by Cathedral Canyon Drive on the west. It measures approximately four blocks both north and south of East Palm Canyon Drive (Highway 111). Possible major redevelopment for that area will be the subject of the study.

#### Mr. Paquette's Economic Interests

Mr. Paquette formerly owned more than 10 percent of a business known as Century 21 Encore. That firm leased office space at the southwest corner of Cathedral Canyon Drive and East Palm Canyon Drive (Highway 111); the latter is the main highway traversing the City of Cathedral City. The downtown business district is primarily centered along Highway 111, east of Cathedral Canyon Drive and west of Date Palm Drive. Thus, Century 21 Encore is located just outside and across the street from the area proposed for study for possible redevelopment.

In February 1987, Century 21 Encore was sold by Mr. Paquette and his co-owner, Newell Ackerson, to Century 21 Hacienda Realty, a California corporation, of Desert Hot Springs, California. The Encore entity was closed out, and no longer exists. However, Century 21 Hacienda has established "Century 21 Encore" as an assumed name enterprise, wholly owned by the corporation, and has entered into its own lease on offices in the same location as formerly occupied by Century 21 Encore.

Mr. Paquette owns 5% of the stock of Century 21 Hacienda Realty, which has a value of at least one thousand dollars. He also serves as one of its five directors. The directorship is unpaid. Although his 5% interest in the corporation will entitle him to share in the corporation's profits, the corporation earned no profits in 1987, and is not expected to earn any profits in 1988. Mr. Paquette's sole income from the business is from commissions earned by him from real estate sales as an agent or broker for Hacienda. He sells only

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<sup>1/</sup> Because no decision is currently pending and therefore none is presented for our consideration, we treat your letter as a request for informal assistance rather than formal written advice. (2 Cal. Code Regs. Section 18329, copy enclosed.) Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code Regs. Section 18329(c)(3).)

residential properties. Century 21 Hacienda Realty has made no commercial sales in downtown Cathedral City, and has no plans or expectations to change their emphasis.

Mr. Paquette owns his home in the cove area of the City of Cathedral City, at 68451 Moonlight Drive, at least 3,500 feet from the downtown business district. His home is in one of the oldest residential areas of the city. He believes that redevelopment of the downtown business district will have no significant effect on the value of his residential property. Neither Mr. Paquette nor Century 21 Hacienda Realty owns any interest in any other property in the City of Cathedral City.

None of the proposals for possible redevelopment include residential developments of the type from which Mr. Paquette earns his income, and in which Century 21 Hacienda specializes.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>2/</sup> prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he has a financial interest. (Section 87100.) Mr. Paquette is a public official, and the redevelopment decisions are governmental decisions.

A public 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 on the public generally, on himself, his immediate family, or on a business entity or real property in which the official has an interest or on a source of income to the official. (Section 87103.)

Century 21 Hacienda Realty is an economic interest of Mr. Paquette's. He has an investment in the corporation of \$1,000 or more and is a director. (Section 87103(a) and (d).) In addition, Century 21 Hacienda Realty is a source of commission income to Mr. Paquette, as are his real estate clients within the past 12 months. (Section 87103(c); Regulation 18704.3, copy enclosed.) Mr. Paquette's residence is also an economic interest as his interest in that real property surely exceeds

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

\$1,000 in value. (Section 87103(b).)

Consequently, if it is reasonably foreseeable that either his real property (residence), or Century 21 Hacienda Realty, or any of his real estate clients of the last 12 months will be materially affected by the redevelopment decisions in a manner which is distinguishable from the effects on the public generally, Mr. Paquette will be disqualified.

#### Residence

Mr. Paquette's residence is situated 3,500 feet from the area in question. It seems likely that his home will not be affected in a material manner. Furthermore, any effects upon his home would appear likely to be shared by other homeowners similarly situated. Thus, any such effects would not be distinguishable from the effects on the public generally. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) Disqualification would not be required based upon this interest.

#### Century 21 Hacienda Realty

Century 21 Hacienda Realty does not own the real property where its office is located; it leases the space. Mr. Paquette has no interest in Hacienda's leasehold because he owns less than 10-percent of Hacienda. (Sections 82033 and 82034.) In addition, because he owns less than 10-percent, sources of income to Hacienda, other than his own clients, are not sources of income to him. Consequently, unless the decisions will have a reasonably foreseeable material financial effect upon Century 21 Hacienda Realty, Mr. Paquette would not be disqualified based upon this interest.

Under Regulation 18702.2(g) (copy enclosed), a \$10,000 or more increase or decrease in Hacienda's annual gross revenues or its assets (including its leasehold interest in its offices) would be considered material. Based upon the facts which you have provided, a material effect on its annual gross revenues seems unlikely. However, we leave that judgment to you. If the project would result in increased (or decreased) property sales for residential properties due to increased economic activity in the community, then it is possible that the project would affect Hacienda materially. However, to be foreseeable, an effect must be more than a mere possibility, it must have a substantial likelihood of occurring. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Next we consider the question of whether there will be a material effect on the leasehold interest of Hacienda in the amount of \$10,000. Again, this seems unlikely, but could

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depend on the terms of the lease and the nature of the redevelopment project. Absent more facts, we leave the conclusion to you and Mr. Paquette. If most retail businesses which lease their space are also located around the area, the effect, if any, on Century 21 Hacienda Realty may be similar to the effect on a significant segment of the general public. (In re Owen, supra.) We do not have sufficient facts to make this determination at this time.

#### Real Estate Clients

Clients of Century 21 Hacienda Realty who are not clients of Mr. Paquette are not sources of income to him. However, his own clients are sources of income to Mr. Paquette if he completes a transaction on their behalf. (Regulation 18704.3.) Consequently, any client whom Mr. Paquette has represented in a real estate transaction completed in the last 12 months is a source of income to him if his commission on the transaction was at least \$250.

You have provided no information on whether any of these persons may own a business or real property in the redevelopment study area or whether they might otherwise be affected by the decisions. Consequently, we are unable to provide further guidance in this regard. However,, we must caution you that analysis of these interests is required before concluding that Mr. Paquette is not required to disqualify himself.

I trust this letter is responsive to your question on Mr. Paquette's behalf. If you have questions regarding this letter or if you would like more specific advice based on submission of additional facts, I may be reached at (916) 322-5901.

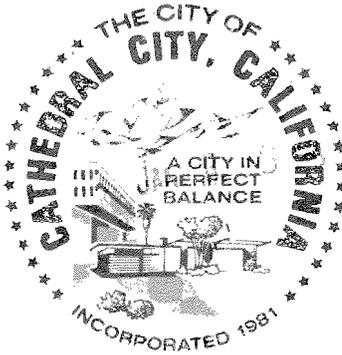
Sincerely,

Diane M. Griffiths  
General Counsel

By: Robert E. Leidigh  
Counsel, Legal Division

REL:jaj

Enclosures



68-625 PEREZ ROAD • CATHEDRAL CITY • CALIFORNIA 92234  
GENERAL ADMINISTRATION 619/324-8388  
COMMUNITY DEVELOPMENT 619/321-1531

January 6, 1988

Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Request for Opinion, Gil Paquette

Attn: "Margaret"

Gentlemen:

On behalf of Gil Paquette, council member (presently serving as Mayor) of the City of Cathedral City and thereby serving as a member of the Redevelopment Agency of the City of Cathedral City, I request an updated opinion as to the participation of Gil Paquette in matters involving redevelopment of the downtown area of the City of Cathedral City.

The Commission has previously issued an opinion in your file A-86-297A relating to Mr. Paquette's activities, and those of other council members. A change in circumstances has arisen which we feel justifies a change in that opinion as to Mr. Paquette's participation.

It is the area bounded by Date Palm Drive on the east, and by Cathedral Canyon Drive on the west, and measuring approximately four blocks both north and south of East Palm Canyon Drive (Highway 111) in which major redevelopment is presently being contemplated. No present proposal for development is pending, but a study focusing on that area is presently being considered by the City Council and Redevelopment Agency.

Mr. Paquette formerly owned part of a business known as Century 21 Encore. That firm leased office space basically at the southwest corner of Cathedral Canyon Drive and East Palm Canyon Drive, which is Highway 111, the main highway traversing the City of Cathedral City. The downtown business district is primarily centered along Highway 111 easterly of Cathedral Canyon Drive and westerly of Date Palm Drive.

In February, 1987, Century 21 Encore Realty was sold by Mr. Paquette and his co-owner, Newell Ackerson, to Century 21 Hacienda Realty, a California corporation, of Desert Hot Springs, California. The Encore entity was closed out, and no longer exists. However, Century 21 Hacienda has established "Century 21 Encore" as an assumed name enterprise, wholly owned by the corporation, and has entered into its own lease on offices in the same location as formerly occupied by Encore, at the same southwest corner of Cathedral Canyon Drive and Highway 111.

Mr. Paquette owns 5% of the stock of Century 21 Hacienda Realty, which has a value of at least one thousand dollars (\$1,000), and serves as one of its five directors. The directorship is unpaid. (No salary.) Although his 5% interest in the corporation will entitle him to a share in the corporation's profits, the corporation earned no profits in 1987, and is not expected to earn any profits in 1988. Mr. Paquette's sole income from the business is from commissions earned by him from real estate sales. He sells only residential properties, and the Century 21 Hacienda Realty for whom he works has no commercial listings in Cathedral City. Century 21 Hacienda does no commercial sales in downtown Cathedral City, and has no plans or expectations to change their emphasis.

Mr. Paquette owns his home in the Cove area of the City of Cathedral City, at 68451 Moonlight Drive, at least 3500 feet from the downtown business district. His home is in one of the longest established residential areas of the City. He believes that redevelopment of the downtown business district will have no significant effect on the value of his residential property.

Neither Mr. Paquette nor Century 21 Hacienda Realty owns any interest in any other property in the City of Cathedral City.

Mr. Paquette does not personally sell commercial property, the only property comprising the downtown area; Hacienda has not sold and does not plan to sell commercial property in the area of downtown Cathedral City; Mr. Paquette holds only a 5% ownership, and holds no office other than as director, in Hacienda; Hacienda leases its office space (no ownership) near to the area being considered for redevelopment; Hacienda does not engage in commercial property sales in Cathedral City, and contemplates no change, and has not participated in such sales in the past year in the area considered for redevelopment. For all of these reasons, Mr. Paquette feels that any proposal for redevelopment of the business district would not have any material effect on his own finances, or on those of Century 21 Hacienda Realty.

Mr. Paquette advises that no decision he would make would have an effect, direct or indirect, on Century 21 Hacienda Realty such as to increase or decrease its annualized gross revenues, its annual net income, or its current assets or liabilities, by the amounts or percentages specified in Regulation 18702 (b), as adopted by the Commission. He believes no such effect is foreseeable at all.

None of the proposals for redevelopment include residential developments of the type in which Mr. Paquette earns his income, and in which Century 21 Hacienda specializes in this city.

Based on the information contained herein, Mr. Paquette believes he would not be financially interested in any redevelopment proposal, and that the business entity in which he is involved would not be affected materially by any decision in which he might participate as a member of the Redevelopment Agency involving the downtown business district.

Accordingly, we request the opinion of the Fair Political Practices Commission as to whether the changes noted herein are sufficient to remove the doubt as to Mr. Paquette's ability to participate fully in downtown redevelopment decisions.

Your consideration in this matter will be greatly appreciated.

Very truly yours,

  
Allen R. Briggs  
City Attorney



# California Fair Political Practices Commission

January 11, 1988

Allen R. Briggs  
68-625 Perez Road  
Cathedral City, CA 92234

Re: 88-023

Dear Mr. Briggs:

Your letter requesting advice under the Political Reform Act was received on January 8, 1988 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,

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Gil Pacquette



68-625 PEREZ ROAD • CATHEDRAL CITY • CALIFORNIA 92234  
GENERAL ADMINISTRATION 619 324-8388  
COMMUNITY DEVELOPMENT 619 321-1531

January 6, 1988

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P.O. Box 807  
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