



California
Fair Political
Practices Commission

SUPERSEDED
by 18702.1(2X4)

May 6, 1988

Larry L. Marshall
Jennings, Engstrand & Henrikson
2255 Camino del Rio South
San Diego, CA 92108

Re: Your Request for Advice
Our File No. A-88-130

Dear Mr. Marshall:

You have requested advice on behalf of Mr. Gil Ontai, a member of the Centre City Development Corporation, concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} This letter confirms our previous telephone advice.

This letter is limited to interpretation and analysis of the conflict-of-interest provisions of the Act. The Commission cannot answer questions concerning other conflict-of-interest laws such as Section 1090. If you have any questions about laws other than the Act, please contact the Attorney General's office.

QUESTIONS

Centre City Development Corporation is considering whether to provide financial assistance to the Chinese Historical Society to reconstruct the Chinese Mission building.

1. May Mr. Ontai participate in this decision if the president of the Chinese Historical Society has paid him more than \$250 in income during the past year?

2. Would the answer to the first question change if the president of the Chinese Historical Society is required to provide his personal guarantee of the financial obligations of the Chinese Historical Society in this transaction?

^{1/} 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.

CONCLUSION

1. Mr. Ontai may participate in decisions involving the Chinese Historical Society unless it is reasonably foreseeable that those decisions would have a material financial effect on its president.

2. Mr. Ontai must disqualify himself from participating in the decision before his agency if the president of the Chinese Historical Society is required to personally guarantee \$250 or more of the financial obligations of the Chinese Historical Society in this transaction.

ANALYSIS

Section 87100 prohibits any public official from making, participating in or using his official position to influence any governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on, among other interests, any source of income totaling \$250 or more provided to, received by, or promised to the official during the preceding 12 months. (Section 87103(c).)

Centre City Development Corporation is a nonprofit corporation created by the City of San Diego to undertake redevelopment activities in the downtown San Diego area. Mr. Ontai is a public official by virtue of his position as a director of Centre City Development Corporation. (Section 82048.)

Mr. Ontai is an architect. He has been hired by Mr. Tom Hom to provide design services on certain projects. Mr. Hom has paid Mr. Ontai more than \$250 for his services during the past year. Thus, Mr. Ontai is required to disqualify himself from participating in any decision of the Centre City Development Corporation which would foreseeably and materially affect Mr. Hom.

Mr. Hom is president of the Chinese Historical Society. The Chinese Historical Society is seeking assistance from Centre City Development Corporation for reconstruction of the Chinese Mission building. Mr. Ontai may participate in decisions of the Centre City Development Corporation concerning

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the Chinese Historical Society unless those decision would foreseeably and materially affect Mr. Hom.

For purposes of the Act's conflict-of-interest provisions, financial effects on the Chinese Historical Society would not be imputed to its president, Mr. Hom, merely because he is the president. Thus, Mr. Ontai is required to disqualify himself from participating in decisions concerning the Chinese Historical Society only if specific facts indicate that Mr. Hom himself could be affected financially by decisions of the Centre City Development Corporation.

In your letter, you stated that the Centre City Development Corporation might require Mr. Hom's personal guarantee of the financial obligations of the Chinese Historical Society as a condition of financial assistance for reconstruction of the Chinese Mission building. In a subsequent telephone conversation, you informed us that Mr. Hom's personal guarantee is required. Under these circumstances, decisions of the Centre City Development Corporation would foreseeably affect Mr. Hom's personal liability. If the effect on Mr. Hom's personal liability would be material, Mr. Ontai must disqualify himself from the decision to assist the Chinese Historical Society.

Regulation 18702(a) (copy enclosed) provides that the effect of a decision on an individual who is a source of income to an official is material if it is "significant." There is no monetary guideline specifically applicable to this situation. However, if a decision would affect the official's personal income, assets or liabilities by \$250 or more, the effect on the official is considered material. (Regulation 18702.1(a)(4).) By analogy, we have advised that an effect of \$250 or more on the personal income, assets or liabilities of an individual who is a source of income to a public official is a material effect on that individual. (Sprague Advice Letter, No. A-86-260, copy enclosed.)

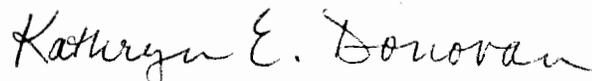
Therefore, Mr. Ontai may participate in the decisions in question unless it is reasonably foreseeable that Mr. Hom would be required to personally guarantee \$250 or more of the financial obligations of the Chinese Historical Society.

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If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:ld

Enclosure

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March 25, 1988

* ADMITTED IN ALABAMA AND TEXAS ONLY

Diane Griffiths, Esq.
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Request For Advice Letter

Dear Ms. Griffiths:

I am writing in my capacity as General Counsel to the Centre City Development Corporation, a California nonprofit public benefit corporation created by the City of San Diego to undertake redevelopment activities in the downtown area. The obligation of members of the Board of Directors and designated employees to adhere to the provisions of the Political Reform Act has been acknowledged.

The circumstances which have prompted this request for advice arose in connection with a proposal brought forward to the Centre City Development Corporation (CCDC) by a nonprofit corporation, the Chinese Historical Society, which would involve the sale from a third party of a historical structure, the Chinese Mission building, to the Historical Society for a nominal amount, and CCDC's provision of financial assistance to the Society to enable it to reconstruct the historical fabric of the building on another site to be acquired by CCDC and leased to the Historical Society. The President of the Chinese Historical Society, Mr. Tom Hom, is an active real estate developer within the jurisdiction of CCDC. Given the limited existing resources the Society, Mr. Hom may be required to provide his personal guarantee of its financial obligations in the transaction. Mr. Hom has employed Gil Ontai, an architect who is a member of the Board of Directors of CCDC, to provide design services on certain of his projects thereby generating income in excess of \$250 to Mr. Ontai during the last year.

Diane Griffiths, Esq.
March 25, 1988
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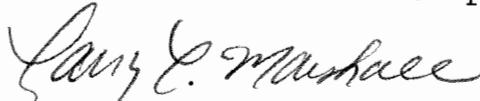
In discussions with Ms. Katherine Donovan of your office we have jointly concluded that since the Chinese Historical Society is not a source of income to Mr. Ontai, and any decision favorable to the Historical Society could not, by the terms of its Articles of Incorporation and the California Corporations Code, inure to the benefit of Mr. Hom, that Mr. Ontai would not be disqualified from participating in decision-making affecting the Chinese Historical Society since no decision could be said to have a foreseeable material financial effect on a source of income to Mr. Ontai.

Ms. Donovan has further indicated that, in the absence of any pre-existing understanding between Mr. Hom and Mr. Ontai, the FPPC would not imply any quid pro quo between Mr. Hom and Mr. Ontai to the effect that his favorable vote for the Historical Society's proposal would lead its President, Mr. Hom, to be favorably disposed towards Mr. Ontai and result in additional income to him from further requests for architectural services. Mr. Ontai has requested that you confirm the foregoing understanding in order that he may in good conscience participate in decision-making affecting the Chinese Historical Society. Decisions regarding any personal guarantee may require different treatment. Your advice in that regard would also be appreciated.

Please permit me to thank you in advance for your prompt attention to this request.

Very truly yours,

JENNINGS, ENGSTRAND & HENRIKSON,
A Professional Law Corporation



Larry L. Marshall
General Counsel
Centre City Development Corporation

LLM/mb

cc: John Davies, President
Pamela Hamilton, Acting Executive Director
Gil Ontai, Director

LMFAIR.L2



California Fair Political Practices Commission

March 29, 1988

Larry L. Marshall
Jennings, Engstrand & Henrikson
2255 Camino Del Rio South
San Diego, CA 92108

Re: 88-130

Dear Mr. Marshall:

Your letter requesting advice under the Political Reform Act was received on March 28, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, 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. Code of Regs. 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:plh
cc: Gil Ontai