



California Fair Political Practices Commission

June 22, 1988

Richard Shaffer
Planning Commissioner
City of Modesto
P.O. Box 642
Modesto, CA 95354

Re: Your Request for Informal
Assistance
Our File No. I-88-178

Dear Mr. Shaffer:

You have requested advice concerning your duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Your letter contains only a general question; therefore we consider it to be a request for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTION

You are a member of the Planning Commission for the City of Modesto and also the sole proprietor of a printing company. May you participate in planning commission decisions concerning projects of a local developer who is a client of your printing business?

CONCLUSION

You are required to disqualify yourself from participating in any decision where the developer is an applicant or otherwise would be materially affected by the decision, if the developer has paid or promised a total of \$250 or more to your printing business within 12 months prior to the decision.

^{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.

^{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).)

FACTS

You are a member of the Modesto City Planning Commission. You also are the sole proprietor of a printing business. You have informed us that one of your printing clients is a local developer.

The developer is the sole owner of two corporations. Both of the corporations and the owner have paid your business for printing services during the past year. One of the corporations is a property management company which manages rentals for the developer. You rent your house through the management company. The rent is at fair market value and is paid either by check or offset against amounts owed to your company.

ANALYSIS

Public officials are prohibited from making, participating in or attempting to influence any governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) A public official has a financial interest in a decision if it is reasonably foreseeable that there will be 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 within 12 months prior to the decision.

As a member of the planning commission, you are a public official. (Section 82048.) Because you are the sole proprietor of your printing business, your clients who have paid or contracted for printing services totaling \$250 or more during the past year also are sources of income to you. (Section 82030(a).) Accordingly, you are required to disqualify yourself from participating in any planning commission decisions which would foreseeably and materially affect one of those clients.

In your letter, you state that your printing business has done printing for a developer. More specifically, you have done business with two corporations and their sole shareholder. In past advice, we have treated a closely-held corporation and its controlling shareholder as one person. (In re Lumsdon (1976) 2 FPPC Ops. 140; Hentschke Advice Letter, No. A-80-069; Waggoner Advice Letter, No. A-85-146, copies enclosed.) Based on this past advice, we consider the developer and his or her two corporations to be one person for purposes of the Act. Accordingly, if you have received gross

payments from the developer and the corporations totaling \$250 in the aggregate, they are collectively a source of \$250 or more in income to you.

It is not clear from your letter whether you have received \$250 or more from the developer and the corporations. Your letter indicates that the percentage of your total gross business with the two corporations and their owner in 1987 was quite small. It is important to note that regardless of the relative amount of business you get from the developer and the corporations, they are a source of income to you if your company receives gross payments from them totaling \$250 or more in a 12-month period. In addition, when calculating the total amount you have received, you should include all payments from the developer and the corporations, whether cash or offset against the rent you owe on your house.^{3/} (Sections 82030 and 82044.)

Assuming that your company has received \$250 or more in income from the developer and the corporations during the past 12 months, you are required to disqualify yourself from participating in any decision which would foreseeably and materially affect the developer or either corporation. You have specifically asked whether you may participate in planning commission decisions concerning the developer's projects.

The Commission has determined that a public official must disqualify himself when a source of income "appears before" his agency as the applicant or a named party in a proceeding. (Regulation 18702.1(a)(1) and (b), copy enclosed.) Accordingly, if the developer or one of the corporations brings a project to the planning commission for approval, you must disqualify yourself from participating in the decisions on that project.

There may be other types of planning commission decisions which would significantly affect the developer or the corporations, even though they are not applicants in the proceeding. For example, the planning commission might consider general plan amendments for an area which includes land owned by the developer. If the general plan amendments are likely to materially increase or decrease the value of the

^{3/} You also should remember that any rent you owe to the developer which the developer forgoes entirely is a gift. (Section 82028(a).) If the developer's gifts in a 12-month period total \$250 or more, you are required to disqualify yourself from decisions that would foreseeably and materially affect the developer. (Section 87103(e).)

developer's land, you are required to disqualify yourself from participating in the decision.

Pursuant to Regulation 18702.2(g)(3) (copy enclosed), an increase or decrease of \$10,000 or more in the value of the developer's assets would be a material financial effect on the developer.^{4/} Accordingly, using the general plan amendment example above, you may participate in the decision unless it is likely that the value of the developer's real property would increase or decrease by \$10,000 or more as a result of the general plan amendment.

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

Enclosures

^{4/} We have assumed that Regulation 18702.2(g) applies to the business entity in question. This subdivision applies to small closely-held businesses. If you believe a different standard in Regulation 18702.2 applies, please contact us for additional advice.



MAY 12 2 42 PM '88

CITY of MODESTO

Planning Commission:

(209) 577-5267

801 11th St., P. O. Box 642, Modesto, CA 95353

May 10, 1988

Fair Political Practices Committee
428 J Street Suite 800
Sacramento, California 95814

Dear Sir:

I am writing you at the request of my city attorney for an interpretation of the conflict of interest rulings. I am a member of the City of Modesto Planning Commission.

My source of employment is a printing company which I am the sole proprietor. The concern of this letter is my business relationship with a local construction and developing company, owned by a sole stockholder with two corporations, with whom my company does printing for. There is a house that I rent. The rent is paid to a management company (corp. #2) who manage all the rentals for the sole stockholder. The rent is at fair market value and is either paid by check or offset against their accounts receivable to my company.

During the calendar year of 1987 the percentage of my total gross business done with these three identities was as follows.

Corporation 1	.026%
Corporation 2	.054
Direct with owner	.003

I would appreciate your interpretation of the conflict of interest rulings when a project from this developer comes before the commission.

Sincerely yours,

Richard Shaffer
1212 J
Modesto, Ca 95354

cc Mike Milich,
City Attorney

Richard Harriman
Attorney



California Fair Political Practices Commission

May 13, 1988

Richard Shaffer
City of Modesto
1212 J
Modesto, CA 95354

Re: 88-178

Dear Mr. Shaffer:

Your letter requesting advice under the Political Reform Act was received on May 12, 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh



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Richard Harriman
Attorney