



# California Fair Political Practices Commission

June 22, 1988

Vicki J. Finucane  
Office of the City Attorney  
P.O. Box 8100  
San Luis Obispo, CA 93403-8100

Re: Your Request For Advice  
Our File No. A-88-189

Dear Ms. Finucane:

You have requested advice on behalf of Jerry Reiss about application of conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1/</sup> to his duties on the City Council of the City of San Luis Obispo.

## QUESTION

Mr. Reiss is an employee and president of a local construction company. A nonprofit corporation that is not a city agency will be constructing low-income housing. May Mr. Reiss' construction company submit a bid to the nonprofit corporation for a contract to build the low-income housing project?

## CONCLUSION

The Act does not prohibit Mr. Reiss or his employer from submitting a bid to a nonprofit corporation to build a low-income housing project. Mr. Reiss, however, would be disqualified from participating in a governmental decision that would have a foreseeable and material financial effect on his employer.

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<sup>1/</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.

For example, Mr. Reiss would be disqualified from participating in a decision concerning a conditional use permit applied for by his employer, unless the decision would have no measurable financial effect on the company. If the nonprofit corporation applied for the conditional use permit, and a decision about the permit would have a foreseeable and material financial effect on Mr. Reiss' employer, Mr. Reiss also would be disqualified.

If Mr. Reiss' employer bids on or is awarded the contract, Mr. Reiss also may not attempt to use his official position to influence a governmental decision before a city agency under the budgetary control of the city council. For example, if the employer is awarded the contract, Mr. Reiss would not be allowed to contact a planning commissioner regarding a conditional use permit applied for by his employer.

#### FACTS

Jerry Reiss recently became a member of the City Council of San Luis Obispo. Mr. Reiss also is an employee and president of a local construction company. He has no ownership or investment interest in the company.

The San Luis Obispo Housing Authority, which is not a city agency, now owns land on which the housing authority plans to build a low-income housing project. The housing authority will be setting up a separate nonprofit corporation that will be responsible for obtaining construction and permanent financing for construction of the housing project. You have advised us the nonprofit corporation will not be a city agency.

Before Mr. Reiss took office, the state awarded the city a \$421,500 community development block grant to acquire the land for the housing project. When the city receives the community block grant money, the city will place the money in escrow and the housing authority simultaneously will transfer land for the housing project to the nonprofit corporation. You have advised us that after placing the money in escrow, the city will have no further involvement with the housing project.

The director of the housing authority has told Mr. Reiss that he hopes Mr. Reiss' employer will submit a bid to the nonprofit corporation for construction of the low-income housing project.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know the official has a financial interest.

An official has a disqualifying financial interest in a decision if it is reasonably foreseeable the decision will have a material financial effect, different from the effect on the general public, (1) on a source of income of \$250 or more promised to or received by the official within 12 months before the decision or (2) a business entity in which the official is a director, officer, partner, trustee, employee or holds any position of management. (Section 87103(c) and (d).)

Mr. Reiss is a public official. (Section 82048.) The construction company for which he works is a source of income to him and a business entity of which he is an officer. The Act, however, does not prohibit Mr. Reiss or his company from contracting privately with the nonprofit corporation.<sup>2/</sup> The private contract would not be a governmental decision pursuant to Regulation 18700(b) and (c) (copy enclosed).

Nevertheless, the Act prohibits Mr. Reiss from participating in a city council decision that would have a reasonably foreseeable material financial effect on his employer. For example, if his employer appealed to the city council for approval of a conditional use permit, Mr. Reiss would be disqualified from participating in the decision. (Regulation 18702.1(a), copy enclosed.)

Furthermore, if the city council considered an application by the nonprofit corporation and the decision indirectly would affect his employer, Mr. Reiss would be disqualified from participating in the decision if it would have a foreseeable and material financial effect on the employer.

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<sup>2/</sup> The provisions of Government Code Section 1090 and other state statutes may apply to a decision about a city contract with Mr. Reiss' company. The Commission does not administer these statutes. We refer Mr. Reiss back to you for advice regarding Section 1090 and other state statutes.

To require disqualification, the effect of a decision must be foreseeable. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

To require disqualification, the effect of a decision also must be material. Regulation 18702.2(g) (copy enclosed) provides the following guidelines for determining whether a decision will have a material effect on a small business not qualified for public sale:<sup>3/</sup>

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

For example, if the City Council were considering a conditional use permit application submitted by the nonprofit corporation, and denial of the application would result in a decrease in gross revenues to Mr. Reiss' employer of \$10,000 or more in a fiscal year, the effect on the employer would be material. (Regulation 18702.2(g)(1).) Mr. Reiss would be disqualified from participating in that decision.

Finally, Regulation 18700.1(a) (copy enclosed) prohibits Mr. Reiss from using his official position to influence a governmental decision before an agency that is under the budgetary control of the city council. If the same conditional use permit were before the planning commission, Mr. Reiss would be prohibited from contacting planning commissioners or city staff about the permit application.

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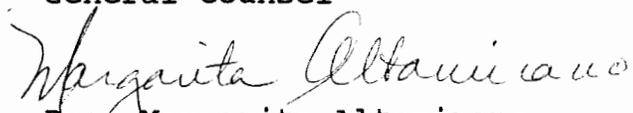
<sup>3/</sup> Regulation 18702.2 contains various standards for determining material financial effect based on the financial size of the business entity and whether it is publicly traded. If you determine that 18702.2(g) is not the appropriate standard for Mr. Reiss' employer, please contact us for additional advice.

Vicki J. Finucane  
June 21, 1988  
Page -5-

I hope this letter provides Mr. Reiss with the guidance he requested. Please call me at (916) 322-5901 if you have any questions about this letter.

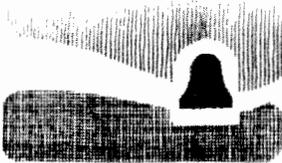
Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:aa

Encls.



# City of San Luis Obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

(805) 549-7140

May 20, 1988

Diane Griffiths, Esquire  
California Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804-0807

Re: Conflict of interest - San Luis Obispo Housing Authority Project

Dear Ms. Griffiths:

I have been asked by Councilmember Jerry Reiss of the City of San Luis Obispo, to obtain a written opinion from you regarding a possible conflict of interest in the construction of low-income housing.

The San Luis Obispo Housing Authority, an entity which is separate from the City of San Luis Obispo, has purchased a parcel of land to be developed for low-income housing. The Housing Authority will set up a non-profit corporation which will be responsible for securing construction and permanent financing for the development. The City is not involved in the construction of the housing development.

The City of San Luis Obispo was awarded the sum of \$421,500 through the State of California Community Development Block Grant specifically for the purpose of purchasing the parcel of land in question. The land will be purchased from the Housing Authority.

When the money is received from the State Grant, the City will place it in escrow and the land will be simultaneously transferred to the non-profit corporation which was set up by the Housing Authority, for a period of years (40-50), for a nominal sum. That will conclude the City's involvement.

Councilman Jerry Reiss is a new councilmember who came on board after all decisions pertaining to the above acquisition and transfer of land had been made. He is employed as president of a local construction company that is interested in submitting a bid to the non-profit organization for the building of the housing project.

MAY 23 8 38 AM '88

Diane Griffiths, Esquire  
May 20, 1988  
Page 2

Councilmember Reiss will obviously be on board at the time the automatic land transfer is made since the City is presently awaiting receipt of the funds. There have been no communications between Councilmember Reiss and other councilmembers, members of the Housing Authority, or members of the non-profit organization regarding this, other than a statement made in passing by the Housing Authority Director to Councilmember Reiss that the non-profit organization would go out for bids and he hoped he (Councilmember Reiss) could bid on the construction project, to which Councilmember Reiss replied he did not know.

I believe the above are all of the facts pertinent to this question. However, should you need additional information, please feel free to call me at the above telephone number.

Thank you for your time and consideration.

Very truly yours,



Vicki J. Finucane  
• Assistant City Attorney  
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VJF:ajr



# California Fair Political Practices Commission

May 25, 1988

Vicki J. Finucane  
Assistant City Attorney  
City of San Luis Obispo  
990 Palm Street  
Post Office Box 8100  
San Luis Obispo, CA 93403-8100

Re: 88-189

Dear Ms. Finucane:

Your letter requesting advice under the Political Reform Act was received on May 23, 1988 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. Code of Regs. Sec. 18329).)

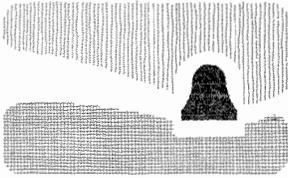
You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:ld



# City of San Luis Obispo

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