



California Fair Political Practices Commission

July 27, 1988

Robert G. Boehm
City Attorney
196 East Fifth Street
Chico, CA 95927

Re: Your Request for Informal
Assistance
Our File No. I-88-227

Dear Mr. Boehm:

You have requested advice on behalf of Chico City Councilmember Bill Nichols regarding his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Your letter provides insufficient facts for us to provide specific advice; therefore, we consider it a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/} In this letter, we will provide general guidance on the questions you presented.

QUESTION

Councilmember Nichols has an interest in two parcels of real property. One parcel is commercial property, improved with a building. The other parcel is undeveloped property in the process of being annexed to the city. This parcel is rezoned for residential development.

May Councilmember Nichols participate in decisions to adopt park facility fees or to increase existing street facility fees levied in connection with development of property?

^{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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSION

Councilmember Nichols must disqualify himself from participating in decisions to adopt park facility fees or to increase existing street facility fees if those decisions would foreseeably and materially affect the fair market value of the real property in which he has an interest or the costs of developing that property.

FACTS

Councilmember Nichols is trustee and a beneficiary of a family trust which owns real property. The trust's holdings include commercial property on which a building is located. The building recently was substantially improved. The configuration of the property would permit additional improvements; however, there currently are no plans for further improvements.

The trust also owns property currently in the process of being annexed to the city. The property has been rezoned for residential development. Councilmember Nichols plans to subdivide the property, install streets and then sell parcels to third parties who will secure building permits for the parcels.

The city currently levies street facility fees on residential properties. These fees are collected at the time building permits are issued. The city may consider increasing the street facility fees. In addition, the city is considering adopting park facility fees either for residential property only or for both residential and commercial/industrial property. The park facility fees also would be collected at the time building permits are issued.

ANALYSIS

Section 87100 prohibits a 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 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 real property in which the official has a direct or indirect interest worth \$1,000 or more. (Section 87103(b).)

Councilmember Nichols is a public official. (Section 82048.) Because of his beneficial interest in the trust, he

Robert G. Boehm
July 27, 1988
Page 3

has an interest in the assets of the trust, including the real property held by the trust. We assume that Councilmember Nichols' interest in the real property is worth \$1,000 or more.^{3/} Accordingly, Councilmember Nichols is required to disqualify himself from participating in city decisions which would foreseeably and materially affect the real property of the trust in a manner distinguishable from the effect on the general public.

The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood it will occur. Certainty is not required; however if an effect is but a mere possibility, it is not "reasonably foreseeable." (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The decisions contemplated by the city council are fees imposed for the development of real property. You have advised us that there are plans to develop only one of the two parcels held by the Nichols Family Trust. That parcel is the one currently undeveloped. The developed commercial parcel recently was substantially improved and there are currently no plans for further improvement; however, there is space for additional improvements.

The city council has not yet determined whether the proposed park facility fees would be levied only on residential property or on both commercial and residential property. In either case, the proposed fee would clearly affect the undeveloped property held by the Nichols Family Trust, since the plans for development of that property are for residential development. As long as the city council has not rejected the proposal to levy the proposed park facility fees on commercial property, it also is reasonably foreseeable that the commercial property held by the Nichols Family Trust also will be affected by the fee decisions. We reach this conclusion despite the

^{3/} Councilmember Nichols has an interest in real property held by the family trust only if he has a 10-percent or greater interest in the trust and his pro-rata share of the real property is worth \$1,000 or more. (Section 82034; Regulation 18234, copy enclosed.) We have no specific information about the percentage of the trust belonging to Councilmember Nichols. However, Councilmember Nichols has disclosed on his annual statement of economic interests the real property held by the Nichols Family Trust. Accordingly, we assume for purposes of this analysis that his interest in the trust and its assets is 10 percent or greater. Please contact us for additional advice if our assumption is incorrect.

Robert G. Boehm
July 27, 1988
Page 4

lack of current plans for further development of that property. The Nichols Family Trust may have no current plans to further develop the property, but the additional fees would increase the costs of developing the property and thus would affect decisions of the trust or any future owner of the property concerning plans for additional development.

Next we examine whether the park and street facility fees would materially affect the trust properties. The Commission has adopted monetary guidelines for determining whether effects on real property are considered material. Regulation 18702(b)(2) (copy enclosed) provides that a decision which will increase or decrease the fair market value of an official's interest in real property by the following amounts is considered to materially affect the property:

1. \$1,000 if the value of the property is \$200,000 or less. (An effect of less than \$1,000 is never material.)
2. One-half of one percent of the fair market value of the property if the value of the property is more than \$200,000 but less than \$2,000,000.
3. \$10,000 if the value of the property is \$2,000,000 or more.^{4/}

We do not have specific information concerning the value of the property held by the Nichols Family Trust. Therefore, we cannot apply these standards to the properties in question in order to determine how much the fair market value of Mr. Nichols' interest would have to change to be considered material.

We also have no specific information concerning the amount of the proposed park facility fees or the amount of the increase in street facility fees the city council may suggest. However, we believe the fees would affect the fair market value of the real property, since potential buyers of developable property typically take into account the costs of development when making an offer to buy the property.

^{4/} The Commission is in the process of revising its regulations concerning material financial effect. Enclosed is a copy of proposed Regulation 18702.3, concerning effects on real property in which an official has an interest. The Commission adopted this regulation at its July 26, 1988 hearing, but the regulation will not take effect for approximately three months.

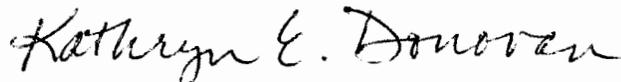
Robert G. Boehm
July 27, 1988
Page 5

Councilmember Nichols should determine the effect of the proposed park facility fees and the increased street facility fees on the trust properties by estimating the extent of the potential future development of the trust properties, as permitted under the current zoning or rezoning, and calculating the additional fees required as a result of the increase in street facility fees or imposition of park facility fees. If the amount so calculated exceeds the applicable guidelines for material financial effect in Regulation 18702(b), Councilmember Nichols is required to disqualify himself from participating in the fee decision.

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

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

Enclosures



CITY OF CHICO
CITY ATTORNEY

1000 J STREET
SACRAMENTO, CALIF. 95814
916/898-3800

June 16, 1988

June 16, 1988
CA/PEND/20:34-4

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Attention: Legal Assistance Division

This is a request for an opinion on the propriety of a city councilmember participating in council deliberations concerning adoption of park facility and street facility fees where such councilmember has an interest in property which may become subject to such fees. The councilmember's name is Bill Nichols and he has authorized this request.

Specifically, the facts are as follows. A city councilmember is trustee and one of the beneficiaries of a trust which owns commercial property on which a building was recently substantially improved. The property is configured so that additional improvements could be made; however, there are no plans to do so at this time.

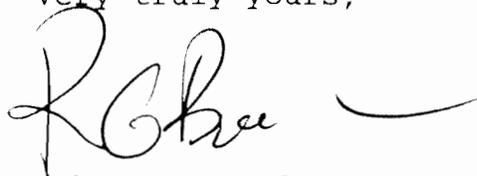
In addition, the same trust owns additional property, located in the county, which was recently rezoned for residential development. The property is in the process of being annexed to the City, and after such annexation, the councilmember plans to subdivide the property, install streets and then sell various parcels to third parties who will secure building permits for the parcels.

The city council is presently considering adopting park facility fees and may consider increasing existing street facility fees. Depending on the city council's decision, the park facility fees may be levied on only residential properties or both residential and commercial/industrial properties. Such fees would be collected at the time building permits are issued. The street facility fees are currently levied only on residential properties.

Fair Political Practices Commission
June 16, 1988
Page 2

The specific issues I would like you to address are: Is the councilmember precluded from participating in the council's deliberations (1) initially enacting the park facility fees; and/or (2) considering an increase in the existing street facility fees?

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. Boehm", followed by a horizontal flourish.

Robert G. Boehm
City Attorney

EEM:sg

cc: City Manager
City Clerk
Councilmember Bill Nichols
P.O. Box 6507
Chico, CA 95927