



California Fair Political Practices Commission

July 19, 1988

Valerie Armento
City Attorney
City of South San Francisco
315 Maple Avenue
South San Francisco, CA 94080

Re: Your Request For Advice
Our File No. A-88-231

Dear Ms. Armento:

You have requested advice on behalf of Mark Addiego about application of the Political Reform Act (the "Act")^{1/} to his duties on the City Council of the City of South San Francisco.

QUESTION

Mr. Addiego works for Safeway Stores, which is the parent company of Pak 'N Save. Pak 'N Save has applied to the planning commission for a use permit. The planning commission's decision on the use permit probably will be appealed to the city council. May Mr. Addiego participate in a decision concerning Pak 'N Save?

CONCLUSION

Because the decision will have a foreseeable and material financial effect on both Pak 'N Save and Safeway, Mr. Addiego is required to disqualify himself from a decision about Pak 'N Save's use permit application.

^{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.

FACTS

Mr. Addiego is a journeyman retail clerk with Safeway Stores. Safeway is the parent company of Brentway, Inc. Pak 'N Save is a division of Brentway, Inc.

Pak 'N Save has applied to the planning commission for a use permit to operate a supermarket in an existing building in South San Francisco. Any planning commission decision on the permit application probably will be appealed to the city council.

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 he has a financial interest. An official has a financial interest in a decision that will have a reasonably foreseeable material financial effect, different from the effect on the general public, on a source of income of \$250 or more promised to or received by the official within 12 months before a decision. (Section 87103(c).)

Mr. Addiego is a public official. (Section 82048.) Safeway Stores is a source of more than \$250 in income to Mr. Addiego. Because Safeway Stores is the parent company of Pak 'N Save, Mr. Addiego has a financial interest in a decision that will have a foreseeable and material financial effect on Pak 'N Save. (Regulation 18706, copy enclosed.)

To require disqualification, the effect of a decision must be reasonably 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 18702.1(a)(1) (copy enclosed) reflects the conclusion of the Commission that the effect of a decision on a party who initiates a proceeding by filing an application will be considered material, unless the decision will have no financial effect on the applicant. Therefore, Regulation 18702.1(a)(1) prohibits Mr. Addiego from participating in a decision about Pak 'N Save's application for a use permit if the decision will have any financial effect on Pak 'N Save.

Valerie Armento
City Attorney
July 19, 1988
Page -3-

We have no information about the financial effect of the use permit decision on Pak 'N Save. Nevertheless, we assume the decision will have some financial effect because Pak 'N Save has applied for permission to operate a supermarket in an existing building. If the application were denied and Pak 'N Save could not operate a supermarket in the existing building, Pak 'N Save would not receive increased gross revenues from the new South San Francisco store. Conversely, if the application were approved, Pak 'N Save would incur the expenses of setting up a new supermarket and the new store would increase gross revenues. Either way, the decision about the use permit would have a financial effect on Pak 'N Save.^{2/} Therefore, Mr. Addiego must disqualify himself from participating in a decision about Pak 'N Save's application for a use permit.

It is possible that without Mr. Addiego's participation, the city council may reach a tie vote on the use permit. The Act prohibits an otherwise disqualified public official from participating in a decision to break a tie. (Section 87101; Regulation 18701(c)(1), copy enclosed.) Consequently, Mr. Addiego may not participate in the decision just to break a tie.

I hope this letter provides you with a satisfactory answer to your advice request. 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

Enclosures

^{2/} If you have other facts that would lead to a different conclusion, please contact us immediately.



OFFICE OF THE
CITY ATTORNEY

JUN 20 9 27 AM '88

June 17, 1988

Robert E. Leidigh
Counsel
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA. 95804

Re: Conflict of Interest Advice

Dear Mr. Leidigh:

An Advice letter would be appreciated with regard to the following:

Situation:

- A member of the City Council is a journeyman retail clerk at a local Safeway store. He is a member of the retail clerks' union and as such all of his working conditions are governed by the applicable memorandum of understanding. He has no management responsibilities for Safeway.

Safeway is the parent company of Brentway, Inc. Brentway is one of many Safeway subsidiaries. Pak 'N Save is a division of Brentway. Pak 'N Save has applied to the City for a use permit to operate one of its supermarkets in an existing building. The grant or denial of such a use permit is final with the Planning Commission, before whom the matter is pending, unless appealed to the City Council. It appears likely that any decision by the Planning Commission will be appealed.

Question:

Is the City Councilmember who works for Safeway eligible to vote on the Pak 'N Save application, or must he abstain?

Thank you for your time and attention to this matter.

Very truly yours,


VALERIE J. ARMENTO
City Attorney

VJA/mm