



California Fair Political Practices Commission

November 30, 1988

Honorable Pat S. Miranda
Mayor, City of Irwindale
5050 North Irwindale Avenue
Irwindale, CA 91706

Re: Your Request for Advice
Our File No. I-88-373

Dear Mayor Miranda:

You have requested advice about application of conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to your duties on the City Council of the City of Irwindale.

Because you have not requested advice about a specific pending decision, we are treating your request as one for informal assistance.^{2/}

QUESTIONS

In a previous advice letter, the Commission advised you that disqualification may be required from a decision that is "linked" to development of another parcel of land.

1. What types of decisions are "linked," so that disqualification is required?
2. If a majority of councilmembers are disqualified from a decision about property development, can the city council take action or must the city council find a different developer?

^{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), copy enclosed.)

CONCLUSION

1. If a decision about a parcel of land directly affects development of another, separate parcel, the decision is "linked" to development of the other parcel. If the decisions are linked, a councilmember already disqualified from participating in a decision about development of one parcel, also is disqualified from a decision about the other parcel.

2. If the city council lacks a quorum, disqualified councilmembers may draw lots to determine who will participate to form a quorum. Participation, however, is limited to what is legally required. The city council does not have to get another developer in order to be able to act on development decisions.

STATEMENT OF FACTS

You own commercial property across the street from parcel #1, which Birtcher Development Company (Birtcher) is developing. You have disqualified yourself from participating in decisions about development of parcel #1.

Birtcher also is developing parcels #2 and #3 which are about one mile and three miles respectively from your property. Birtcher needed \$600,000 to develop parcel #1. When the city council bought property in parcel #3 from Birtcher, councilmembers knew Birtcher would use the sale proceeds to develop parcel #1. You abstained from the city council decision about buying property in parcel #3 from Birtcher.

If the preceding decision is "linked" to development of parcel #1, you believe three of five councilmembers will be disqualified from similar, future decisions. If so, the city council will lack a quorum. Over the telephone on November 3, 1988 you said you were particularly concerned about a decision to approve a warrant, which requires approval by three councilmembers.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a 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 the decision will have a foreseeable and material financial effect, different from the effect on the general public, on, among other economic interests, any real property in which the official has an interest worth \$1,000 or more. (Section 87103(b).)

Linked Decisions

In a previous advice letter, we advised you that you are disqualified from participating in any decision about development of parcel #1, which is near your commercial property, if development of parcel #1 foreseeably would have a material financial effect on the value of your property. (Miranda Advice Letter, No. I-88-253, copy enclosed.)

We also mentioned that you may be disqualified from a decision about parcels #2 or #3, if a decision about either parcel is linked to development of parcel #1. You have requested advice about whether a particular city decision to buy land in parcel #3 is linked to development of parcel #1.

According to the facts you provided, Birtcher raised \$600,000 to develop parcel #1 by selling property in parcel #3 to the city. When the city council decided to buy property from Birtcher, councilmembers knew that Birtcher would use the sale proceeds to develop parcel #1. Based on these facts, the city's decision to buy property in parcel #3 was connected directly to development of parcel #1.

Because of this link, if you are disqualified from a decision about development of parcel #1, you also are disqualified from the city's decision to buy land in parcel #3. You are disqualified because the decision about parcel #3 is presumed to have a foreseeable and material financial effect on the value of your property through development of parcel #1.

Legally Required Participation

If a majority of councilmembers are disqualified from participating in a decision, the city will lack a quorum. Section 87101 provides that an otherwise disqualified official may participate in a decision if his or her participation is "legally required." Regulation 18701(a) (copy enclosed) provides that legally required participation is not appropriate except under the following circumstances:

- (a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

Regulation 18701(a).

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Therefore, an otherwise disqualified official may participate in a decision only if participation is required because there is no "alternative means of decision-making." (In re Brown (1978) 4 FPPC Ops. 19, 25, copy enclosed.) Because a governmental body cannot legally adopt decisions without a quorum, a disqualified councilmember may participate to form a quorum. Participation, however, is limited to voting only. A disqualified official cannot participate in discussions. (Skousen Advice Letter, No. A-88-162, copy enclosed.)

Failure to form a quorum does not include a situation where only the physical absence of agency members prevents formation of a quorum. (Regulation 18701(c)(1).) If a quorum can be convened from among those absent members, enough councilmembers are qualified to participate in the decision. Therefore, participation of disqualified officials is not legally required.

Disqualified officials also cannot participate only to break a tie. (Regulation 18701(c)(1).) Similarly, disqualified officials cannot participate just to make up the unanimous three-person vote required for warrant approval.

The Commission has concluded that choosing by "lot or other means of random selection" is one method for forming a quorum from among disqualified officials. (See In re Hudson (1978) 4 FPPC Ops. 13, 18, copy enclosed.) Consequently, disqualified councilmembers may draw lots to determine who shall participate to form a quorum. Once a disqualified councilmember is selected the council has legal authority to vote on issues affecting Birtcher. Consequently, the city does not have to find a different developer.

I hope this letter provides you with the information you 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

Enclosures



CITY OF IRWINDALE

5050 NORTH IRWINDALE AVENUE • IRWINDALE, CALIFORNIA 91706
(818) 962-3381

September 27, 1988

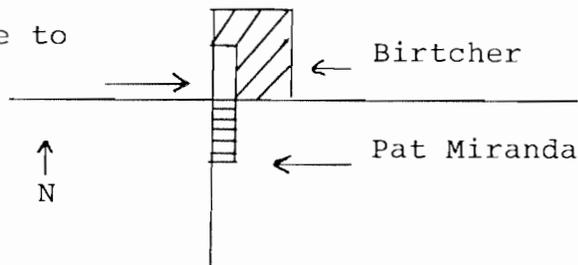
Ms. Kathryn E. Donovan, Counsel
Legal Division
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: File # I 88 253

Dear Ms. Donovan:

You wrote in your letter dated August 9, 1988, page 5, second paragraph (copy enclosed) "However, if the City Council decisions to develop parcels #2 and #3 are "linked" to development of parcel #1, you may be required to disqualify yourself from the decisions to develop parcel #2 and #3."

\$600,000 were to
be invested
here



Birtcher has developed most of parcel "1" which is across from my commercial property. Birtcher has bought property on parcel "3", which is about 3 miles from my property. The City of Irwindale also bought property in parcel "3" (map of parcel 3 enclosed). Birtcher wanted to develop more property in parcel "1". Birtcher needed \$600,000.00. About 3 months ago Birtcher sold to the City of Irwindale a piece of property in parcel "3" for \$600,000 (I abstained) which they were to invest in parcel "1". Now Birtcher wants to develop parcel "3" using their property and the City of Irwindale's property.

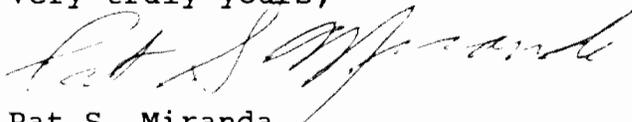
In your opinion is this considered "linked"? If it is "linked", there will probably be three councilmen who could not vote for Birtcher to develop parcel "3". We are five councilmen.

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Ms. Kathryn E. Donovan
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Mr. Charles Martin, our city attorney, gave me page 12 from "A guide to the Political Reform Act of 1974" (copy enclosed).
"May a public official ever make a decision in which he or she has a disqualifying financial interest?"

- 1) Is the "linked" paragraph a conflict in my voting?
- 2) If it is a conflict, do we draw lots as suggested on page 12?
- 3) Do we get another developer where more than three councilmen can vote?
- 4) Other opinions on this matter.

Very truly yours,



Pat S. Miranda
Mayor
City of Irwindale

/cd