



California Fair Political Practices Commission

February 17, 1989

Michael H. Roush
City Attorney
P.O. Box 920
Pleasanton, CA 94566-0802

Re: Your Request for Advice
Our File No. A-88-466

Dear Mr. Roush:

You have requested advice on behalf of Pleasanton Mayor Kenneth Mercer regarding application of conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to his duties as Mayor and member of the redevelopment agency for the City of Pleasanton.

QUESTION

1. Are deposits to a bank considered income, assets or liabilities of the bank for purposes of the conflict-of-interest provisions of the Act?
2. Does the fact that eminent domain may not be used with respect to property in which a public official has an economic interest, and that there are differing opinions regarding the financial consequences of the city's use of eminent domain against the property, mean that it is not foreseeable that there will be a material financial effect on the public official's economic interest?

^{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.

3. In the Commission's previous advice letter regarding this same decision (Roush Advice Letter, No. A-88-404), was the Commission's holding in In re Oglesby (1975) 1 FPPC Ops. 71, misapplied to the facts in this situation?

CONCLUSIONS

1. Deposits to a bank are liabilities of the bank. This conclusion is based on information provided by the president of the bank in question.

2. When eminent domain has been identified as an option to be considered in a governmental decision, consideration of the foreseeable consequences of eminent domain on the public official's economic interests is appropriate. Disagreement as to the financial impact of eminent domain is a factual matter which cannot be settled by the Commission. Our analyses are based on the best available facts at the time of the request.

3. The holding in In re Oglesby was appropriately applied to this situation, where the Mayor's financial interests will be affected in a variety of ways by a governmental decision.

FACTS

Mr. Mercer is Mayor of the City of Pleasanton and, as such serves on the city's redevelopment agency. Mayor Mercer also owns stock worth more than \$1,000 in Community First Bank of Pleasanton ("Community First").

The redevelopment agency is considering adoption of a redevelopment plan for the purpose of improving infrastructure in the downtown area. The redevelopment plan provides that the power of eminent domain will be used only for infrastructure improvements. These improvements are intended to revitalize the area by removing barriers to investment, resulting in increased commercial activity.

Community First has net tangible assets of more than \$18 million, and pre-tax income for the past fiscal year of more than \$2.5 million. The main branch of Community First is located within the proposed redevelopment project area, on property owned by the bank and valued at approximately \$1.5 million.

In a telephone conversation with our staff counsel, Margarita Altamirano on December 6, 1988, Robert Philcox, the president of Community First National Bank which owns Community First Bank of Pleasanton, explained that deposits are liabilities for the bank. More deposits provide more money for the bank to loan out. Present redevelopment plans include the possibility of using

eminent domain to take part of the bank's parking lot. Compensation for this property will be in the form of points that reduce real estate taxes.

You agree that it is foreseeable that the proposed redevelopment plan will have a financial effect on Community First. You disagree, however, with our previous advice which concluded that the proposed redevelopment plan could foreseeably have a material financial effect on Community First, requiring Mayor Mercer to disqualify himself from the decisions regarding adoption of the proposed project area plan.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which the 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 foreseeable and material financial effect, different from the effect on the general public, on the official, or a member of his or her immediate family, or on a business entity in which the official has an investment worth \$1,000 or more. (Section 87103(a).)

Mayor Mercer is a public official who has an investment interest worth more than \$1,000 in Community First. (Sections 82048 and 87103(a).) Consequently, Mayor Mercer must disqualify himself from participating in the decision to adopt the redevelopment plan if the decision will have a foreseeable and material financial effect on Community First.

The Commission Cannot Resolve Factual Disputes

Whether the city will or will not use the power of eminent domain is a question of fact which the Commission cannot resolve. So, too, is the question of the payment to which Community First would be entitled if its property were taken by eminent domain. However, it is not disputed that the bank is located within the proposed redevelopment project area. It is also clear that there will be a significant financial effect on the bank through an increase in business, affects on the value of its real property interests and anticipated tax consequences. Thus, despite our inability to estimate precisely the extent of the decision's effect on Community First, all agree that the decision will have a foreseeable financial affect on the bank in several ways.

Material Financial Effect

You agree that it is foreseeable that the proposed redevelopment plan would have a financial effect on Community First. You argue, however, that the financial effect will not be material.

Regulation 18702.2 (copy enclosed) provides guidelines for determining whether a decision will have a material financial effect on a business entity. Based on the financial size of Community First, Regulation 18702.2(b) and (e) provide that the effect of a decision is material if the decision will result in an increase or decrease in the gross revenues for a fiscal year or an increase or decrease in the value of assets or liabilities of the bank by \$150,000 or more, or an effect of \$50,000 on expenses for a fiscal year.

As was explained in our previous letter, the test for calculating the effect of a decision on an economic interest applies to gross revenue, not net profits.

You have stated, deposits to a bank constitute liabilities and assets to the bank. Mr. Philcox, president of Community First, explained to our staff that deposits are liabilities to the bank. Once again, we do not resolve factual disputes. However there is no dispute that the end result is an increase in business to the bank.

Whether the bank's deposits will be materially affected, however, is not the basis of our previous advice. The Commission, in its Oglesby opinion (In re Oglesby (1975) 1 FPPC Ops. 71), held that it is not necessary to determine the precise effects of a decision on a public official's economic interests in order to conclude that the public official has a disqualifying interest in the decision. A combination of effects on a public official's financial interests is sufficient to require the official's disqualification.

Although the facts in Oglesby are not identical to those of the present situation, the holding in the Oglesby opinion, nevertheless, is applicable. (See Athan Advice Letter, No. A-86-094, copy enclosed.) The bank's financial interests within the proposed redevelopment area are both numerous and significant. The decisions of the redevelopment agency will, at a minimum, affect the bank's real property interest, revenues, and tax liabilities.

We conclude, therefore, that because the decision regarding the proposed redevelopment project will affect the bank in several ways, the effect will be material. Since Mayor Mercer has an investment interest in the bank, he must disqualify himself from participation in the decisions regarding the proposed redevelopment project.

Michael H. Roush
February 17, 1989
Page 5

I trust this clarifies for you application of the Act to Mayor Mercer's position on the redevelopment agency. If you have further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosures



CITY OF PLEASANTON

P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0802

December 13, 1988

CITY OFFICES
123 MAIN STREET

CITY COUNCIL
847-8001

CITY MANAGER
847-8000

CITY ATTORNEY
847-8003

FINANCE
847-8033

PERSONNEL
847-8012

CITY OFFICES
200 OLD BERNAL AVE.

PLANNING
847-8023

ENGINEERING
847-8041

BUILDING INSPECTION
847-8015

COMMUNITY SERVICES
847-8160

WATER - BILLING
847-8038

FIELD SERVICES
5335 SUNOL BLVD.

PARKS
847-8056

SANITARY SEWER
847-8061

STREET
847-8066

WATER
847-8071

FIRE
444 RAILROAD AVE.
847-8114

POLICE
4833 BERNAL AVE.
P.O. BOX 909
847-8127

Margarita Altamirano
Counsel, Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

Re: Advice Request -
Your File No. A-88-404

Dear Ms. Altamirano:

I have had an opportunity to review your letter dated December 7, 1988 to me concerning the above referenced matter. I have a number of comments on the matters in the letter.

While I do concur that the proposed redevelopment plan will affect businesses and property values in the area covered by the proposed plan, I do not concur that the proposed plan will result in a material financial effect with respect to Community First National Bank. If the plan does not have such an effect on Community First, then Mr. Mercer's investment in Community First would not disqualify him from participating in the decision.

Regulation 18702.2 provides guidelines for determining whether a decision will have a material financial effect on a business entity. Based on the financial size of Community First, Regulation 18702.2(b) and (e) provide that the effect of a decision is material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding

Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 2

additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

In my letter dated October 14, 1988 to the Commission, I suggested that it would be appropriate to consider the profit spread as an accurate indicator for determining gross revenues as used in Regulation 18702.2(b)(1). You pointed out that for purposes of determining gross revenues, gross income, not just net profits, is the proper focus; and that "income" includes any payment. From that premise, your letter, at page 5, states "Instead, if the decision were to increase or decrease deposits by \$150,000 or more, the effect on Community First would be material."

That statement, however, assumes that deposits are revenues or income to the bank. That is not correct. As to the bank, a deposit is a liability in the amount of the deposit, and, at the same time, is an asset of the bank in a like amount. See 9 Cal. Jur.3d, Banks, §§94 et seq. Therefore, deposits, except as such deposits earn "interest income" for Community First, cannot properly be considered gross revenues, as that term is used in §18702.2(b)(1), for Community First.

For the same reason, such deposits do not trigger the threshold amounts under 18702.2(b)(3). That subsection assumes either an increase or a decrease in an asset or a liability in an amount of \$150,000 or more. However, because a deposit is, at the same time, an asset and a liability in an equal amount, the deposits are a wash under §18702.2(b)(3).

In finding that the redevelopment plan will have a material effect on Community First, your letter also provides that for purposes of §18702.2(b)(2), compensation for the taking of certain property belonging to the bank "will be in the form of points that reduce real estate taxes." I do not know the source of that statement but I can assure you that that is not the case.

First, I question whether eminent domain will even be necessary with respect to Community First. There are a number of different parking

Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 3

arrangements contemplated by a proposed Specific Plan for downtown Pleasanton, one of which might affect this property. Even if this particular parking lot configuration were adopted, it could be accomplished without the need of eminent domain.

Second, even if eminent domain were utilized, Community First would be entitled only to the fair market value of the take, which value would not trigger the threshold amount pursuant to §18702.2(b)(1) or (b)(3). Furthermore, the take of this property (which is undeveloped except for asphalt) would not significantly reduce the bank's real property taxes in any amount near the threshold of §18702.2(b)(2).

Even though your letter concedes at page 5 the inability to estimate the extent of the redevelopment plan's effect on Community First, you found that the effect will be material because, based on In re Oglesby 1 FPPC 71, the decision will affect the bank in several ways. In Oglesby, a councilmember/Agency member owned two rental properties and had his real estate office within the proposed redevelopment area. The particular redevelopment plan in that case included such improvements as the construction of a civic center, a freeway off-ramp and improving a two lane road to a four lane arterial. Under such circumstances, the Commission concluded,

[T]he ownership of several lots in and around the redevelopment area for business and investment purposes and the real estate brokerage each raise significant question under the Political Reform Act, and the cumulative effects of both types of economic interests which are reasonably foreseeable are sufficient under the circumstances present here to require disqualification under Section 87100.

In re Oglesby, supra, at 79.

The situation here is distinguishable. First, unlike Oglesby, Mr. Mercer has no direct ownership of property within the proposed area nor does he derive his livelihood therefrom. Further, the proposed redevelopment plan is a mere shadow of the plan contemplated in Oglesby. Finally, for the reasons stated above, to find that this decision will cause the threshold amounts under any of the

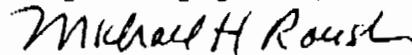
Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 4

tests set forth in §18702.2 to be exceeded is to engage in speculation.

The Commission has stated that whether material financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. In re Thorner, 1 FPPC 198. In the facts presented here, there is no substantial evidence that the adoption of the redevelopment plan will have a material financial effect on Community First.

I request that you reconsider your advice letter in view of the above. If you need additional material from me, please contact me.

Very truly yours,



Michael H. Roush
City Attorney

MHR:ple

cc: Mayor Kenneth R. Mercer
Kathy Donovan
T. Brent Hawkins



FPPC CITY OF PLEASANTON

Dec 19 8 15 AM '88 P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0802

December 13, 1988

CITY OFFICES
123 MAIN STREET

CITY COUNCIL
847-8001

CITY MANAGER
847-8008

CITY ATTORNEY
847-8003

FINANCE
847-8033

PERSONNEL
847-8012

CITY OFFICES
200 OLD BERNAL AVE.

PLANNING
847-8023

ENGINEERING
847-8041

BUILDING INSPECTION
847-8015

COMMUNITY SERVICES
847-8160

WATER - BILLING
847-8038

FIELD SERVICES
5335 SUNOL BLVD.

PARKS
847-8056

SANITARY SEWER
847-8061

STREET
847-8066

WATER
847-8071

FIRE
444 RAILROAD AVE.
847-8114

POLICE
4833 BERNAL AVE.
P.O. BOX 909
847-8127

Margarita Altamirano
Counsel, Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

Re: Advice Request -
Your File No. A-88-404

Dear Ms. Altamirano:

I have had an opportunity to review your letter dated December 7, 1988 to me concerning the above referenced matter. I have a number of comments on the matters in the letter.

While I do concur that the proposed redevelopment plan will affect businesses and property values in the area covered by the proposed plan, I do not concur that the proposed plan will result in a material financial effect with respect to Community First National Bank. If the plan does not have such an effect on Community First, then Mr. Mercer's investment in Community First would not disqualify him from participating in the decision.

Regulation 18702.2 provides guidelines for determining whether a decision will have a material financial effect on a business entity. Based on the financial size of Community First, Regulation 18702.2(b) and (e) provide that the effect of a decision is material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 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 \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

In my letter dated October 14, 1988 to the Commission, I suggested that it would be appropriate to consider the profit spread as an accurate indicator for determining gross revenues as used in Regulation 18702.2(b)(1). You pointed out that for purposes of determining gross revenues, gross income, not just net profits, is the proper focus; and that "income" includes any payment. From that premise, your letter, at page 5, states "Instead, if the decision were to increase or decrease deposits by \$150,000 or more, the effect on Community First would be material."

That statement, however, assumes that deposits are revenues or income to the bank. That is not correct. As to the bank, a deposit is a liability in the amount of the deposit, and, at the same time, is an asset of the bank in a like amount. See 9 Cal.Jur.3d, Banks, §§94 et seq. Therefore, deposits, except as such deposits earn "interest income" for Community First, cannot properly be considered gross revenues, as that term is used in §18702.2(b)(1), for Community First.

For the same reason, such deposits do not trigger the threshold amounts under 18702.2(b)(3). That subsection assumes either an increase or a decrease in an asset or a liability in an amount of \$150,000 or more. However, because a deposit is, at the same time, an asset and a liability in an equal amount, the deposits are a wash under §18702.2(b)(3).

In finding that the redevelopment plan will have a material effect on Community First, your letter also provides that for purposes of §18702.2(b)(2), compensation for the taking of certain property belonging to the bank "will be in the form of points that reduce real estate taxes." I do not know the source of that statement but I can assure you that that is not the case.

First, I question whether eminent domain will even be necessary with respect to Community First. There are a number of different parking

arrangements contemplated by a proposed Specific Plan for downtown Pleasanton, one of which might affect this property. Even if this particular parking lot configuration were adopted, it could be accomplished without the need of eminent domain.

Second, even if eminent domain were utilized, Community First would be entitled only to the fair market value of the take, which value would not trigger the threshold amount pursuant to §18702.2(b)(1) or (b)(3). Furthermore, the take of this property (which is undeveloped except for asphalt) would not significantly reduce the bank's real property taxes in any amount near the threshold of §18702.2(b)(2).

Even though your letter concedes at page 5 the inability to estimate the extent of the redevelopment plan's effect on Community First, you found that the effect will be material because, based on In re Oglesby 1 FPPC 71, the decision will affect the bank in several ways. In Oglesby, a councilmember/Agency member owned two rental properties and had his real estate office within the proposed redevelopment area. The particular redevelopment plan in that case included such improvements as the construction of a civic center, a freeway off-ramp and improving a two lane road to a four lane arterial. Under such circumstances, the Commission concluded,

[T]he ownership of several lots in and around the redevelopment area for business and investment purposes and the real estate brokerage each raise significant question under the Political Reform Act, and the cumulative effects of both types of economic interests which are reasonably foreseeable are sufficient under the circumstances present here to require disqualification under Section 87100.

In re Oglesby, supra, at 79.

The situation here is distinguishable. First, unlike Oglesby, Mr. Mercer has no direct ownership of property within the proposed area nor does he derive his livelihood therefrom. Further, the proposed redevelopment plan is a mere shadow of the plan contemplated in Oglesby. Finally, for the reasons stated above, to find that this decision will cause the threshold amounts under any of the

Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 4

tests set forth in §18702.2 to be exceeded is to engage in speculation.

The Commission has stated that whether material financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. In re Thorner, 1 FPPC 198. In the facts presented here, there is no substantial evidence that the adoption of the redevelopment plan will have a material financial effect on Community First.

I request that you reconsider your advice letter in view of the above. If you need additional material from me, please contact me.

Very truly yours,



Michael H. Roush
City Attorney

MHR:ple

cc: Mayor Kenneth R. Mercer
Kathy Donovan
T. Brent Hawkins



CITY OF PLEASANTON

P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0802

December 13, 1988

DEC 15 8 21 AM '88
F 1000

CITY OFFICES
123 MAIN STREET

CITY COUNCIL
847-8001

CITY MANAGER
847-8008

CITY ATTORNEY
847-8003

FINANCE
847-8033

PERSONNEL
847-8012

CITY OFFICES
200 OLD BERNAL AVE.

PLANNING
847-8023

ENGINEERING
847-8041

BUILDING INSPECTION
847-8015

COMMUNITY SERVICES
847-8160

WATER - BILLING
847-8038

FIELD SERVICES
5335 SUNOL BLVD.

WORKS
847-8056

MUNICIPAL SEWER
847-8061

STREET
847-8066

TRASH
847-8071

RAILROAD AVE.
8114

RAILROAD AVE.
BOX 909
127

Margarita Altamirano
Counsel, Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

Re: Advice Request -
Your File No. A-88-404

Dear Ms. Altamirano:

I have had an opportunity to review your letter dated December 7, 1988 to me concerning the above referenced matter. I have a number of comments on the matters in the letter.

While I do concur that the proposed redevelopment plan will affect businesses and property values in the area covered by the proposed plan, I do not concur that the proposed plan will result in a material financial effect with respect to Community First National Bank. If the plan does not have such an effect on Community First, then Mr. Mercer's investment in Community First would not disqualify him from participating in the decision.

Regulation 18702.2 provides guidelines for determining whether a decision will have a material financial effect on a business entity. Based on the financial size of Community First, Regulation 18702.2(b) and (e) provide that the effect of a decision is material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 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 \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

In my letter dated October 14, 1988 to the Commission, I suggested that it would be appropriate to consider the profit spread as an accurate indicator for determining gross revenues as used in Regulation 18702.2(b)(1). You pointed out that for purposes of determining gross revenues, gross income, not just net profits, is the proper focus; and that "income" includes any payment. From that premise, your letter, at page 5, states "Instead, if the decision were to increase or decrease deposits by \$150,000 or more, the effect on Community First would be material."

That statement, however, assumes that deposits are revenues or income to the bank. That is not correct. As to the bank, a deposit is a liability in the amount of the deposit, and, at the same time, is an asset of the bank in a like amount. See 9 Cal.Jur.3d, Banks, §§94 et seq. Therefore, deposits, except as such deposits earn "interest income" for Community First, cannot properly be considered gross revenues, as that term is used in §18702.2(b)(1), for Community First.

For the same reason, such deposits do not trigger the threshold amounts under 18702.2(b)(3). That subsection assumes either an increase or a decrease in an asset or a liability in an amount of \$150,000 or more. However, because a deposit is, at the same time, an asset and a liability in an equal amount, the deposits are a wash under §18702.2(b)(3).

In finding that the redevelopment plan will have a material effect on Community First, your letter also provides that for purposes of §18702.2(b)(2), compensation for the taking of certain property belonging to the bank "will be in the form of points that reduce real estate taxes." I do not know the source of that statement but I can assure you that that is not the case.

First, I question whether eminent domain will even be necessary with respect to Community First. There are a number of different parking

Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 3

arrangements contemplated by a proposed Specific Plan for downtown Pleasanton, one of which might affect this property. Even if this particular parking lot configuration were adopted, it could be accomplished without the need of eminent domain.

Second, even if eminent domain were utilized, Community First would be entitled only to the fair market value of the take, which value would not trigger the threshold amount pursuant to §18702.2(b)(1) or (b)(3). Furthermore, the take of this property (which is undeveloped except for asphalt) would not significantly reduce the bank's real property taxes in any amount near the threshold of §18702.2(b)(2).

Even though your letter concedes at page 5 the inability to estimate the extent of the redevelopment plan's effect on Community First, you found that the effect will be material because, based on In re Oglesby 1 FPPC 71, the decision will affect the bank in several ways. In Oglesby, a councilmember/Agency member owned two rental properties and had his real estate office within the proposed redevelopment area. The particular redevelopment plan in that case included such improvements as the construction of a civic center, a freeway off-ramp and improving a two lane road to a four lane arterial. Under such circumstances, the Commission concluded,

[T]he ownership of several lots in and around the redevelopment area for business and investment purposes and the real estate brokerage each raise significant question under the Political Reform Act, and the cumulative effects of both types of economic interests which are reasonably foreseeable are sufficient under the circumstances present here to require disqualification under Section 87100.

In re Oglesby, supra, at 79.

The situation here is distinguishable. First, unlike Oglesby, Mr. Mercer has no direct ownership of property within the proposed area nor does he derive his livelihood therefrom. Further, the proposed redevelopment plan is a mere shadow of the plan contemplated in Oglesby. Finally, for the reasons stated above, to find that this decision will cause the threshold amounts under any of the

Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 4

tests set forth in §18702.2 to be exceeded is to engage in speculation.

The Commission has stated that whether material financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. In re Thorner, 1 FPPC 198. In the facts presented here, there is no substantial evidence that the adoption of the redevelopment plan will have a material financial effect on Community First.

I request that you reconsider your advice letter in view of the above. If you need additional material from me, please contact me.

Very truly yours,



Michael H. Roush
City Attorney

MHR:ple

cc: Mayor Kenneth R. Mercer
Kathy Donovan
T. Brent Hawkins



CITY OF PLEASANTON

P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0502

December 17, 1988

CITY OFFICES
123 MAIN STREET

CITY COMMISSIONER
847-3000

CITY MANAGER
847-6000

CITY ATTORNEY
847-8000

FINANCE
847-8000

PERSONNEL
847-8000

CITY OFFICES
100 Q. ST. #200

PLANNING
847-8000

ENGINEERING
847-8000

BOULEVARD #100
847-8000

COMMUNITY DEVELOPMENT
847-8000

WATER
847-8000

FIELD SERVICES
5557 20TH STREET

PARKS
847-8000

SANITATION DEPARTMENT
847-8000

STREET
847-8000

WATER
847-8000

FIRE
414 24TH STREET
847-8114

POLICE
414 24TH STREET
847-8114

Margarita Altamirano
Counsel, Legal Division
Fair Political Practices Committee
P.O. BOX 807
Alhambra, California 91801-0807

Re: Advice Request
Your File No. 88-004

Dear Ms. Altamirano:

I have had an opportunity to review your letter dated December 7, 1988 concerning the above referenced matter. I have read your comments on the matter in the letter.

While I do concur that the proposed redevelopment plan will cause a decrease in property values in the area subject to the plan, I do not concur that the plan will result in a material financial detriment to Community First National Bank. It is not Mr. Mercer's investment in the bank that not have such an effect on the bank's decision. Mr. Mercer's investment in the bank does not disqualify him from making a decision.

Regulation 18716.2 provides guidelines for determining whether a decision has a material financial effect on a financial institution. The financial institution must be a member of the FDIC and the decision must be a decision of a public body. The decision must be a decision of a public body.

The decision in this case is a decision of a public body. The decision is a decision of a public body. The decision is a decision of a public body.

I am sure that you will find this information helpful. If you have any questions, please contact me at (916) 885-1000.

additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

In my letter dated October 14, 1988 to the Commission, I suggested that it would be appropriate to consider the profit spread as an accurate indicator for determining gross revenues as used in Regulation 18702.2(b)(1). You pointed out that for purposes of determining gross revenues, gross income, not just net profits, is the proper focus; and that "income" includes any payment. From that premise, your letter, at page 5, states "Instead, if the decision were to increase or decrease deposits by \$150,000 or more, the effect on Community First would be material."

That statement, however, assumes that deposits are revenues or income to the bank. That is not correct. As to the bank, a deposit is a liability in the amount of the deposit, and, at the same time, is an asset of the bank in a like amount. See 9 Cal.Jur.3d, Banks, §694 et seq. Therefore, deposits, except as such deposits earn "interest income" for Community First, cannot properly be considered gross revenues, as that term is used in §18702.2(b)(1), for Community First.

For the same reason, such deposits do not trigger the threshold amounts under 18702.2(b)(3). That subsection assumes either an increase or a decrease in an asset or a liability in an amount of \$150,000 or more. However, because a deposit is, at the same time, an asset and a liability in an equal amount, the deposits are a wash under §18702.2(b)(3).

In finding that the redevelopment plan will have a material effect on Community First, your letter also provides that for purposes of §18702.2(b)(2), compensation for the taking of certain property belonging to the bank "will be in the form of a tax credit that reduce real estate taxes." I am not the source of that statement but I can assure you that that is not the case.

First, I question whether eminent domain will even be necessary with respect to Community First. There are a number of different parking

arrangements contemplated by a proposed Specific Plan for downtown Pleasanton, one of which might affect this property. Even if this particular parking lot configuration were adopted, it could be accomplished without the need of eminent domain.

Second, even if eminent domain were utilized, Community First would be entitled only to the fair market value of the take, which value would not trigger the threshold amount pursuant to §18702.2(b)(1) or (b)(3). Furthermore, the take of this property (which is undeveloped except for asphalt) would not significantly reduce the bank's real property taxes in any amount near the threshold of §18702.2(b)(2).

Even though your letter concedes on page 5 the inability to estimate the extent of the redevelopment plan's effect on Community First, you found that the effect will be material because, based on In re Oglesby, 1 PPPC 73, the decision will affect the bank in several ways. In Oglesby, a councilmember/Agency member owned two rental properties and had his real estate office within the proposed redevelopment area. The particular redevelopment plan in that case included such improvements as the construction of a civic center, a freeway off-ramp and improving a two lane road to a four lane arterial. Under such circumstances, the Commission concluded,

[T]he ownership of several lots in and around the redevelopment area for business and investment purposes and the real estate brokerage each raise significant questions under the Political Reform Act, and the cumulative effects of both types of economic interests which are reasonably foreseeable are sufficient under the circumstances present here to require disqualification under Section 87100.

In re Oglesby, supra, at 70.

The situation here is distinguishable. First, Community First Bank Mercer has no direct ownership in any of the lots in the proposed area nor does it derive his livelihood therefrom. Further, the proposed redevelopment plan is a mere shadow of the plan contemplated in Oglesby. Finally, for the reasons stated above, to find that this decision will cause the threshold amounts under any of the

Margarita Altamirano
Fair Political Practices Commission
December 13, 1988
Page 4

tests set forth in §18702.2 to be exceeded is to engage in speculation.

The Commission has stated that whether material financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. In re Thorne, 1 FPFC 198. In the facts presented here, there is no substantial evidence that the adoption of the redevelopment plan will have a material financial effect on Community First.

I request that you reconsider your advice letter in view of the above. If you need additional material from me, please contact me.

Very truly yours,

Michael W. Roush

Michael W. Roush
City Attorney

MHR:ple

cc: Mayor Kenneth R. Mercer
Kathy Donovan
T. Brent Hawkins



CITY OF PLEASANTON

P.O. BOX 520 • PLEASANTON, CALIFORNIA 94566-0802

FAX 415-484-8238

TO: MARGARITA ALTAMIRAL DATE: 12/3/88
FAIR POLITICAL MATTERS SUMMIT
COMPANY: _____

FROM: MICHAEL ROUSH, CITY ATTORNEY
PLEASANTON

NO. OF PAGES: 5
(INCLUDING THIS ONE)

PLEASE CONFIRM RECEIPT OF THIS
FAX BY CALLING _____, EXT. _____

MESSAGE: _____



California Fair Political Practices Commission

December 15, 1988

Michael H. Roush
City Attorney
P.O. Box 520
Pleasanton, CA 94566-0802

Re: 88-466

Dear Mr. Roush:

Your letter requesting advice under the Political Reform Act was received on December 13, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, 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,

Kathryn E. Donovan

Diane M. Griffiths
General Counsel

DMG:plh