



California Fair Political Practices Commission

August 18, 1989

Honorable Charles Glenn Adams
Mayor Pro-Tem
590 E. Elm
Coalinga, CA 93210

Re: Your Request for Informal Assistance
Our File No. I-89-380

Dear Mr. Adams:

This is in response to your request for advice concerning your responsibilities under the conflict-of-interest provisions of the Political Reform Act.¹ Because your questions do not involve a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).² I indicated to you in our telephone conversation that the Commission does not give legal advice regarding past conduct. (Regulation 18329(c)(4)(A).) Therefore, I have restated your questions to provide guidance regarding your future responsibilities under the Act. We make no comment concerning your past conduct.

QUESTIONS

In a telephone conversation on July 18, 1989, you clarified that your central concerns are:

1. When a person from whom you are expecting to receive commission income appears before the city council, may you accept

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).)

that income or are you required to resign prior to accepting that income?

2. Are you required to disqualify yourself if the broker who employs you appears before the city council either representing himself or a client, and you have no involvement in the transaction?

3. You have a client who is a buyer. May you introduce this buyer to city staff? If not, may your broker introduce your client to city staff?

CONCLUSIONS

1. You are not required to resign prior to receiving commission income from your client. However, you must disqualify yourself from participating in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on a client who has paid or promised to pay \$250 or more in income during the past 12 months.

2. The real estate firm and the broker are sources of income to you. You must disqualify yourself from any decision before the city council if the broker, or the real estate firm, is the applicant for or the subject of the decision. If, instead, the broker is representing a client, you must disqualify yourself if the decision will affect the broker's income, investment, etc., by more than \$1,000. If the broker or another real estate agent is representing a client of the real estate firm, you must disqualify yourself if the decision will result in the real estate firm receiving commission income of more than \$10,000.

3. You may not introduce your client to city staff for the purpose of influencing any governmental decision. However, your broker may introduce your client to city staff.

FACTS

You are the Mayor Pro-Tem of the City of Coalinga (hereafter "city"). You are a licensed real estate agent employed by Coalinga Realty. You are concerned about the potential conflict of interest in your role as a real estate agent and the Mayor Pro-Tem of the city.

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. You are a public official. (Section 82048.) Therefore you may not make, participate in making, or in any way attempt to influence a governmental decision in which you have 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 its effect on the public generally, on the official or a member of his immediate family,³ or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103 (c) and (d).

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

Materiality

Regulation 18702 (copy enclosed) sets forth the guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, then Regulation 18702.1 (copy enclosed) applies to

³ An official's "immediate family" includes his spouse and dependent children. (Section 82020.)

determine materiality.⁴ If, on the other hand, the official's financial interest is indirectly involved in the decision, then Regulations 18702.2 through 18702.6 (copies enclosed) would apply to determine if the effect of the decision is material.

Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87103.)⁵ A material financial effect is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703, copy enclosed.)

We will now address your specific questions.

1. A source of income to you appears before the city council.

The Act does not require that you resign from the city council prior to accepting commission income from a person who is appearing before the city council. The person from whom you are expecting to receive commission income is a source of income to you (Section 82030, copy enclosed) within the meaning of Section 87103(c) if the income is promised to or received by you within 12 months prior to the time when the decision is made.

Commission income is "promised" to a real estate agent when the sale is pending. The fact that you have a listing which could generate commission income does not mean that the income is "promised." (Larsen Advice Letter, No. A-82-192, copy enclosed.) Regulation 18704.3(c) (copy enclosed) provides that the person

⁴ Regulation 18702.1 would require that a public official disqualify himself or herself if there is a nexus between the purpose for which the official receives income and the governmental decision. Regulation 18702.1(d) defines the term "nexus" as follows:

There is a nexus between the purpose for which an official receives income and a governmental decision if the official receives income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.

Regulation 18702.1(d).

⁵ For the City of Coalinga, the public consists of all residents of the city.

whom you represent in a real estate transaction is considered the source of your income.

Accordingly, you must disqualify yourself from participating in any decision which will have a reasonably foreseeable material financial effect on a person who has paid or promised you \$250 or more in commission income in the past 12 months, if the decision's effect on that person is distinguishable from the effect on the public generally. (Section 87103(c).)

2. Your broker appears before the city council on behalf of a client; you have no involvement in the transaction related to the client.

The broker is a source of income to you within the meaning of subdivision (c) of Section 87103. (Regulation 18704.3(c)(3)(A).) You may not make, participate in making, or in any way attempt to use your position to influence a decision which will have a reasonably foreseeable material financial effect on the broker which is distinguishable from the effect on the public generally. (Section 87103(c).) If your broker appears before the city council representing himself, the effect of the decision will be deemed material pursuant to Regulation 18702.1(a)(1) (copy enclosed). This would be true even if someone else appears representing the broker's interest. If your broker appears before the city council representing a client, then the effect of the decision is material if the decision will affect the broker's income, investments, on other tangible or intangible assets or liabilities by \$1,000 or more. (Regulation 18702.6, copy enclosed.)

The real estate firm is a source of income to you within the meaning of subdivision (c) of Section 87103 (Regulation 18704.3(c)(3)(A)) and is your employer within the meaning of subdivision (d) of Section 87103. If your real estate firm, represented by the broker or some other real estate agent, appears before the city council regarding a decision, the effect of the decision is deemed material pursuant to Regulation 18702.1(a)(1) if the real estate firm is directly involved in the decision as that term is defined in Regulation 18702.1(b). However, if your real estate firm, represented by the broker or some other real estate agent, appears before the city council representing the interests of a client of the real estate firm, then the effect of the decision will be deemed material if the decision will have an economic effect on the real estate firm described in Regulation 18702.2. Regulation 18702.2(g) provides that for a small business entity, the effect of the decision is material if:

- (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.

Regulation 18702.2(g)(1), (2) and (3).

Thus, if a real estate commission is involved which will result in the real estate firm receiving commission income of \$10,000 or more, you must disqualify yourself from participating in that decision.⁶

3. Introduction of a potential buyer to city staff by you or your broker.

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. As discussed above, under certain circumstances, your client may be a source of income to you because the commission income you expect to receive may be deemed "promised" income to you within the meaning of Section 87103(c).

You suggested that a developer who wants to buy property may see your realty office and just stop by to inquire about prospects for developing land in the city. Under such circumstances, the expectation of receipt of income is too speculative to rise to the level of "promised" income. (See, e.g., Remelmeyer Advice Letter, No. A-81-510, copy enclosed.) You are not prohibited from introducing such a developer who is your client to city staff. On the other hand, the income has been earned when the agreement for sale of property is signed even though escrow has not yet been opened and no money has changed hands. At that point, the income has been "promised" for purposes of Section 87103(c). (Larsen Advice Letter, supra.) You are then prohibited from attempting to use your position to influence any governmental decision which will have a reasonably foreseeable material financial effect on your client. (Section 87103(c).) You are attempting to use your official position to influence a governmental decision, if, for the purpose of influencing the decision, you contact, appear before or otherwise attempt to influence any member, officer

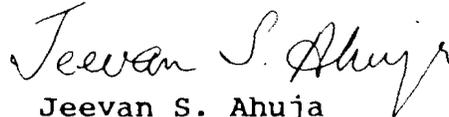
⁶ The \$10,000 figure is based on the assumption that the real estate firm is a small privately-held business. If that is not the case, then the amount could change.

employee or consultant of the city. (Regulation 18700.1, copy enclosed.) Attempts to influence include appearances or contacts by you on behalf of the client. (Id.) However, your broker may introduce your client to city staff.

I trust the letter has provided you with the guidance you requested. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED/JSA/aa

Enclosures



590 E. Elm • Coalinga, CA 93210
(209) 935-2964

**COALINGA
REALTY**

June 23, 1989

Fair Political Practices Board
P.O. Box 807
Sacramento, CA 95804-0807

Re: Possible conflict of interest
Charles Glen Adams

Dear Board Members;

I am writing this letter to obtain your opinion as to whether I have a conflict of interest. I am Mayor Pro-Tem of the City of Coalinga and I am also a licensed Real Estate Agent. The growth programs of Coalinga have been well publicized, so I feel my position does not give me any advantage over any other Agent in this particular transaction.

I have been promoting the growth of Coalinga with everyone I deal with. I have a property in escrow who the Buyers girlfriend is an Agent with Caldwell Banker. After my normal presentation on Coalinga's plans including the Industrial Park, she brought a Developer in who is interested in 40 acres of the Insustrial Park and Subdivision land. I have introduced them to City Staff and property owners. The City is considering (on staff level), per the client, participating in part of both the Industrial and Subdivision development through buydowns etc. Any agent can take any client to the City, get the same results and draw income from the sale of both the Industrial Park and Subdivision.

For further clarification, I have not participated in discussions that the Developer has had with the City for any offerings of incentives. I have only introcuded the Developer to City Staff. If this Developer or one in the future that I may be working for as a Real Estate Agent, buys property from the City or other land that the City may offer incentives on, I will draw an income as a Real Estate Agent. Am I allowed to draw that income if I do not vote or discuss items that involve this party and if I do not negotiate with the City.

One way for me not to negotiate with the City would be for my Broker to present any offer and do the negotiations. Another way would be to have another Real Estate Office (if there is a participation by that office in a transaction) do the presentation and negotiating.

If I am eleminated from income participation, at what point would my resignation from the Council ailow me to participate in a sale that would generate income for me.

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Time is very important to this question. It is possible for this to transact in 30 days, so I need your guidance as our city Attorney is not sure.

Thank you.

Sincerley,



Charles Glen Adams
Sales Associate/Mayor Pro-Tem
(209)935-0069 home phone

CGA/cad



California Fair Political Practices Commission

June 28, 1989

Honorable Charles G. Adams
Sales Associate/Mayor Pro-Tem
590 E. Elm
Coalinga, CA 93210

Re: Letter No. 89-380

Dear Mr. Adams:

Your letter requesting advice under the Political Reform Act was received on June 27, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja 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
General Counsel

KED:plh