



California Fair Political Practices Commission

September 12, 1989

Honorable Keith Scrivner
Mayor, City of Coalinga
P.O. Box 1075
Coalinga, CA 93210

Re: Your Request for Advice
Our File No. A-89-439

Dear Mayor Scrivner:

You have requested advice concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to your duties as the Mayor of Coalinga. The following advice is based upon the facts provided in your letter, the list of property owners in reorganization areas 1-A, 1-B, and 1-C, and our telephone conversations of August 22 and 24, 1989.

QUESTIONS

Your business has received more than \$250 in income from Chevron USA, Inc. (hereinafter referred to as "Chevron") in the last 12 months.

1. Under the Act, are you disqualified from participating in a decision regarding the city's purchase of 160 acres of land from Chevron?
2. Under the Act, are you disqualified from participating in a decision regarding the city's annexation plan, since Chevron owns land in each of the three reorganization areas?

CONCLUSIONS

1. Because Chevron is a source of income to you, you may not vote on or otherwise participate in the decision for the city to purchase 160 acres of land from Chevron.

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. You may not vote on or otherwise participate in the decision regarding the city's annexation plan because of the direct effects of the plan on Chevron's property.

FACTS

You are the Mayor of the City of Coalinga. You are also the owner and majority shareholder of K. M. Scrivner, Inc., a general engineering construction firm which does construction and routine maintenance on surface facilities in the oil fields. Your company, which you have owned since January 1, 1986, does business with several oil companies, including Chevron.

Coalinga is negotiating the purchase of 160 acres of land for an industrial park outside the city limits. This land, which is owned by Chevron, is not used for oil production.

As an independent and separate transaction, Coalinga is also negotiating an annexation plan, which involves three areas of land. Each of these areas, which are called reorganization areas 1-A, 1-B, and 1-C, have several owners. Chevron owns 931.78 acres in area 1-A, 65.37 acres in area 1-B, and 320.09 acres in area 1-C.

Last year, Chevron's account with your company amounted to approximately 20 percent of your gross sales. The contracts with Chevron were competitively bid.

Your company deals with the producing and pipeline divisions of Chevron. The land negotiations, for both the purchase and the annexation, are handled by other divisions of Chevron.

ANALYSIS

The Act prohibits a 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. (Section 87100.) A public 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 or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(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.)

Purchase of the Chevron Property

Chevron has been a source of income to you of more than \$250 in the past 12 months. Therefore, you may not participate in any decision regarding the purchase of Chevron's property if it reasonably foreseeable that the decision will have a "material" financial effect on Chevron.

Regulation 18702.1 (copy enclosed) contains guidelines for determining if the effect of a decision is material when an official's economic interest is directly involved in the decision. Pursuant to Regulation 18702.1, the effect of a decision is material if:

(a)(1) ... Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency or there is a nexus (as defined in subdivision (d)) between the purpose for which the official receives income and the governmental decision; ...

(b) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

* * *

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Pursuant to Regulation 18702.1 (b)(2) and (3) above, Chevron is directly involved in the decision because it is the subject of a proceeding which involves a real estate contract for the purchase of 160 acres of its property. Accordingly, you may not participate in the decision for the city to purchase Chevron's property. You are required to abstain from voting and from participating in city council discussions of these decisions. (Regulations 18700 and 18700.1, copies enclosed.)

Annexation of the Property

The city's annexation plan is separate and independent from the transaction for the purchase of Chevron's property. Chevron is only one of three to seven property owners in each of the three reorganization areas, which comprise the general annexation plan. However, Chevron's property constitutes over 90 percent of the property to be annexed. In this circumstance, Chevron is considered a named party or the subject of the proceeding.

Therefore, the analysis parallels that given above for the purchase of the Chevron property. Since there is a material financial effect under Regulation 18702.1(a)(1), you also may not participate in the decision regarding the city's annexation plan.

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

Sincerely,

Kathryn E. Donovan
General Counsel

By:  Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

Enclosure

FPPC
Jul 25 8 19 AM '89

Keith Scrivner
P. O. Box 1075
Coalinga, Ca. 93210

209-935-0815

July 21, 1989

California Fair Political Practices Commission
P. O. Box 807
Sacramento Ca. 95804-0807

As Mayor of the City of Coalinga, I am faced with a potential conflict of interest, and am formally requesting a determination ruling.

The City of Coalinga is negotiating to purchase 160 acres of land for an industrial park outside the city limits. The landowner is Chevron USA, Inc. In conjunction with these negotiations, Coalinga is in the process of annexation of a large area, including not only the industrial park land, but additional land belonging to various oil companies.

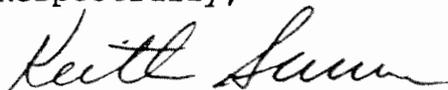
My primary source of income is from K. M. Scrivner, Inc. This company is a general engineering construction firm which does business with several oil companies. Chevron's account amounted to an average of 20% of the gross sales. These were primarily hard dollar contracts on a bid basis. The amounts were in excess of 400,000.00 per year annually. The land negotiations are with a different division and with different people than my company deals with.

My questions are as follows:

1. Do I have a conflict of interest and should I abstain from discussion and voting on the land acquisition.
2. Should I abstain from discussion and voting on the annexation.

I would appreciate a timely response as this is a priority for the City of Coalinga. Thank you in advance for your assistance on this matter.

Respectfully,



Keith Scrivner,
Mayor, City of Coalinga

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Respectfully,



Keith Scrivner,
Mayor, City of Coalinga



California Fair Political Practices Commission

July 26, 1989

Honorable Keith Scriver
Mayor, City of Coalinga
P.O. Box 1075
Coalinga, CA 93210

Re: Letter No. 89-439

Dear Mayor Scriver:

Your letter requesting advice under the Political Reform Act was received on July 25, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh