

Memorandum

To : Advice File No. M-89-647

Date : November 15, 1989

From : FAIR POLITICAL PRACTICES COMMISSION
John McLean

Subject: Materiality Regulations

Kathy, John Wallace and I have discussed several issues relating to application of the materiality regulations. The issues have come up in the context of several recent advice letters. Generally, they involve questions regarding when we will and will not use the distance tests in Regulation 18702.3, and when a source of income is "directly involved" in a decision as provided for in Regulation 18702.1. Here are the different situations we discussed and the ways in which we concluded they should be dealt with.

1. **A** and **B** are planning commissioners. **A** and **B** live directly across the street from one another. **A's** property is zoned R1 and **B's** property is zoned R2. The street is the boundary line.

A proposed zoning change comes before the commission which would increase the height limits on all R1 properties in the city.

ANSWER

A's property is not "directly involved" in the decision because this is an amendment to a zoning ordinance, and thus is specifically exempted under 18702.1(a)(3)(E). In Regulation 18702.3, the distance tests do not apply because **A's** property is not the "subject of" the decision. The distance tests are not intended to apply to such broad decisions. The distance tests are intended to apply only to decisions involving a specific development or developments, or decisions which only affect a discrete area. **A** and **B** should use Regulation 18702.3(c) which says that if the decision does not involve a subject property from which the distance can be measured, the dollar tests are applied.

2. A decision on a 500-acre subdivision is before the Hemet City Council. A councilmember owns property which is located approximately 1 mile from the site of the subdivision. City staff says that the subdivision will result in the need to improve many streets in the area surrounding the subdivision, and indicates that the developer needs to help fund those street improvements.

One of the streets to be improved would be a street immediately adjacent to the councilmember's property. It is currently a dirt road, and would become a paved road.

ANSWER

The councilmember's property is not directly involved in the decision, so we go to Regulation 18702.3. If the decision on the development actually includes the decision to improve the street immediately adjacent to the councilmember's property, the effect is material under Regulation 18702.3(a)(2) which provides that a decision is material as to real property if it involves the construction of, or improvements to, streets, water, sewer, storm drainage etc. in which the official's property will receive substantially improved services. If the decision does not actually involve the bringing of an improved street to the official's property, but merely makes that a foreseeable possibility, Regulation 18702.3(a)(2) does not apply. Rather, since there is a specific property which is the subject of the decision, we apply the distance tests. In this case, the property which is the subject of the decision is 1 mile away. The provision to be applied is Regulation 18702.3(b) which says that if the official's property is more than 2500 feet away from the subdivision, the effect on the official's property is not material unless there are special circumstances. Here, the improvement of the street may be the type of special circumstances which would merit disqualification.

3. Supervisor Smoley votes on decisions regarding the formation of various assessment districts. Persons within these districts may be sources of income to Ms. Smoley.

ANSWER

Regulation 18702.1 prohibits participation if the source of income is "directly involved" in the decision. Regulation 18702.1(b) says a person is directly involved if the person:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(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.

If the source of income initiated the process of forming the assessment district, the source of income is "directly involved" in the decision, and thus "materially" affected. Furthermore, if the decision on the assessment district involves an entitlement or contract with the source of income, the source of income is directly involved in the decision.¹ Generally, we would not say that every property owner in an assessment district is a named party in the proceeding to form the district.

Assuming we conclude that the source of income is not directly involved, we go to Regulation 18702.6 if the source is an individual. Since the formation of an assessment district involves a fee to be imposed on the individual, the appropriate materiality test to apply is the \$1,000 test in Regulation 18702.6(a). We would not in this situation use the real property test in Regulation 18702.6(b).

4. An official sits on a transportation authority and votes on decisions regarding various street repairs and improvements. The decisions may affect various sources of income who own real property near the improvements.

ANSWER

The source of income is not directly involved in the decision as provided for in Regulation 18702.1. Accordingly, if the source of income is an individual, we go to Regulation 18702.6. Since the decision affects the individual's real property interest, Regulation 18702.6(b) sends us back to Regulation 18702.3 which deals with indirect effects on real property. If the decision will result in improvements on or immediately adjacent to the property of the source of income, disqualification is required per 18702.3(a)(2).

If the improvements will not occur on, or adjacent, to the individual's real property, we will apply the distance tests if the improvements are occurring only in a discrete area. For example, if the decision is to widen a short stretch of a major thoroughfare one block from the official's house, or to build a bridge or freeway access near the official's property, the distance tests will apply. However, if the decision is to pave all of the roads in a large section of the city, the distance tests do not apply. Rather, using Regulation 18702.3(c), we use the dollar tests to determine materiality.

¹ I am currently working on an advice letter to Lee Elam, No. I-89-467. The letter will include a rather lengthy discussion of whether inclusion in an assessment district is an entitlement for use.

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If you have questions, or would like to discuss this, please let me know.

JGM/aa

cc: Kathryn Donovan
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