

March 25, 2013

Teresa Arballo Barth
Mayor, City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024

Re: Your Request for Advice
Our File No. A-13-019

Dear Mayor Barth:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is based only on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws, such as Government Code Section 1090, common law conflict of interest, or restrictions on incompatible activities your agency may impose. You should consult your agency's counsel regarding these, and any other laws, that may apply.

QUESTION

Under the Act, may you make, participate in, or use your official position to influence a decision by the City of Encinitas (the "City") on whether to issue a proposed Special Event application for the "California 10/20" running race for February 16, 2014?

CONCLUSION

Under the Act, you may make, participate in, or use your official position to influence a decision by the City on whether to issue the Special Event application as the event is currently proposed.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are mayor of the City and sit as a voting member on the city council. The City, as well as the cities of Del Mar and Solana Beach, have been approached by a large event organization proposing to hold a major ten mile running race along Pacific Coast Highway 101. The applicant submitted a Special Event application for the "California 10/20" running race proposed for February 16, 2014. On January 30, 2013, the Encinitas City Council initially considered the event (from which, out of caution, you recused yourself) and gave preliminary directions to City staff on processing an appropriate permit for the event.

The staff report, a copy of which you have provided, gave details of the event. According to the report, the race route begins in the City of Del Mar, and extends north along the coast in both the Cities of Solana Beach and Encinitas before following a similar return route to Del Mar. The event is projected to attract 10,000 - 12,000 participants and would include 20 entertainment stages equipped with amplified sound systems and bands playing live music. A total of six stages are proposed within Encinitas. Although the location of these stages is not stated in the report, the report indicates that all will be constructed at points off of the highway and, therefore, will not impede traffic at any time before, during or after the event. The report estimates that the stretch of the Pacific Coast Highway in Encinitas will be closed for approximately four hours on the day of the event. It also states that the bands participating in the event will set up their equipment at some time on the day before the event and all band equipment will be removed by 3:00 p.m. on the day of the event.

You own and reside in a condominium unit in a 24-unit complex. The common property of the complex is within 180 feet of the proposed race route but the front door of your condominium is located more than 500 feet from any aspect of the event, as currently proposed.

There is no indication at this point that this event will become a regular annual occurrence in the City.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (See Regulations 18700 – 18709.)

As Mayor of the City, you are a public official (see Section 82048(a)) and thus subject to the Act's conflict of interest provisions in Section 87100. As a consequence, you are prohibited from making, participating in, or using your official position to influence the City's decision on

the Special Event application if the decision will have a reasonably foreseeable material financial effect on one of your financial interests as defined in Section 87103.²

Because the only financial interest you appear to have that may in any way be related to the City's decision on the Special Event application is your ownership of the condominium unit (which we assume is valued at \$2,000 or more; see Section 87103(b)), we would normally focus our discussion on Steps 4, 5 and 6 of our eight-step conflict of interest analysis, concerning whether the City's decision on the application will have a reasonably foreseeable material financial effect on your real property. (See Regulations 18704 – 18706.) Regarding real property held by an official, Steps 4 through 6 essentially provide that when a government decision involves real property, any other real property within a 500-foot radius of that property is presumed to be materially affected by the decision; that is, a one-penny effect on the value of the property can create a conflict of interest. Thus, any official owning real property within the 500-foot radius and participating in the decision has a conflict of interest unless he or she can show that the decision will have no financial effect on the property. (See Regulations 18704.2(a)(1) and 18705.2 (a)(1).)³

We do not think, however, that the Commission intended to apply such a hard and fast rule to every governmental decision that had a physical location attached to it. Instead, we think the intent was to apply the rule to decisions that affect such things as the character, nature, value, improvements to, or overall permanent use of a particular parcel of real property. It is difficult to see how a permit to hold a one-time running event for a few hours along the main artery of Encinitas can be considered a governmental decision that affects real property within the intended meaning of these regulations.

Accordingly, under these specific facts, we conclude that you do not have a conflict of interest in participating in this decision because of your interest in your personal residence.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

SH:jgl

² Note that the official's position of "for" or "against" the government decision is irrelevant. The only consideration is whether the official makes, participates in, or uses his or her official position to influence the decision and the decision has a reasonably foreseeable material financial effect on the official's financial interest.

³ Our analysis is limited to the potential economic interests you have identified.