

June 4, 2013

Rob Schroder
Mayor
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Re: Your Request for Advice
Our File No. A-13-066

Dear Mr. Schroder:

This letter responds to your request for advice regarding your duties as Mayor of the City of Martinez under the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹

QUESTION

May you participate in the Martinez City Council’s consideration of the approval or denial of the Laurel Knolls project despite owning property in the area (more than 500 feet from the development) and having an interest in an Insurance brokerage in Walnut Creek?

CONCLUSION

It does not appear reasonably foreseeable that your insurance business or your real property will be materially affected by the Laurel Knolls decision. Therefore, you would not have a conflict of interest.

FACTS

The Martinez City Council will be considering the approval or denial of a project called “Laurel Knolls” located at 370 Muir Station Road, Martinez, CA 94553. The project consists of 80 attached townhomes and two that are single-family detached townhomes. The applicant is Discovery Homes.

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.

The project was denied by the planning commission and appealed to the city council . The city council has held two public hearings on March 20, 2013, and May 15, 2013. The proposal will return for consideration by the city council on June 5, 2013.

In addition to being the Mayor of Martinez, you are a one-third owner of a family Insurance brokerage in Walnut Creek, California called Schroder Insurance Services. The remaining two-thirds owners of the firm are your parents. The firm writes both personal and commercial property insurance and casualty insurance in California, Nevada, and Oregon. You stated that you have no business relationship with the developer and you are not aware of having any business relationship with any real estate broker or mortgage broker that may be associated with this project.

On May 23, 2013, you supplemented the facts with the following:

- The majority of the business you write is in Central Contra Costa County, including Walnut Creek (where the office has been located for 80 years), Concord, Pleasant Hill, Danville, San Ramon and Lafayette. You estimated that 5% of our total premium volume is generated in Martinez, primarily retail businesses and commercial property insurance.
- Schroder Insurance Services is a small family owned insurance agency and broker with four employees. The firm's income is approximately \$350,000 per year generated from about \$3,000,000 in total premium volume. Income from insurance business written in the City of Martinez is estimated to be about \$17,500. You do not know how many other insurance agents, brokers, and direct writers do business in Martinez, but you believe that it must be hundreds, if not thousands (including agents located in Martinez, outside of Martinez, and direct writers like GEICO, Progressive, etc.).
- You estimated your market share of the insurance business in the City of Martinez to be a fraction of 1%.

In addition, you own a home located over two miles from the development site.

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. Section 87103 provides:

“A public official has a financial interest in a decision within the meaning of Section 87100 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, a member of his or her immediate family, or on any of the following:

“(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

“(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

“(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, 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.

“(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$440] 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. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to subdivision (f) of Section 89503.

“For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.”

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.

Your letter eliminates the need to discuss the first three steps. You have acknowledged that you are the Mayor of Martinez (a public official under the Act), and you are asking whether you may make or participate in the Laurel Knolls decision with respect to the following interests:

(1) Your real property. We assume your interest in your home is worth \$2,000 or more.

(2) Your business. We assume your 1/3 interest in your insurance business is worth \$2,000 or more, qualifying as an investment interest under Section 87103(a). In addition, you are employed by the business and receive income from the business. We assume the income you receive is \$500 or more qualifying the business as an interest under Section 87103(c) and (d).

Step Four: Are your interests directly or indirectly involved in the decision?

Real Property: In pertinent part, Regulation 18704.2(a) states that real property in which a public official has an interest is directly involved in a governmental decision if:

“(1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision.”

You stated that your home is more than 500 feet from the Laurel Knolls development. Consequently, your property is considered indirectly involved in the decision.

Your Business: Regulation 18704.1(a) states that a business entity or source of income is directly involved in a decision before the official’s agency when that business entity or source of income, either directly or by an agent:

“(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. A person 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.”

The involvement of your business (like your real property) does not meet the definition of “directly involved” and therefore is indirectly involved in the decision.

Steps Five and Six: Will there be a reasonably foreseeable material financial effect on your interests?

Different standards apply to determine whether a reasonably foreseeable financial effect on your business or your property will be material.

Real Property: For indirectly involved real property, the financial effect of a governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an interest, which make it reasonably foreseeable that the decision will have a material financial effect. (Regulation 18705.2(b)(1).) Examples of some specific circumstances are:

“(A) The development potential or income producing potential of the real property in which the official has an economic interest;

“(B) The use of the real property in which the official has an economic interest;

“(C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.”

You have provided no facts to indicate that your property will be materially financially affected by the decision. Given the distance of the project from your home and the size of the project, absent other facts to indicate an impact on your property that may rebut the presumption, it does not appear that the decision will have a reasonably foreseeable material financial effect that would create a conflict of interest.

Your Business: For interests in business entities indirectly involved in a decision, including business entities that are a source of income to an official, the materiality standards are in Regulation 18705.1(c). The thresholds for materiality under this regulation vary with the size of the business. Regulation 18705.1(c)(4) provides that the financial effect of a governmental decision on a business, not publicly traded and relatively modest in economic size, is material if it is reasonably foreseeable that:

“(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year in the amount of \$20,000 or more; or,

“(B) The governmental 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 \$5,000 or more; or,

“(C) The governmental decision will result in an increase or decrease in the value of the business entity’s assets or liabilities of \$20,000 or more.”

For a material financial effect on your business to be “reasonably foreseeable,” it need not be certain or even substantially likely that it will happen. However, the financial effect must be more than a mere possibility. (Regulation 18706(a); *In re Thorner* (1975) 1 FPPC Ops. 198.) It would not appear the decision in question will have any effect on your business’ expenses or the value of its assets. Moreover, an increase in the businesses insurance revenue by \$20,000 in a fiscal year by virtue of selling insurance policies to residents in the development when completed, based on your facts, is speculative at best. You noted that the firm’s income is approximately \$350,000 per year and income from insurance business written in the City of Martinez is estimated to be about \$17,500. It is not foreseeable that the development will result in your firm receiving \$20,000 in additional revenue in a fiscal year.

Steps Seven and Eight: Exceptions

Even if an official has a conflict of interest, disqualification is not required if the governmental decision affects the official's economic interests in a manner that is indistinguishable from the manner in which the decision will affect the public generally. (Section 87103; Regulation 18707(a).) Additionally, in certain rare circumstances, an official may be called upon to take part in a decision despite the fact that the official may have a disqualifying conflict of interest under the "legally required participation" exception. This exception applies only in certain very specific circumstances where the government agency would be paralyzed from acting. (Section 87101; Regulation 18708.)

However, since we have concluded that you do not have a conflict of interest in the decision we have not analyzed the exceptions.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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