

March 14, 2014

Edward M. Brand, Ed.D.
Superintendent
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896

Re: Your Request for Advice – Conflict of Interest under the Political Reform Act
Our File No. A-14-021

Dear Mr. Brand:

This letter responds to your request for advice on behalf of Jim Cartmill, a member of the Board of Trustees (the “Board”) of the Sweetwater Union High School District (the “District”) regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”),¹ Government Code Section 1090 and the common law. We are responding to your questions in two separate letters. This letter addresses conflict of interest under the Act. Advice Letter No. I-14-021a addresses conflicts relating to Section 1090.

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion in this letter other than the advice offered herein and on Section 1090 in Advice Letter No. I-14-021a. We urge you to check with your agency’s attorney to determine if there are other laws that may be applicable in light of the facts you present. Also, this letter is based 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.)

QUESTION

Do the Act’s conflict-of-interest provisions prohibit Mr. Cartmill from participating in a Board decision to relocate the District office to real property located 517.1 feet from property he owns?

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.

CONCLUSION

Based on the facts you have provided, Mr. Cartmill is not prohibited by the Act's conflict-of-interest provisions from participating in the decision. It is not reasonably foreseeable that the District's relocation would have a material financial effect on Mr. Cartmill's interests, as discussed below.

FACTS

Mr. Cartmill owns a parcel of real property consisting of three commercial office suites and adjacent parking. The parcel is on the southwest corner of a commercial park located at 2411 Fenton Street, Chula Vista, CA 91914. Mr. Cartmill utilizes two of the office suites for his business, a wholly owned corporate entity (OBA "Let's Talk Health") which makes and sells nutritional supplements. Mr. Cartmill rents out the remaining suite to an insurance agency.

The District is considering relocating its office to a large office building located at 860 Harold Place, Chula Vista, CA 91914. The edge of the parcel containing the proposed new office is exactly 517.1 feet from the closest edge of the parcel owned by Mr. Cartmill. While it is possible that the relocation of the District office in close proximity to Mr. Cartmill's commercial property could increase the value of Mr. Cartmill's property, the District has no data regarding the impact of the proposed relocation on the value of nearby commercial property. The Board will be considering the purchase of the proposed site at its March 17, 2014 meeting.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise 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 decision within the meaning of 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 one of five enumerated interests.

- An interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- An interest in real property in which he or she has a direct or indirect interest of \$ 2,000 or more. (Section 87103(b); Regulation 18703.2.)

- An interest in any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An interest in any source of gifts to him or her if the gifts aggregate to \$ 420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- An interest in his or her personal finances, including those of his or her immediate family -- this is the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

Business Entity and Source of Income

Mr. Cartmill has an interest in his nutritional supplement business and his property rental business as an owner, as an investment interest², and as a source of income to him. (Section 87103(c) and (d).) Moreover, Mr. Cartmill has an interest in his tenants to the extent that his pro rata share in the income from the tenant is \$500 or more.

Real Property

Mr. Cahill has an interest in real property. Presumably, Mr. Cartmill's interest in his real property is \$2,000 or more. .

Personal Finances

A public official is considered to always have an interest in his or her personal finances. Mr. Cartmill has an interest in his personal finances if a decision will result in an increase or decrease in his "personal expenses, income, assets, or liabilities." (Section 87103.) However, a financial effect on the value of real property owned directly or indirectly by an official or the financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which a public official has a direct or indirect investment interest, are not considered separate financial effects on the official's personal finances and would not be analyzed separately under the "personal financial effects" rule. (Regulation 18705.5(a).) Accordingly, the personal financial effects rule does not appear to apply to Mr. Cartmill's circumstances and we will not discuss it further.

DIRECTLY OR INDIRECTLY INVOLVED INTERESTS

In determining whether a public official has a conflict of interest, different materiality standards apply depending on whether the financial interest is directly or indirectly involved in the agency's decision.

² For purposes of our analysis, we presume that Mr. Cartmill has an investment of \$2,000 or more in each of his businesses and has annual income from each business of \$500 or more.

Business Entity and Source of Income

Under Regulation 18704.1(a), a person, including a business entity and source of income, is directly involved in a decision before an official's agency when that person, 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.”

Neither of Mr. Cartmill's businesses has initiated or is a named party in, or is the subject of any proceeding concerning the Board's relocation decision. Accordingly, his businesses are indirectly involved. (Regulation 18704(a).) Similarly, the same can be said about Mr. Cartmill's tenant.

Real Property

Regulation 18704.2(a) states, in pertinent part, 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 Mr. Cartmill's property is exactly 517.1 feet from the proposed site. Consequently, his property is considered indirectly involved in the decision

MATERIALITY

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material, depending on the nature of the interest and whether that interest is directly or indirectly involved in the agency's decision.

Business Entity and Source of Income

Regulation 18705.3 (c) sets forth the materiality standard for business entities that are indirectly involved in a governmental decision, including those that are sources of income. For

relatively small businesses, (those with annual net income of \$750,000 or less), which we assume applies to Mr. Cartmill's businesses, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that the governmental decision will increase/decrease the business entity's annual gross revenues by \$20,000 or more, result in the business entity incurring/avoiding additional expenses or reducing/eliminating existing expenses by \$5,000 or more in a fiscal year or increase/decrease the value of the business entity's assets by \$20,000 or more. (Regulation 18705.1(c)(4).)

Regulation 18705.2 provides the materiality standards applicable to real property, other than leaseholds, that is indirectly involved in a governmental decision. Regulation 18705.2(b)(1) provides:

“The financial effect of a governmental decision on real property which is indirectly involved in the 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 economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

“(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.”

If it is determined that a government decision may have a “material” financial effect on an official's interest, the next step in the analysis is determining whether it is “reasonably foreseeable” that the standard will be met. (Regulation 18700(b)(6).) For a government decision to have a “reasonably foreseeable” material financial effect on an official's interest, the effect 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.)

Business Entities and Source of Income: You have not provided facts that suggest any financial effects will be caused by the relocation decision on Mr. Cartmill's businesses or his tenants.

Real Property: We have previously advised that, for the purposes of application of Regulation 18705.2(b), the presumption that an indirectly involved property will not be materially affected is rebutted only if the governmental decision will have a clearly distinguishable and substantial financial effect on an official's property. (*Yang* Advice Letter, No. I-06-198 and *Berger* Advice Letter, No. A-05-054.) In adopting Regulation 18705.2(b), the Commission a rule of thumb that "beyond the 500 foot range, participation would be allowed unless something about the decision makes the official's property 'stick out like a sore thumb.'" (Commission Minutes of Meeting, October 6, 2000, at page 4; *Dugard* Advice Letter, No. I-10-200.)

The facts you have submitted indicate that the District has "no data" indicating whether its relocation to the proposed new site will have an effect on surrounding commercial property values (or, presumably, on the rental values of those properties). The facts also indicate that it would be speculative to attempt to assess these values. Based on these facts, we therefore presume that neither the District nor Mr. Cartmill are aware of any facts that would make the District's relocation have a clearly distinguishable and substantial financial effect on Mr. Cartmill's property or its rental value. Accordingly, we conclude on the basis of these facts that, for the purposes of the Act's conflict of interest provisions, it is not reasonably foreseeable that the District's relocation would have a material financial effect on Mr. Cartmill's interests.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl