

April 3, 2015

Gregory J. Rubens, Esq.
City Attorney, City of San Carlos
1001 Laurel Street, Suite A
San Carlos, CA 94070

Re: Your Request for Advice
Our File No. A-15-034

Dear Mr. Rubens:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Moreover, this letter is based on the facts presented. The Fair Political Practices 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 you from advising the city on a bond measure where one of the stated purposes of the bond is to purchase and develop vacant property (the "Vacant Property" or "property") as a park and your residence is located within 500 feet of the property?

CONCLUSION

Yes. Governmental decisions relating to the bond measure will have a reasonably foreseeable material financial effect on your property.

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 the contract city attorney for the City of San Carlos. The city is exploring the possibility of placing on the ballot a measure approving the issuance of bonds to be used, in part, to purchase the Vacant Property. The bonds will be re-paid from taxes imposed on all property owners in the city. The city intends to convert the property to a city park. The city is also negotiating with the property owner to obtain an option to purchase the property, should the bond measure pass. You have determined that you have a conflict of interest in governmental decisions relating to the purchase of the property. You ask whether you may advise the city on the bond measure on the basis that the financial effect of the measure on your interests is indistinguishable from its effect on the interests of all property owners in the city.

ANALYSIS

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 governmental decision, within the meaning of the Act, when it is “reasonably foreseeable” that the governmental decision will have a material financial effect on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).)

You have determined that you have a conflict of interest in decisions involving the purchase of the Vacant Property. You ask whether you may nonetheless advise the city on matters involving the bond measure.

You indicate that the bond proceeds will be used to purchase and develop the Vacant Property as a park. The property is located within 500 feet of your home. You have suggested that, although you have a conflict of interest in decisions involving the Vacant Property, you may nevertheless advise the city on matters involving the bond measure because the bond measure would affect you in the same way it would affect all other property owners. This is based on the “public generally” exception whereby an official may participate in a decision even if the decision will have a reasonably foreseeable material financial effect on his or her interest, if the financial effect of the decision on the official’s interest is indistinguishable from its effect on the public generally. (Section 87103; Regulation 18707.)

This argument presupposes that the only effect of the bond measure will be to impose a tax on property owners. However, the tax consequences are not the only effects of the bond measure. If the bond measure passes, the proceeds will be used to finance the purchase and development of the property located within 500 feet of your home. Therefore, decisions relating to the bonds appear to be interrelated to the purchase decision for which you have a conflict of interest.

Under certain circumstances, large and complex decisions may be divided into separate decisions so that an official who has a disqualifying interest in one component of the decision

may still participate as to other components in which the official has no financial interest. (Regulation 18709.) However, certain decisions are too interrelated to be considered separately. In that event, a public official's conflict of interest on one decision will be disqualifying for the other decision as well. Decisions are inextricably interrelated when, among other things, the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision." (Regulation 18709(b).) Thus, a public official must disqualify himself or herself if the result of one decision will effectively determine or nullify the result of another.

Under your facts, the purchase and development of the Vacant Property is contingent upon the passage of the bond measure. In other words, decisions regarding the bonds will determine the result of decisions to purchase and develop the property. Accordingly, because you have a conflict of interest in decisions to purchase and develop the property, you also have a conflict of interest in decisions regarding the bonds.

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

Sincerely,

John W. Wallace
Assistant General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl