



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 23, 2015

Richard Mendelsohn
Public Art Advisory Committee
Town of Windsor
9248 Eastside Road
Healdsburg, CA 95448

Re: Your Request for Advice
Our File No. A-15-118

Dear Mr. Mendelsohn:

This letter responds to your request for advice as a member of the Town of Windsor Public Art Advisory Committee regarding your duties under 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.

QUESTIONS

1. May you participate in future discussions and decisions regarding the development of guidelines and criteria for the selection of art at the Roundabout Location near property that you lease to a commercial tenant, Multi-Contact?

2. Assuming you recuse yourself from future discussions and decisions regarding the development of selection guidelines and criteria, once those decisions are made, may you participate in the actual selection of a specific piece of art to be installed at the Roundabout Location?

CONCLUSIONS

1 and 2. Because the decisions will not financially affect any of your interests (your property, your business or your source of income), you do not have a conflict of interest.

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

Earlier this year, the Town of Windsor created the Public Art Advisory Committee (“PAAC”) to advise the Town Council on the installation of public art within the Town, including the scope and location of such installations. The PAAC is composed of one Councilmember, one Town Parks and Recreation Commissioner, and five citizens appointed at large by the Town Council for four-year terms. Although the PAAC is recently created and technically only an advisory committee, the Town considers it to be a decision-making body, and the Town treats PAAC members as public officials.

The PAAC is currently in the process of soliciting art to install at various sites throughout the Town. The PAAC will create different guidelines for the selection and installation of art for each installation site. For example, the size of the art may differ from site to site, and some sites may feature a permanent art installation, while others may feature rotating art installations.

The first location selected to be a site of an outdoor art installation is the center of a certain traffic roundabout located on Old Redwood Highway in the Town (“Roundabout Location”). The PAAC plans to select a temporary piece of art to be installed at this location for an initial 24 month placement. At the conclusion of the 24 month period the PAAC will then decide whether to make that piece of art into a permanent installation, select another temporary art installation, or select a different piece of art for a permanent installation. The PAAC will pay the selected artist a stipend of \$2,000. The PAAC will publish this information, and other criteria still to be decided, publically at some point in the future and will solicit proposals from artists. The PAAC will then select one of these art proposals to recommend to the Town Council as the work of art that should be installed at the Roundabout Location.

You are a citizen member of the Public Art Advisory Committee appointed at large by the Town Council. You also own commercial property located at 100 Market Street in Windsor. The property, which is 42,000 square feet, is fully leased to one tenant, Multi-Contact.² They are in the solar industry and have been in this location for almost 5 years and have a lease for another 10 years. The property is in close proximity to the center of the Roundabout Location.

You do not operate any business out of this property, but receive rent from Multi-Contact. As of this point, you have recused yourself from discussions and decisions involving the selection of the Roundabout Location as a site for the installation of public art and subsequent discussions regarding the development of the guidelines and criteria for that site.

ANALYSIS

The Act’s conflict-of-interest provisions ensure that public officials “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).) Specifically, Section 87100 prohibits

² According to Multi-Contact’s website: “As a leading provider of electrical and electronic connectors, Multi-Contact offers innovative and safe quality products for power and data connection. The Multi-Contact product range includes interconnection systems for the most demanding applications in Aerospace, Medical, Robotics, Solar Energy, General Industry and Test & Measurement.”

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. Section 87103 defines a “financial interest” as follows:

“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,^[3] or on any of the following:

“(a) Any business entity in which the public official has a direct or indirect^[4] 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 [four hundred and sixty dollars (\$460)^{5]} 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.”

You have the following interests: (1) an interest in the real property that is leased to Multi-Contact (Section 87103(b)); (2) an interest in your business of leasing property (Sections 87103(a) and (d)); and an interest in Multi-Contact as a source of income. (Section 87103(c).)

³ A public official always has an interest in his or her personal finances. A governmental decision will have an effect on this interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. The financial effect is material if the official or the official’s immediate family member will receive a measurable financial benefit or loss from the decision. (Regulation 18702.5) Section 82029 defines “immediate family” as the spouse and dependent children.

⁴ “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.” (Section 87103.)

⁵ 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 Section 89503(f). The quoted provision above has been modified with the current figure.

*Foreseeability and Materiality;
Your Leasing Business and Multi-Contact as a Source of Income*

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. Regulation 18701 provides, in pertinent part, that a financial effect is presumed to be reasonably foreseeable if your interest is a named party in, or the subject of a proceeding. Neither your Leasing Business nor Multi-Contact is a named party in, or the subject of the proceeding in question. Thus, they are not explicitly involved in the decision.

However, even if your interests are not explicitly involved in the decision, the financial effect may still be reasonably foreseeable. Regulation 18701(b) provides:

“Financial Interest Not Explicitly Involved in Decision: A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.”

Nothing in your facts suggest that the placing of art in the roundabout adjacent to your property (and adjacent to the site at which Multi-Contact operates its business) would be the type of decision that one would anticipate will financially affect the value of your property business or the Multi-Contact's business. You noted that the existing lease to Multi-Contact will continue for 10 more years. The financial result (if any) cannot be expected absent extraordinary circumstances. Therefore, the decision will not have a foreseeable financial effect on your business or that of Multi-Contact.

*Foreseeability and Materiality;
Your Interest in Real Property*

Similarly, your real property interest is not explicitly involved in the decision. Your property interest would be considered explicitly involved in the decision if the decision involves:

- The issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract concerning the property;
- The adoption of or amendment to a general or specific plan, and the property is located within the proposed boundaries of the plan;
- Determination of the parcel's zoning or rezoning, annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries;
- Imposing, repealing, or modifying taxes, fees, or assessments that apply to the property;

- Authorization of the sale, purchase, or lease of the property;
- The issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on, that property;
- Construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision. (Regulation 18705.2.)

None of these factors apply to your facts. However, as we noted above, even if your interests are not explicitly involved in the decision, the financial effect may still be reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical.

Regulation 18702(a)(7)-(12) sets forth the standards for materiality as applied to your facts (we already concluded that the materiality factors in Regulation 18702.2(a)(1)-(6) do not apply in our foreseeability analysis above). The effect is material if the decision would:

“(7) Would change the development potential of the parcel of real property;

“(8) Would change the income producing potential of the parcel of real property. However, if the real property contains a business entity, including rental property, and the nature of the business entity remains unchanged, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead;

“(9) Would change the highest and best use of the parcel of real property in which the official has a financial interest;

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

“(11) Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18702.1. Notwithstanding this prohibition, the

Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property; or

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.”

The mere placement of art at the roundabout would not appear to trigger any of the criteria set forth above. Thus you would not have a conflict of interest.

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

Sincerely,

Hyla P. Wagner
General Counsel

/S/

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl