



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

May 13, 2020

Brian A. Pierik
Burke, Williams & Sorensen
2310 East Ponderosa Drive, Suite 25
Camarillo, CA 93010-4747
bpierik@bwslaw.com

Re: Your Request for Advice
Our File No. A-20-060

Dear Mr. Pierik:

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.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Under the Act, may Camarillo City Councilmember Charlotte Craven take part in various decisions involving the City’s trolley service, given that she owns rental properties located within 500 feet of a trolley stop?

CONCLUSION

Councilmember Craven may not take part in decisions pertaining to the City’s trolley service that would impact a stop within 500 feet of real property Councilmember Craven owns, given that the decision would have reasonably foreseeable, material financial effects on her real property interests. However, Councilmember Craven may be able to take part in certain trolley-

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.

related decisions if properly segmented from those which would have a reasonably foreseeable, material financial effect, as detailed below.

FACTS AS PRESENTED BY REQUESTER

The City of Camarillo (“City”) owns and operates a trolley service. The City receives contributions from others, including California State University at Channel Islands, to help fund the trolley service. The trolley is free for the use of the public and travels a route through the center of the City on surface streets to the north and south of the 101 Freeway. There are various trolley stops along the route. Councilmember Charlotte Craven recently sought general advice from the Commission, given that she owns rental properties within 500 feet of a trolley stop. (*Craven* Advice Letter, No. I-20-030.) She is now seeking more specific advice on whether she may take part in the City Council’s decision-making process, including discussion, for the following items related to the City’s trolley service:

- Trolley ridership numbers;
- Cost and funding sources to provide trolley service;
- Purchasing a new or used trolley versus continuing to lease a trolley vehicle from the contract service provider;
- Changing the trolley route and/or service schedule;
- Charging a fare for trolley rides, which have been free in the past; and
- The process to possibly terminate the trolley service if it is determined there is no unmet need after implementing a fare and documenting any complaints about the trolley service.

ANALYSIS

Section 87100 of the Act provides that “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Section 87103 further specifies that “[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 certain enumerated economic interests.

As pertinent to the facts provided, those economic interests include “[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more,” “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more,” and “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, [or] received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(b).) As noted in *Craven* Advice Letter, No. I-20-030, Councilmember Craven has potentially disqualifying economic interests in her rental properties as business entity and real property interests, as well as her tenants as source of income interests.

Councilmember Craven’s economic interests will be explicitly involved in governmental decisions pertaining to the City’s trolley, and a financial effect on her property foreseeable, if her

interests are a named party in, or the subject of, the proceedings including any decision that may affect the property as specified in Regulation 18702.2(a)(1) through (6). (Regulation 18701(a)). However, the nature of the decisions has not been clearly identified at this time. For example, it appears that the funding of the trolley is at issue based upon the facts provided. Under Regulation 18702.2(a)(3), a reasonably foreseeable financial effect on an official's property is material if the decision would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel. Accordingly, Councilmember Craven's property interest is explicitly involved in the decision and the financial effect reasonably foreseeable and material under applicable regulations, if a tax, fee, or assessment on her property is considered.

Additionally, even if her property interest is not explicitly involved, Councilmember Craven is disqualified from taking part in the decisions identified under the less stringent standards for property not explicitly involved in the decision. Regulation 18701(b) provides the standard for determining whether a financial effect is reasonably foreseeable when an official's economic interest is not explicitly involved in a decision. The regulation states, "[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."

With respect to governmental decisions involving the trolley and trolley stop near your properties, in general, the most relevant provision for determining whether the effect is material, even if the councilmember's interest is not explicitly involved, is Regulation 18702.2(a)(7). Under this regulation, "[t]he reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision . . . [i]nvolves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property."

Regulation 18702.2(a)(7) is implicated when a governmental decision would directly involve property located 500 feet or less from Councilmember Craven's rental properties. If the decision would affect the trolley stop within 500 feet from her rental properties, the decision would presumably have a material financial effect on her real property interests and, in the absence of clear and convincing evidence that the decision(s) would have no measurable impact, Councilmember Craven would be disqualified from taking part in the decision. With respect to the package of decisions concerning the trolley, it appears the decisions before the City include the termination of the trolley and changes to the trolley route both involve property within 500 feet. Additionally, no facts have been presented indicating that these decisions, which would potentially change the accessibility of public transportation options for current or future tenants, would have no measurable impact on Councilmember Craven's rental properties. Thus, Councilmember Craven may not take part in the package of decisions which would potentially determine whether to terminate the trolley service or alter the trolley route so as to affect the trolley stop near her properties.

In regard to the councilmember's interest in her business entity, Regulation 18702.1 provides, in relevant part, that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a

source of income to the official, is material where the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of the entity's annual gross revenues and at least \$10,000. (Regulations 18702.1(a)(2)(A)-(B), 18702.3(a)(4).) The reasonably foreseeable financial effect of a governmental decision on an official's business entity interest is also material where the decision may cause the entity to incur, avoid, reduce, or eliminate expenses equal to or greater than \$250,000, or one percent of the entity's annual gross revenues and at least \$2,500. (Regulation 18702.1(a)(3)(B).) However, because we have determined the councilmember is disqualified based upon her property interest it is unnecessary to further analyze disqualification based upon her business interest.²

Notwithstanding the fact that Councilmember Craven is generally disqualified from taking part in the package of decisions if it includes decisions to terminate the trolley service or alter the trolley route so as to affect the trolley stop near her properties, we note that the City may be able to segment other decisions regarding the trolley, thereby allowing the councilmember to take part in the decisions. Regulation 18706(a) provides that an agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all of the following conditions apply:

- (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated³ to the decision in which the official has a disqualifying financial interest;
- (2) The decision in which the official has a financial interest is segmented from the other decisions;
- (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

If the above conditions are met, Councilmember Craven may be able to take part in segmented trolley decisions that are relatively minor and do not implicate the termination of the service or route changes within 500 feet of the councilmember's rental properties. However, whether a decision may be segmented is a fact-based determination that can be made only on a case-by-case basis. If Councilmember Craven needs assistance regarding the segmentation of any particular decision once final decisions regarding the continuation of the trolley and its route have been made, the councilmember may wish to seek further advice at that time identifying the nature of the specific decision.

² Similarly, we do not analyze any potential effect on the councilmember's interest in tenants as a source of income. Regulation 18702.3 provides the standard for determining whether a reasonably foreseeable financial effect on an official's source of income is material. Among the instances in which such an effect will be considered material is where the decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by \$1,000 or more. (Regulation 18702.3(a)(2)(A).)

³ The term "inextricably interrelated" means the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

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

Sincerely,

Dave Bainbridge
General Counsel

Kevin Cornwall

By: Kevin Cornwall
Counsel, Legal Division

KMC:aja