



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 19, 2020

Shawn Hagerty
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-20-066

Dear Mr. Hagerty:

This letter responds to your request for advice on behalf of City of Santee City Councilmembers Ronn Hall and Rob McNelis 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.

QUESTIONS

Do the Act’s conflict of interest provisions prohibit:

- Councilmember Hall from taking part in governmental decisions relating to a proposed residential development in the Fanita Ranch area of the City of Santee (the “Fanita Ranch Project”) given that Councilmember Hall is the principal owner and operator of an insurance brokerage located in the City?
- Councilmember McNelis from taking part in those decisions given that he is employed by a retail mortgage lender which has originated home loans on real properties in recently constructed residential development projects in the City?

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

No. The Act's conflict of interest provisions do not prohibit Councilmember Hall or Councilmember McNelis from taking part in decisions relating to the Fanita Ranch Project based on the facts presented.

FACTS AS PRESENTED BY REQUESTER

Your firm serves as the City Attorney for the City of Santee, and you are the authorized representative of City Councilmembers Ronn Hall and Rob McNelis. The City encompasses 17 square miles and has a population of 58,000. A growing suburban community, the City has more than 20,000 households, nine public elementary and middle schools, two high schools, a small private college, and over 3,600 businesses which employ over 28,000 people. There is significant commercial development within the City, and a majority of the City's housing units are single-family dwellings. The City contains sizable areas of vacant land suitable for development.

The Fanita Ranch Project

The City is currently processing a development application for the Fanita Ranch Project, a master planned community in the Fanita Ranch area of the City. The Project would consist of up to 2,949 housing units with a school, or 3,008 units without a school, and up to 80,000 square feet of commercial uses, parks, open space, and agricultural uses. The Santee General Plan identifies Fanita Ranch as Planned Development. The applicant, HomeFed Fanita Rancho, LLC ("HomeFed"), and its wholly owned subsidiary, JWO Land, LLC, are proposing a General Plan Amendment and the designation of the Fanita Ranch Project Specific Plan.

The Fanita Ranch Project likely will not be completed until 2024-2026 given legal challenges and the permit and construction processes. You state that it is your understanding that HomeFed would use several different builders to construct and build out the Project, with each builder using its own mortgage companies for purchase financing.

Councilmember Hall

Councilmember Hall is the principal owner and operator of Ronn Hall Insurance & Notary Service ("Hall Insurance & Notary"), which is located in the City. The business serves as an insurance brokerage and offers the following lines of insurance: commercial, general liability, errors and omissions, director and officer, landlord rental units, business and fleet auto, special events, life, health, home, renters, auto, boat, motorcycle, trike, and recreational vehicle. The business also offers general contractor, planned unit developments, and homeowners association insurance, including new association conversions.

Ronn Hall Insurance & Notary's marketing is directed at realtors and escrow agents located outside of the City, and the business's current client base of approximately 800 individuals, most of whom reside outside the City. The business derived no customers from a previous residential development project consisting of 415 homes that was built in the City. And you state that Councilmember Hall plans to retire from the business before the Fanita Ranch Project is completed.

Councilmember McNelis

Councilmember McNelis is a market leader for Movement Mortgage (“Movement”), a retail mortgage lender. Councilmember McNelis works out of Movement’s branch located in the City, and he manages the inland corridor and originates loans for the business. Movement finances residential homes with conventional, government-backed, and portfolio (private fund) loan products. Movement compensates Councilmember McNelis on a commission basis for his own production and at a lower rate for the production of those in his market group. Councilmember McNelis holds an active Mortgage Loan Originators License and Nationwide Multiple Licensing System identification which allow him to originate loans only on behalf of Movement. Movement has no builder accounts in Councilmember McNelis’s market. On June 11, 2020, you confirmed that neither Councilmember McNelis nor his spouse have any ownership interest in Movement.

Councilmember McNelis receives all of his business from real estate agents, past clients, friends, and family, and he has not received any business from any of the builders or developers of any of the housing projects recently built in the City. Councilmember McNelis’s Movement branch closed two purchase money loans from the Braverman Project, a modest residential development project in the City which opened in early 2017, but both were referred by the selling agent who was not an employee of the project developer. Councilmember McNelis also originated one loan in the Weston Development, a residential development project in the City, referred by an independent agent who did not work for the developer. Councilmember McNelis has refinanced two homes in both developments, but those transactions were not related to the builders or developers either.

ANALYSIS

Sections 87100 and 87103 of the Act prohibit a public official from making, participating in making, or attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests distinguishable from the decision’s effect on the public generally. Section 87103 identifies an official’s financial interests that may give rise to a disqualifying conflict of interest under the Act.

Based on the facts presented, Councilmember Hall has the following financial interests with respect to decisions relating to the Fanita Ranch Project:

- A business interest in Ronn Hall Insurance & Notary because he is the owner and operator of that business. (See Section 87103(d).)
- A source of income interest in Ronn Hall Insurance & Notary Service assuming he has received \$500 or more from that business within the 12 months prior to the decision. (See Section 87103(c).)
- Because Councilmember Hall owns a 10-percent or greater interest in Ronn Hall Insurance & Notary, he would have a source of income interest in any client of that business if the he has

received \$500 or more in income from that client within the 12 months prior to the decision.² (See Sections 82030(a) and 87103(c).)

- An interest in his personal finances or those of immediate family members. (See Section 87103.)

And Councilmember McNelis has the following interests with respect to those decisions:

- A business interest in Movement because he holds a management position with that business. (See Section 87103(d).)
- A source of income interest in Movement assuming he has received \$500 or more in income from that business within the 12 months prior the decision. (See Section 87103(c).)
- An interest in his personal finances or those of immediate family members. (See Section 87103.)

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest. In addition, an official's business interest is explicitly involved in any decision affecting the business as described in Regulation 18702.1(a)(1), and an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Regulation 18702.1 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's financial interest in a business.³ As pertinent to the facts

² We do not further analyze Councilmember Hall's potential source of income interests in clients of Ronn Hall Insurance & Notary from whom he has received \$500 or more within the 12 months prior to decisions relating to the Fanita Ranch Project because the facts presented provide no indication that any particular client of that business would be financially affected by those decisions. We caution, however, that you should seek further advice if there is any indication that those decisions may have a disqualifying effect on such a client.

³ Regulation 18702.3 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's source of income interest, and subdivision (b)(4) of that regulation provides that such an effect on a source of income interest in a business is material if the business will be financially affected under the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's business interest set forth in Regulation 18702.1. Regulation 18702.5(a) sets forth the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's interest in his or her personal finances, and Regulation

presented, that regulation provides that such an effect on an official's not explicitly involved business interest is material if the decision may:

- Result in an increase or decrease of the business's annual gross revenues, or the value of the business's assets or liabilities, in an amount equal to or more than: (A) \$1,000,000; or (B) five percent of the business's annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)
- Cause the business to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: (A) \$250,000; or (B) one percent of the business's annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

Ronn Hall Insurance & Notary

Ronn Hall Insurance & Notary has a client base of approximately 800 individuals, most of whom reside outside the City. When a prior residential development project consisting of 415 homes was built in the City, the business derived no new customers from that development. You state that Councilmember Hall intends to retire from the business before the Fanita Ranch Project would be completed, and that the Fanita Ranch Project likely will not be completed until 2024-2026, more than three years from now, given legal challenges and the permit and construction processes.

Because Ronn Hall Insurance & Notary's marketing is directed at realtors and escrow agents located outside of the City, there is no indication the business will incur additional expenses to market its services to Fanita Ranch Project residents. The facts presented provide no indication of any other expenses the business may incur or avoid due to decisions relating to the Project.

Therefore, based on the facts presented, it is not reasonably foreseeable that decisions relating to the Fanita Ranch Project would have a material financial effect on Ronn Hall Insurance & Notary under Regulation 18702.1(a)(2) or (3).

Movement

Movement is a retail mortgage lender, Movement has no builder accounts in Councilmember McNelis's market, and Councilmember McNelis has not received any business from any of the builders or developers of any of the housing projects recently built in the City. You state that HomeFed, the Fanita Ranch Project applicant, would use several different builders to construct and build out the Project, with each builder using its own mortgage companies for purchase financing.

Councilmember McNelis's Movement branch closed two purchase money loans from the Braverman Project, Councilmember McNelis originated one loan from the Weston Development,

18702.5(c) provides that if the decision would have a reasonably foreseeable financial effect on the official's business interest, any related effect on the official's personal finances is not considered separately, and the effect is only analyzed under Regulation 18702.1. Therefore, we apply Regulation 18702.1 to determine whether the Act's conflict of interest provisions prohibit Councilmember Hall or Councilmember McNelis from taking part in decisions relating to the Fanita Ranch Project.

and he has refinanced two homes in both developments. However, none of these transactions were related to the builders or developers of the projects.

Based on the facts presented, it does not appear that Movement would receive business from any of the builders or developers associated with the Fanita Ranch Project. Although Movement may receive business from borrowers financing Fanita Ranch Project homes, the amount of business Councilmember McNelis has generated from previous residential development projects within the City does not indicate that decisions relating to the Fanita Ranch Project would have a material financial effect on Movement under Regulation 18702.1(a)(2).

While Movement may incur additional expenses to advertise its services to potential Fanita Ranch Project homeowners, the facts presented provide no indication that those potential expenses or any others would have a material financial effect on Movement's expenses under Regulation 18702.1(a)(3).

Therefore, the Act's conflict of interest provisions do not prohibit Councilmember Hall or Councilmember McNelis from taking part in decisions relating to the Fanita Ranch Project based on the facts presented.⁴

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

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

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⁴ This advice is limited to the facts presented. You should seek additional advice if new information provides any indication that decisions relating to the Fanita Ranch Project may have a disqualifying effect on one or more of Councilmembers Hall or McNelis's respective financial interests.