



FAIR POLITICAL PRACTICES COMMISSION

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March 25, 2010

Mr. Frank Schiavone

REDACTED

RE: **Warning Letter**
FPPC No. 07/748, Frank Schiavone

Dear Mr. Schiavone:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, and following. As you may be aware, the Commission received a complaint against you alleging violations of conflict of interest and reporting provisions of the Act. Specifically, the complaint alleges that you made and participated in making governmental decisions that had a reasonably foreseeable material financial effect on your real property interests while serving as a city council member for the City of Riverside, failed to report certain real property interests, and failed to file a timely Leaving Office Statement of Economic Interests. The Commission has decided to close this case with this warning letter.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official's economic interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest.¹ (See Regulation 18700.)

Under Regulation 18704.2 (b), certain decisions pertaining to land use regulations will indirectly effect an official's real property interest. It states: notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a

¹ The additional two steps of the analysis - whether the public generally exception applies and whether the individual is legally required to participate in the governmental decision - are inapplicable to this matter.

governmental decision, but is instead indirectly involved if: (1) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under Section 18705.2(b).

As city council member for the City of Riverside, you were a public official under the Act at time of the events relevant to the complaint. (Sections 82048 and 87200.) By voting and participating in discussions during several city council meetings in 2006, you made and participated in making governmental decisions. According to assessor's office records, you had a financial interest in a parcel of undeveloped real property in the vicinity of Bradley Street. (the "Bradley Street Property.") Assessor's Parcel No. 242-170-005-9, in the City of Riverside, at the time of the decisions. In this matter, the allegations in the complaint turn on whether it is reasonably foreseeable that a material financial effect on your economic interests would result from your votes and participation in discussions regarding certain governmental decisions.

City council minutes for the City of Riverside show that you voted and participated in discussions in 2006 to enact ordinances that would revise subdivision requirements in the municipal code to allow the use of private streets in subdivisions, and to allow the drawing of lot lines to the center of private streets for the purposes of determining the required minimum lot size. These amendments to land use regulations are applicable to all properties within an entire zoning category, and indirectly affect your real property interests. Based on our investigation into these matters, there is insufficient evidence to establish that the financial effects of the governmental decisions you made and participated in making would cause a reasonably foreseeable material financial effect on your economic interests given the particular nature of the decisions.

The complaint also alleged that you failed to disclose an interest in the "Bradley Street Property" on your Statement of Economic Interests ("SEI") for calendar year 2005, that you did not properly disclose this real property interest on subsequent SEIs, did not include an acquisition date for the property when you did report it, and that you did not timely file a Leaving Office SEI. Section 87204 of the Government Code requires designated officials to file a Leaving Office Statement of Economic Interests within 30 days of leaving office. You left office on June 22, 2009. The Riverside City Clerk's Office received your Leaving Office SEI on August 17, 2009. Your actions violated the Act because you filed your Leaving Office SEI 26 days after the filing deadline.

You must immediately file an amended 2006 SEI, which includes the date you acquired an interest in the "Bradley Street Property," Assessor's Parcel No. 242-170-005-9, with the City of Riverside.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED

Zachary W. Norton
Commission Counsel
Enforcement Division