



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
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August 17, 2009

Mr. Gary Silbiger
REDACTED

**RE: Warning Letter
FPPC No. 03/0883; Gary Silbiger**

Dear Mr. Silbiger:

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 was investigating whether you were in violation of the conflict of interest provisions of the Act because you attempted to influence the Culver City Council's decision on a matter in which you had a disqualifying financial interest; that you failed to identify your financial interest on the record at the Council meeting, and that you failed to recuse yourself from the discussion of the matter in violation of Sections 87100 and 87105 of the Act.

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, "public officials, whether elected or appointed, 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, subdivision (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.¹

¹ Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

First, the individual must be a public official as defined by the Act. Section 82048 defines "public official" to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.3, subdivision (a), a public official "is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempt to influence, any member, officer, employee or consultant of the agency."

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (b), a public official has a financial interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. Pursuant to Section 82035, real property is deemed to be within the jurisdiction with respect to a local government agency if the property, or any part of the property, is located within or not more than two miles outside of the boundaries of the jurisdiction, or within two miles of any land owned or used by the local governmental agency.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.2, subdivision (a)(1), real property in which a public official has an economic interest is directly involved in a governmental decision if "the real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision." Under Regulation 18704.2, subdivision (d), if the real property is "directly involved" in a governmental decision, the materiality standards in regulation 18705.2, subdivision (a) apply.

Fifth, under Regulation 18705.2, subdivision (a), any financial effect of a governmental decision on the public official's real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

Whether the financial consequences of a decision are "reasonably foreseeable" at the time of a governmental decision depends on the facts of each particular case. An effect of a decision on real property is considered "reasonably foreseeable" if there is a substantial likelihood that it will affect property values, either positively or negatively, or will alter or change the use of the property in some manner. Certainty of the effect is not required.

However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

We find that you violated the Act and have decided to close this case with a warning letter. Specifically, you violated the Act by participating in the discussion of the Ballona Creek Concept Plan at the December 8, 2003 meeting of the Culver City Council, of which you are a member. You owned property at 4436 Jasmine Avenue in Culver City at that time, which was within 500 feet of the Ballona Creek Concept Plan. Additionally, you failed to disclose this financial interest at the December 8, 2003 meeting.

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 future conduct or newly discovered information. 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.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act and provides guidance regarding filing obligations over the telephone and through written advice. Please call the Commission's Technical Assistance Division at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Sincerely,



Gary Winuk, Chief
Enforcement Division