



California Fair Political Practices Commission

April 14, 1989

Linda S. Nunn
Deputy City Clerk
8353 Sierra Avenue
P. O. Box 518
Fontana, CA 92334

Re: Your Request for Informal Assistance
Our File No. I-89-059

Dear Ms. Nunn:

You have requested advice on behalf of Nathan A. Simon, Mayor of the City of Fontana, concerning his responsibilities under the Political Reform Act (the "Act").^{1/} Because your request is more in the nature of a general inquiry than a request for advice related to a specific incident, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

Mayor Simon owns a parcel of undeveloped land within the city's downtown redevelopment area. Does the mayor's intent to improve this parcel create a conflict of interest for the mayor?

CONCLUSION

Mayor Simon's decision to develop a parcel of land he owns within the city's downtown redevelopment area is not a governmental decision and thus creates no conflict of interest. However, Mayor Simon should abstain from participating in decisions related to the issuance, denial, or revocation of permits or

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114, Regulation 18329(c)(3).)

Linda S. Nunn
April 14, 1989
Page 2

other land use entitlements related to the improvement of his property. Moreover, Mayor Simon is required to disqualify himself from participating in decisions to develop nearby property or to make significant changes in the redevelopment plan.

FACTS

Mayor Simon owns an undeveloped parcel of land in the city's downtown redevelopment area. The mayor intends to erect a commercial building upon this property in the near future.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. The mayor is a public official. (Section 82048.)

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, different from its effect on the general public, on real property in which the official has an interest worth \$1,000 or more. (Section 87103(b).)

Mayor Simon owns real property valued, presumably, at \$1,000 or more. Thus, he is disqualified from participating in any governmental decision which will foreseeably and materially affect his real property. (Section 87103(b).) The Commission has determined that there are several situations in which a governmental decision will materially affect an official's real property interest. For example, the effect of a decision on real property is material if the decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property. (Regulation 18702.1(a)(3)(B), copy enclosed.)

Under the facts as presented, the mayor intends to develop property located within the redevelopment project. The mayor's decision to develop his property is not a governmental decision and thus creates no conflict of interest. Conversely, the issuance, denial, or revocation of building permits, approval of plans, and other land use entitlements are governmental decisions and the mayor is required to abstain from participating in those decisions which directly affect the use of his property.

There also may be decisions concerning the redevelopment area which would foreseeably and materially affect the mayor's real property and thus require his disqualification. An official who owns real property in a redevelopment area is required to disqualify himself from participating in decisions to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the

Linda S. Nunn
April 14, 1989
Page 3

environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions. (Regulation 18702.1(a)(3)(D), copy enclosed.) Thus, the mayor need only disqualify himself from decisions pertaining to the redevelopment area when said decisions are major ones and involve establishing or amending the redevelopment plan. (See Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App. 3d 983; Regulation 18702.1(a)(3)(D).) The mayor's decision to improve his real property within the redevelopment area has no impact on the existing redevelopment plan and thus his decision does not create a conflict of interest for the mayor under the Act.

Additionally, the mayor may have to disqualify himself from participating in governmental decisions affecting property near the property he owns. As a general rule, this applies only to properties located within a 2,500 foot radius of his property. (Regulation 18702.3, copy enclosed.)

In brief, the mayor's decision to improve his real property does not constitute a governmental decision and thus creates no conflict of interest. Conversely, the mayor is required to disqualify himself from participating in decisions related to the issuance of building permits, plan approval or other land use entitlements which may be necessary for the successful completion of his building. In addition, the mayor also may be disqualified from significant changes in the redevelopment plan and from decisions concerning development of nearby property.

If you have any further questions related to this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Blanca M. Breeze

Counsel, Legal Division

NATHAN A. SIMON
MAYOR
GARY E. BOYLES
DONALD F. DAY
CHARLES A. KOEHLER
WILLIAM KRAGNESS
COUNCIL MEMBERS

JOHN O'SULLIVAN
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City of Fontana
CALIFORNIA

PATRICIA M. MURRAY
CITY CLERK
RON HIBBLE
CITY TREASURER

January 25, 1989

California Fair Political
Practices Commission
428 J. Street, Ste. 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Sirs:

The Fontana City Council has directed me to obtain your opinion of the legalities involved with the ownership of Redevelopment property by our Mayor Simon. He intends to develop this property in the near future and Council's questioning if this may be a Conflict of Interest.

A reply at your earliest convenience would be greatly appreciated.

Sincerely,

Linda S. Nunn
Linda S. Nunn
Deputy City Clerk

LSN:vm

Enclosure

cc: City Manager



California Fair Political Practices Commission

January 30, 1989

Linda S. Nunn
Deputy City Clerk
P.O. Box 518
Fontana, CA 92334

Re: Letter No. 89-059

Dear Ms. Nunn:

Your letter requesting advice under the Political Reform Act was received on January 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *by Ked*

DMG:plh