



California Fair Political Practices Commission

June 17, 1994

Steven L. Dorsey
Richards, Watson & Gershon
Thirty-eighth Floor
333 South Hope Street
Los Angeles, CA 90071-1469

Re: Your Request for Advice
Our File No. A-94-160

Dear Mr. Dorsey:

This is in response to your request for advice concerning the responsibilities of Norwalk City Councilmember Gordon Stefenhagen under the conflict-of-interest provisions of the Political Reform Act.¹

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

May Councilmember Stefenhagen participate in decisions concerning a development that will include a 24 screen, 4,500 seat theater complex, a two-story state office building, five restaurants and two multi-story parking structures?

CONCLUSION

Councilmember Stefenhagen may participate in decisions concerning the development provided the decisions will not have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on Councilmember Stefenhagen's real property interests or on his

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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

sources of income.²

FACTS

On April 5, 1994, the Norwalk Redevelopment Agency ("Agency") approved entering into a disposition and development agreement with Highridge Partners, Ltd. ("Highridge").

Pursuant to the agreement, Highridge will lease property from the Agency and construct a 24 screen, 4,500 seat movie theater complex, a two-story state office building and five restaurants. The Agency is obligated to construct two multistory parking structures. One of the parking structures will serve the state office building and the other will serve the Norwalk Superior Court and be constructed on county property immediately adjacent to the proposed theater. Both parking structures will also be available for use by Norwalk Entertainment Center patrons.

The Agency, the city and the Civic Center Authority, the legal entity that owns the Norwalk City Hall, will be required in the future to take numerous actions to implement this project, including processing a development agreement, an amendment to the existing specific plan and a tentative subdivision map relating to the project. In addition, one or more of these entities will issue bonds to finance the parking facilities and enter into a lease with the County of Los Angeles for the courthouse parking facility. As a member of the city council, Councilmember Stefenhagen automatically serves as a member of the Agency and the Authority.

Councilmember Stefenhagen owns two separate multi-family units that are near the development. Both are further than 300, but closer than 2,500 feet from the site. One of these parcels is developed with three dwelling units and the other is developed with two dwelling units. Councilmember Stefenhagen lives in one of these units and leases the other four.

Councilmember Stefenhagen is a licensed real estate broker who works as an independent contractor for Norwalk Realty. Councilmember Stefenhagen manages fourteen rental units for Norwalk Realty located between 300 and 2,500 feet from the proposed project. As part of his management services, Councilmember Stefenhagen will assist in locating a tenant, if a vacancy occurs in a unit he is managing.

Norwalk Realty receives between 5 percent and 8 percent of the gross monthly rent from the rental units that Councilmember Stefenhagen manages. The firm also receives a one-time fee of the

² Please see the discussion below and the enclosed regulations to determine whether there is a material financial effect on Councilmember Stefenhagen's real property interests and on his sources of income.

equivalent of 5-8 percent of the security deposit each time a unit is leased as compensation for leasing the unit.

Norwalk Realty pays Councilmember Stefenhagen 75 percent of the revenues it receives for his services in managing the units for Norwalk Realty, less Norwalk Realty's utilities costs, office rent, secretarial salaries and other overhead costs attributable to the property management services. After these costs are deducted, Norwalk Realty's payments to Councilmember Stefenhagen equal approximately 50 percent of the income Norwalk Realty receives for the property Councilmember Stefenhagen manages.

By letter dated May 31, 1994, you provided the following additional information:

1. Property owners sometimes contact Councilmember Stefenhagen directly about management services and other times contact Norwalk Realty without knowledge of Councilmember Stefenhagen. Regardless of the method of the initial contact, the property management contracts are entered into by the landlords and EXLNT Property Management, a division of Norwalk Realty, and never by Councilmember Stefenhagen.
2. The property management agreements can be terminated by Norwalk Realty or the property owners on 30 days notice.
3. The property management agreements specify the payment arrangement between Norwalk Realty and the building owners.
4. The contract between Councilmember Stefenhagen and Norwalk Realty provides the method by which he will be compensated.
5. The leases for the units Councilmember Stefenhagen manages are on a month-to-month basis.
6. The leases for the units Councilmember Stefenhagen owns are on a month-to-month basis.

The planning commission recently approved a development agreement for the Norwalk Entertainment Center complex. This agreement will be presented to the Norwalk City Council at the June 21, 1994, meeting.

ANALYSIS

Section 87100 provides that no public official at any level of state or local government shall make, participate in making, or in any way attempt 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.

Section 87103 provides in relevant part:

An 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 or a member of his or her immediate family or on:

* * *

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Councilmember Stefenhagen is a public official. He has an ownership interest in real property worth more than \$1,000 by virtue of his ownership of the two parcels of property. The tenants of the four units are sources of income to Councilmember Stefenhagen, presumably of more than \$250 in the previous 12 months.

In addition, Councilmember Stefenhagen works as an independent contractor for Norwalk Realty, providing management services for fourteen rental units. You have indicated that some of the owners of these fourteen units seeking management services may have contacted Norwalk Realty directly, whereas others may have contacted Councilmember Stefenhagen for management services. Nevertheless, in each case the property management contract is entered into between the property owner and EXLNT Property Management, a division of Norwalk Realty; Norwalk Realty receives the fees for the management services. As a result of Norwalk Realty's contract with Councilmember Stefenhagen, Norwalk Realty is obligated to pay Councilmember Stefenhagen 75 percent of the revenues it receives for his services in managing the 14 units, less certain expenses incurred by Norwalk Realty.

Councilmember Stefenhagen's situation is somewhat analogous to that of a real estate agent who works for a brokerage business entity selling homes under the auspices of the brokerage business entity; the real estate agent may be the listing agent in some cases and may also sell homes listed by other agents of the brokerage business entity. Generally, in both cases, upon the

sale of a property, the brokerage business entity becomes obligated to pay to the real estate agent a portion of the commission it receives. In Regulation 18704.3(c)(3), the Commission concluded that the brokerage business entity as well as the person the agent represented in the transaction are sources of income to the real estate agent.

Although not directly applicable, it would seem logical to apply the rationale embodied in Regulation 18704.3(c)(3) to Councilmember Stefenhagen's situation. As a manager of the units for Norwalk Realty Councilmember Stefenhagen is representing the interests of Norwalk Realty as well as the interests of the owners of the fourteen units. Therefore, we conclude that Norwalk Realty as well as the owners of the units Councilmember Stefenhagen is managing are sources of income to Councilmember Stefenhagen. Accordingly, the full gross value of the income received for the management services is attributed to each source of income.

As noted above, Councilmember Stefenhagen is disqualified from making, participating in making, or attempting to influence any governmental decision if the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on Councilmember Stefenhagen, his real property interest and his sources of income.

A. Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. To be foreseeable, the effect of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817; In re Thorner (1975) 1 FPPC Ops. 198.) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

In the present case it is reasonably foreseeable that the development of a 24 screen, 4,500 seat movie theatre complex, the two-story office building, the five restaurants and the two multi-story parking structures will have a financial impact on the surrounding areas. Therefore, it is reasonably foreseeable that decisions related to such development will have a financial effect on the properties owned or managed by Councilmember Stefenhagen.

B. Material Financial Effect

Regulation 18702, et seq. sets forth the guidelines for determining whether an official's economic interest in a decision is materially affected by a decision. If the official's economic interest is directly involved in the decision, then Regulation 18702.1 (copy enclosed) applies to determine materiality. On the other hand, if the official's economic interest is indirectly affected by the decision, then Regulations 18702.2-18702.6 (copies

enclosed) would apply to determine whether the effect of the decision is material.

1. Councilmember Stefenhagen's Parcels of Property

In the present case, Councilmember Stefenhagen's economic interests include his real property interest in the two adjacent parcels of property developed with the five dwelling units. Regulation 18702.3 would apply to determine whether the effect of the decision will be material. Regulation 18702.3(a)(3) states in relevant part:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if ...:

* * *

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Thus, Regulation 18702.3(a)(3) would apply to determine whether the effect of a decision on Councilmember Stefenhagen's real property interests is material. It should be noted that the effect of a decision will be deemed to be material if the total financial effect on both parcels exceeds the threshold levels described in Regulation 18702.3(a)(3).

2. Councilmember Stefenhagen's Sources of Income

Councilmember Stefenhagen's tenants, Norwalk Realty and the owners of the fourteen units Councilmember Stefenhagen manages are all sources of income to Councilmember Stefenhagen. Accordingly, Councilmember Stefenhagen is disqualified if the decision will have a material financial effect on these sources of income. If the source of income is an individual, Regulation 18702.6 applies to determine whether the effect of such a decision is material. If the source of income is a business entity, Regulation 18702.2 would apply to determine whether the effect of such a decision is material.

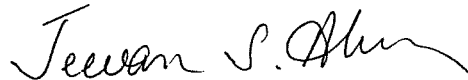
C. Public Generally

Even if the effect of a decision on Councilmember Stefenhagen or one of his economic interests is material, Councilmember Stefenhagen is not disqualified from participating in the decision if the decision will affect a significant segment of the public in substantially the same manner as it will affect Councilmember Stefenhagen's economic interest. Regulation 18703 (copy enclosed) provides the general guidelines for determining whether the effect of a decision is distinguishable from its effect on the public generally.

I trust the above analysis has responded to your questions. Should you have any further questions regarding this matter, please feel free to contact me at 916/322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

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