



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 9, 2021

Jeffrey Ballinger
City Attorney
BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Informal Assistance
Our File No. I-21-044

Dear Mr. Ballinger:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your question seeks general guidance and is not limited to a specific governmental decision, we are treating your request as one for informal assistance.² 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.

QUESTION

Do the Act’s conflict of interest provisions prohibit the Councilmember Donna Griffith from taking part in decisions relating to the Indian Wells Golf Resort, which is located within 500 feet of her residence?

CONCLUSION

The Act generally prohibits Councilmember Griffith from taking part in decisions relating to the Golf Resort within 500 feet of her residence. While she may be able to participate in decisions relating to specific renovations or the general operations of the Golf Resort, so long as they are not inextricably interrelated to decisions that relate to the course as a whole, this is a determination that is factually dependent on the specific nature of the decision and could only be made on a case-by-

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.

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).)

case basis. Councilmember Griffith may wish to seek additional assistance prior to taking part in any decisions related to the Golf Course once the nature of the decision can be identified.

FACTS AS PRESENTED BY REQUESTER

Your firm serves as the City Attorney for the City of Indian Wells (“City”) and you seek this advice on behalf of City Councilmember Donna Griffith.

The Indian Wells Golf Resort is a municipal golf course operated by the City, and consists of two golf courses, a pro shop, a restaurant, and a “Shots in the Night” hi-tech golf putting game. There are no memberships available for the Golf Resort. A City discount card is available for purchase by all City residents for the price of \$50, and includes discounts on rounds of golf, pro shop items, and meals at the Golf Resort, as well as discounts at other restaurants in the City and events at the Indian Wells Tennis Garden. The Golf Resort also offers discounts to guests of the nearby hotels.

The City has issued a Request for Proposals for a consultant to develop a Master Plan for the Golf Resort. The City Council will soon vote on the award of a contract to the selected consultant, and then ultimately, on the adoption of the Master Plan, and possibly the approval of any proposed renovation. In addition, because the Golf Resort is a municipal facility, from time to time, the City Council may consider decisions related to the operation of the Golf Resort, such as decisions regarding certain fees, the hours of operation, or the tee time reservation process.

Councilmember Griffith owns her personal residence, a single-family home that is located approximately 331 feet from the Golf Resort property when measured on a map in a direct line. However, the shortest driving distance from Councilmember’s residence to the entrance of the Golf Resort is 5,140 feet. The Councilmember’s residence is separated from the Golf Resort by a street, a sidewalk and landscaped area, Highway 111, and then another sidewalk and landscaped area. The Golf Resort is not visible from the Councilmember’s residence. Councilmember Griffith, like many other City residents, plays golf at the Golf Resort from time to time and has purchased a City discount card.

It is expected that in the future the City Council will consider decisions regarding the adoption of a Master Plan for the Golf Resort, the potential renovation of the Golf Resort, and the general operation of the Golf Resort.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “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, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests, including “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)

Councilmember Griffith has an economic interest in her real property, which is located less than 500 feet from the Golf Resort.

Foreseeability and Materiality

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial 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 financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where, as here, an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).) As the language of Regulation 18702.2 indicates, the relevant distance for purposes of applying the regulation is generally the distance from parcel-to-parcel, not the distance from building-to-building.³

According to the facts, future City Council decisions will involve adoption of a Master Plan for the Golf Resort, the potential renovation of the Golf Resort, and the general operation of the Golf Resort. Because Councilmember Griffith’s personal residence is within 500 feet of the Golf Resort, the reasonably foreseeable financial effect of those decisions will be considered foreseeable and material unless she is able to demonstrate that there is clear and convincing evidence the decisions will not have any measurable impact on her property.⁴ You have not provided details of any specific governmental decision, so we are unable to analyze these issues further.

³ See, e.g., *Minner* Advice Letter, No. A-19-205, where the analysis of a city hall replacement project also proceeded under the parcel-to-parcel measurement of within 500 feet, despite the official’s residence being 500-to-1,000 feet from the city hall building itself.

⁴ In the past, we have advised that in some circumstances, where the governmental decision affects a clearly defined, specific, and isolated site, such as a particular building on a large tract of land, “the Commission has interpreted the materiality regulations to allow the distance to be measured from that clearly defined and specifically affected portion.” (See, e.g., *Kaplan* Advice Letter A-98-224; *Craven* Advice Letter, No. I-00-224.) However, at this preliminary stage, there are no facts confining the ultimate project to an isolated portion of the Golf Resort property.

Potential Segmentation

We note that under certain circumstances, a public official disqualified from one decision may participate in other related decisions if the official's participation does not affect the decision in which he or she has a conflict of interest. (Regulation 18706.) The Commission has consistently advised that an official may segment a decision in which the official has a conflict of interest from other decisions in which he or she does not have a conflict of interest to allow participation by the official in one or several related decisions if the decisions are not too interrelated to be considered separately.

The Commission has advised that some decisions may be too interrelated and may not be considered separately, such as when resolution of one decision will effectively determine, affirm, nullify or alter the result of the other decision. (Regulation 18706(b).) Segmentation may only apply if the decisions can be broken down into separate decisions that are not inextricably interrelated to the decisions in which you have a disqualifying conflict of interest.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Counsel, Legal Division

JW:dkv