



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 3, 2021

Diana Varat
Of Counsel
Richard Watson Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-20-140

Dear Ms. Varat:

This letter responds to your request for advice on behalf of City of Pasadena City Councilmember Felicia Williams regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ 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

Does the Act prohibit Councilmember Williams from taking part in governmental decisions relating to the development of real property that formerly was the site of the City’s YWCA facility (the “YWCA Redevelopment Project”) given that Kosmont Companies (“Kosmont”), a business that previously completed an evaluation of development alternatives for the site on behalf of the City, is the sole client of the Councilmember’s business, FWD Consulting, LLC (“FWD”)?

CONCLUSION

No. The Act does not prohibit the Councilmember from taking part in decisions relating to the YWCA Redevelopment Project because it is not reasonably foreseeable that those decisions would have a disqualifying financial effect on any of the Councilmember’s interests in Kosmont or FWD. Based on the facts presented, Kosmont’s final report to the city on the project was completed in early 2019 nearly one year prior the Councilmember’s election to office. Accordingly, there is no indication that the Councilmember’s interests in Kosmont or FWD would be implicated by the current decisions regarding the Project.

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.

FACTS AS PRESENTED BY REQUESTER

You are outside counsel for the City of Pasadena and the authorized representative of Pasadena City Councilmember Felicia Williams. The Councilmember was elected to the City Council on March 3, 2020 and was seated on the City Council on December 7, 2020. In her private capacity, the Councilmember is the President and 100-percent owner of FWD. Kosmont is currently FWD's sole client. FWD has received more than \$500 from Kosmont in the last 12 months.

On October 8, 2018, the City entered into a professional services agreement with Kosmont to evaluate development alternatives for real property within the City that formerly was the site of the City's YWCA facility. Kosmont delivered its final report to the City on April 4, 2019. The Councilmember did not work on the report on behalf of Kosmont, and Kosmont's work under the agreement was completed before Ms. Williams was elected to the City Council. Kosmont does not have any continuing obligations to the City under the agreement. You state that neither Kosmont nor FWD has any ongoing interest in the YWCA Redevelopment Project, and Kosmont does not anticipate doing any additional work relating to the YWCA Redevelopment Project.

In the coming months, the City Council will be asked to consider various decisions relating to the YWCA Redevelopment Project, including: (1) the selection of a developer to redevelop the YWCA site; (2) whether to enter into an exclusive negotiating agreement with the chosen developer; and (3) the eventual approval of analyses required by the California Environmental Quality Act and related land use entitlements.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) An official's interests that may give rise to a disqualifying conflict of interest are identified in Section 87103 and include an interest in:

- Any business in which the official has an investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- Any real property in which the official has an interest worth \$2,000 or more. (Section 87103(b).)
- Any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).)
- Any source of a gift or gifts aggregating \$520² or more in the 12 months prior to the decision. (Section 87103(e).)

² Section 87103(e) requires the amount of the value of a gift or gifts set forth therein to equal the same amount as the gift limit specified in Regulation 18940.2. This gift limit was recently adjusted from \$500 to \$520, effective January 1, 2021, pursuant to Section 89503(f).

- The official's personal finances and those of immediate family members. (Section 87103.)

The Councilmember has a business interest in FWD because she holds a position of management in the business as its President. If the Councilmember's investment in FWD is worth \$2,000, the Councilmember would also have a business interest in FWD for that reason.

Section 82030 provides that an official's "income" includes a pro rata share of any income of any business entity in which the individual owns a 10-percent interest or more. FWD has received more than \$500 from Kosmont in the previous 12 months. The Councilmember is the 100-percent owner of FWD. Therefore, the Councilmember's pro rata share is the entirety of FWD's income, which is more than \$500 in the previous 12 months due to FWD's income from Kosmont.

Thus, the Councilmember has a business interest in FWD, source of income interests in both FWD and Kosmont, and an interest in her personal finances with respect to decisions relating to the YWCA Redevelopment Project based on the facts presented.

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an 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 interest.

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Kosmont's work evaluating development opportunities for the YWCA Redevelopment Project on behalf of the City was completed before the Councilmember was elected to the City Council. Kosmont does not have any continuing obligations to the City under the professional services agreement governing that work. You state that neither Kosmont nor FWD has any ongoing interest in the YWCA Redevelopment Project, and that Kosmont does not anticipate doing any additional work on the Project. Thus, based on the facts presented, it is not reasonably foreseeable that decisions relating to the Project would have a disqualifying financial effect on any of the Councilmembers' interests in FWD or Kosmont or her interest in her personal finances.

However, because Kosmont is currently FWD's sole client, and because the Councilmember currently has a source of income interest in Kosmont based on the facts presented, we caution that the Act's conflict of interest provisions may prohibit the Councilmember from taking part in a future governmental decision if it is reasonably foreseeable that the decision would have a disqualifying effect on Kosmont, FWD, or the Councilmember.

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

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

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