

State of California



Fair Political Practices Commission

P.O. BOX 607 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

January 10, 1977

Mr. Kenneth C. Scheidig
City Attorney
30 West Angela Street
Pleasanton, California 94566

77-06-213

Dear Mr. Scheidig:

Thank you for your letter of November 17, 1976, requesting an informal opinion as to whether a member of your City Council, who is a Vice President and Director of the First National Bank of Pleasanton, might have a conflict of interest in passing upon various types of land use requests by persons who have savings, loans or checking accounts with the bank.

The City Councilmember, being an elected official required to file pursuant to Government Code §87200, clearly falls within the general prohibition of Government Code §87100:

87100. No 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.

Government Code §87103 provides:

87103. 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:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

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

(c) Any source of income, other than loans by a commercial lending institution in the regulation course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management....

From your letter and our telephone conversation of November 24, 1976, the relevant portions of the above-mentioned definition of financial interest with which your Councilmember is concerned are §87103(a), an investment worth more than \$1,000; §87103(c), a source of income; and §87103(d), a business entity in which the Councilmember is a director, officer, or holds any position of management.

In determining whether it is reasonably foreseeable that a decision made by the Councilmember would have a material financial effect, distinguishable from its effect on the public generally, upon an investment worth more than \$1,000 or on a business entity in which the Councilmember is a director, officer, or holds any position of management, 2 Cal. Adm. Code §18702(b)(1) is instructive.

The general test of materiality for all financial interests in §87103 is contained in 2 Cal. Adm. Code §18702(a), which provides:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if, at the time the official makes, participates in

making or attempts to use his or her official position to influence the making of the decision, in light of all the circumstances and facts known at the time of the decision, the official knows or has reason to know that the existence of the financial interest might interfere with the official's performance of his or her duties in an impartial manner free from bias.

2 Cal. Adm. Code §18702(b) then goes on to set down guidelines which should be considered in determining the existence of a material effect upon a financial interest, which if shown to exist, would lead one to conclude that the official's interest was such that it would render the official incapable of performing his duties "in an impartial manner free from bias".

The guidelines in pertinent part are as follows:

(1) In the case of a business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000), or in the case of a public official who is a director, officer, partner, trustee, employee, or holds any position of management in a business entity:

(A) Whether the effect of the decision will be to increase or decrease the annualized gross revenue of the business entity by one percent or more or the annual net income of the business entity by .5 percent or more;

(B) Whether the effect of the decision will be to increase or decrease the assets or liabilities of the business entity by \$50,000 or more or by .5 percent of its current assets or liabilities, whichever is less.

Note that investments and positions of management, Government Code §§87103(a) and (d), are treated exactly the same for purposes of establishing materiality.

To establish materiality concerning a source of income, however, two additional factors must be considered. 2 Cal. Adm. Code §18702(b)(3) provides that:

(3) In the case of a source of income of a public official as defined in Government Code §87103(c):

(A) The decision will affect the source of income in the manner described in subsection (b)(1) above;

(B) Whether the governmental decision will directly affect the amount of income to be received by the official;

(C) Whether there is a nexus between the governmental decision and the purpose for which the official receives income.

Therefore, unless the Councilmember's decision affects the Bank in the manner described in the guidelines at 2 Cal. Adm. Code §18702(b)(1) or (b)(3) above, the Councilmember will probably not have to disqualify himself.

I would point out, however, that should the Bank be working with a client on a project which would foreseeably be the subject of a decision before the City Council, the Councilmember should probably disqualify himself pursuant to the general provision of 2 Cal. Adm. Code §18702(a). This view follows from the fact that the requisite 87103 interest is present and the reasonable inference of possible bias is so apparent. (See Thorner, attached.)

With respect to the confidentiality of Bank information, the Act does not require that the Councilmember disclose information relating to third parties, but rather requires the disclosure of any financial interests of the Councilmember which could be materially affected by his decision. 2 Cal. Adm. Code §18700(b)(5) provides:

(b) A public official "makes a governmental decision", except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

(5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300.

I trust that these informal comments will be of some assistance. If you have any further questions, please call me at 916/322-6444.

Sincerely,



Alfredo Flores
Research Specialist
Conflicts of Interest
Division

AF:gb
Enclosure