

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

July 17, 1980

Preston Hill
Town Attorney
Town of Los Gatos
P.O. Box 949
Los Gatos, CA 95030

A-80-07-090.

Dear Mr. Hill:

This is in response to your letter of July 7, 1980, requesting advice on behalf of Brent Ventura concerning the conflict of interest provisions of the Political Reform Act. The following advice is provided pursuant to Government Code Section 83114(b).^{1/} The facts as I understand them from your letter and from our telephone conversations are as follows.

Mr. Ventura is a member of the Town Council, (i.e., city council) of the Town of Los Gatos. He currently has a one-sixth beneficial interest in an irrevocable testamentary trust, and upon the death of his father one-third (two-sixths) of the corpus will be distributed to Mr. Ventura. One of the two major assets of the trust is a seven-unit apartment building in Los Gatos worth approximately \$300,000 to \$400,000 which grosses about \$1,400 to \$1,600 per month in rents. The present value of one-sixth of the corpus of the trust is between \$10,000 and \$100,000. At its next meeting the Town Council will discuss rent control, mediation and arbitration matters, and you have asked the extent to which Mr. Ventura may participate in those discussions as a member of the Town Council given his interest in the trust.

^{1/} All statutory references are to the Government Code unless otherwise noted.

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Section 87100 of the Political Reform Act provides that no public official may make, participate in making or use his official position to influence a decision in which he has a financial interest, and Section 87103 provides that:

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:

. . .

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

. . .

For purposes of this section, indirect investment or interest means any investment or interest owned by . . . a trust in which [the public official] has a substantial interest. . . . A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

The definition of the term "interest in real property" as it is used in the Act provides, inter alia, that "Interests in real property of an individual includes a pro rata share of interests in real property of any . . . trust in which the individual . . . owns directly, indirectly or beneficially, a ten percent interest or greater. . . ." Section 82033. Pursuant to regulations of the Commission, a public official has a direct, indirect or beneficial interest in a trust if he is a beneficiary and has an irrevocable future right to receive income or principal. See 2 Cal. Adm. Code Section 18234(c)(2)(B).

Although the final sentence of Section 87103 and the definitional sections establish somewhat different standards (a problem we are attempting to solve this year through legislation), it is clear that by operation of either the 10 percent rule contained in Section 82033 or the "substantial interest" provision of Section 87103 itself, Mr. Ventura does have an interest in the rental property held by the trust. Consequently, he must not make, participate in making

Mr. Preston Hill
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or otherwise use his official position to influence a decision of the Town Council which could have a material financial effect on the property which would be distinguishable from its effect on the public generally. In the Ferraro opinion, 4 FPPC Ops. 62 (No. 78-009, 1978), the Commission decided that the effect of a rent control decision on a person who owns four or more units of rental property is in fact distinguishable from the effect the decision will have on the public generally, and in the Gillmor opinion, 3 FPPC Ops. 38 (No. 76-089, 1977), the Commission determined that if a government action is intended to have a certain effect, such an effect is "foreseeable." As rent control measures are designed to limit the amount of income which can be earned from rental property, it is therefore clearly foreseeable that a rent control measure will have a financial effect on the rental property in which Mr. Ventura has an interest.

The remaining question is therefore whether such an effect would be "material" within the meaning of Section 87103. By regulation the Commission has provided that:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of a general standard set forth in paragraph (a), consideration should be given to the following factors:

. . . .

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or

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July 17, 1980
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2. Five percent per month if it is fifty dollars (\$50) or more per month;
or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000);
or

2. One half of one percent if it is one thousand dollars (\$1,000) or more.

. . .

2 Cal. Adm. Code Section 18702

Applying these standards to the property in which Mr. Ventura has an interest, the effect of a rent control ordinance could be considered significant if it would decrease the amount of rent which could otherwise be received from the building by from \$70 to \$90 per month (5 percent of \$1,400 to \$1,600), or if it would decrease the fair market value of the property by from \$1,500 to \$2,000 (one-half of one percent of \$300,000 to \$400,000). As the building has seven units, any ordinance which created a differential of from \$10 to \$15 per month between the amount of rent which was allowable under the ordinance and the amount of rent which could otherwise be charged per unit would have a material financial effect on the property.

Given these amounts, it is obvious that it does not require a very stringent rent control measure in order to create a material financial effect on rental property. If there were a specific proposal which would clearly have such a minor effect as to fail to meet these standards, an official who had an interest in rental property would not be required to disqualify himself from participating in it. However it is only reasonable to assume (in the absence of such a specific proposal) that the Town Council's discussion of rent control will lead to consideration of a measure or alternative measures which would have a material financial effect on rental property. Consequently, Mr. Ventura should not participate in the Town Council's decision regarding rent control per se.

Mr. Preston Hill
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With respect to mediation and arbitration, if those questions are intertwined with the concept of rent control, e.g., if the mediation or arbitration system will decide how much rent can be charged for a particular unit under a defined set of circumstances, then the Town Council's decision on those questions could also foreseeably affect the amount of rent which could be collected from the building in which Mr. Ventura has an interest, and he should disqualify himself from those decisions as well. If the concept of rent control were to be rejected by the Town Council without Mr. Ventura's participation, however, and the question of mediation and arbitration of other kinds of landlord-tenant problems were to be raised, our advice concerning his participation in such decisions might be different. If such turns out to be the case, please feel free to contact us again.

Sincerely,



Sarah T. Cameron
Deputy Chief for
Conflicts of Interests
Legal Division

STC:nrw



TOWN of LOS GATOS

Town Attorney
354-6880

July 7, 1980

Ms. Sarah Cameron
Fair Political Practices Commission
1100 K Street Building
Sacramento, California 95814

Dear Ms. Cameron:

This letter is a follow-up to our telephone conversation; a member of our Town council needs written advice, either in the form of an opinion or an informal letter, on a question of whether he is qualified to participate in the discussion of, and to vote on, residential rent control, mediation, and arbitration matters. (The word "Town" is part of Los Gatos' name. The Town is a general law city with the usual five-member city council government.) The council meeting at which these matters will be taken up will be held in two weeks. I cannot give a detailed description of the ordinance or resolution that would be before the council. It must suffice to say that any form of regulation or assistance in resolving disputes may be considered, but that seven-unit buildings would not be exempted from any measures adopted.

The councilmember who asked the question is a one-sixth beneficiary of a testamentary trust. The value of a one-sixth of the corpus is in the \$10,000-\$100,000 range. On the death of the councilmember's father, who is 53 years old and in good health, two-sixths of the corpus will be distributed to the councilmember. The trust is not revocable. The councilmember has never received income distributions from the trust, and assumes that the instrument or trust requires none.

The trust has two major assets, a drugstore business operated in leased premises and a seven-unit apartment house worth roughly \$300,000-\$400,000. The operation of the apartment house grosses around \$1,400-\$1,600 monthly. The councilmember does not know the net return.

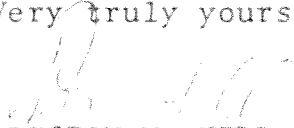
Ms. Sarah Cameron

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July 7, 1980

Judging from the discussion you and I had earlier, this letter contains more information than is necessary for you to reach a conclusion, but I prefer to err in the direction of giving too many facts rather than too few.

Very truly yours,


PRESTON W. HILL
Town Attorney

PWH:kb

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May 13, 1982

Mr. Walter V. Hays
Town Attorney
Town of Los Gatos
P.O. Box 949
Los Gatos, CA 95030

Re: Brent Ventura; Follow-Up of Advice
Letter No. 82-063, Our No. 82-083

Dear Mr. Hays:

Thank you for your letter following up on my recent advice letter to you regarding Councilmember Brent Ventura. You now ask whether Mr. Ventura may participate in the re-adoption of the entire rent control ordinance. The facts have been summarized previously in two advice letters on this subject, and we have previously issued Mr. Ventura advice that he must disqualify himself from participating in the adoption of the rent control ordinance in question. However, it does not necessarily follow that he will be disqualified from participating in its re-adoption.

If the facts remain unchanged, then our advice would be the same as in our original advice letter to your predecessor, Preston Hall, dated July 17, 1980, No. 80-090.^{1/} If the facts have changed, then our advice might also change. A potential factual difference might be the value of the apartment building. For instance, if it has increased significantly in value, then the dollar amount of the effect of the decision^{2/} would have to

^{1/} A copy of this letter is enclosed. Per your suggestion, we have not restated the facts or our analysis in that letter; however, they are incorporated herein by reference as if set forth in full.

^{2/} These amounts were calculated on page four of our previous advice letter (No. 80-090).

Mr. Walter V. Hays
May 13, 1982
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increase in order for it to be considered material. You and Mr. Ventura will be able to make such calculations based upon the reasonably foreseeable effects of the decision to re-adopt or not to re-adopt.

We trust that this advice is responsive to you and Mr. Ventura's request. Should you have further questions, please do not hesitate to contact us. I may be reached at 916/322-5901.

Very truly yours,



Robert E. Leidigh
Counsel
Legal Division

REL:km
Enclosure

F P P C
MAY 10 9 12 AM '82



TOWN of LOS GATOS

Town Attorney
354-6880

May 7, 1982

Robert E. Leidigh, Esq.
Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Brent Ventura; Follow-Up on Advice Letter No. 82-063

Dear Mr. Leidigh:

Thank you very much for your very helpful letter of April 20, 1982.

Mr. Ventura has asked me to request an additional opinion on a closely related subject; namely, whether he may participate in a re-adoption of Chapter 24 when it expires.

I informed Mr. Ventura that in my opinion, the answer was clearly implied by the analysis in your letter of April 20, 1982. However, since he is under considerable pressure to vote, if possible, he has asked that I obtain a formal opinion. You need not repeat the detailed analysis in the earlier letter, but can simply incorporate it by reference.

Thank you again for your assistance.

Very truly yours,

Walter V. Hays
Walter V. Hays ¹¹⁸
Town Attorney

WH:ms

cc: Brent Ventura

F P C
Jul 8 11 10 AM '80



TOWN of LOS GATOS

Town Attorney
354-6880

July 7, 1980

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Fair Political Practices Commission
1100 K Street Building
Sacramento, California 95814

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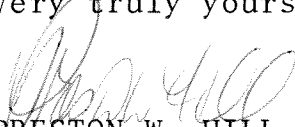
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