

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
(916) 322-5662 322-5660 322-5901 322-6441

August 29, 1984

Michael Visconti
Michael Visconti Associates
Citicorp Savings Building
180 Grand Avenue, Suite 900
Oakland, CA 94612

Re: Your Request for Advice,
Our Advice No. A-84-215

Dear Mr. Visconti:

You have requested our advice as to whether you are a "public official" within the meaning of the Political Reform Act^{1/} (the "Act") and therefore subject to its conflict of interest provisions. If our answer to your first question is in the affirmative, you have asked that we give you advice regarding your duties and obligations under the Act.

FACTS

You have previously performed work, on a contract basis, for the City of Healdsburg to obtain a Federal Urban Development Action Grant (UDAG) for a project which has since been completed. The City of Healdsburg (the "City") was pleased with your work and has once again retained your services to seek a UDAG for the Plaza Hotel project. You have supplied us with a copy of your "Scope of Services" agreement with the City for the Plaza Hotel project. This agreement is attached hereto as Exhibit "A".

Unrelated to the Plaza Hotel project, you are also working with the City, in a private capacity on behalf of two high-tech firms, to obtain yet another UDAG for an office park project.

You are being privately compensated for your work on behalf of the office park project. The City is compensating you only for your work on its behalf for the Plaza Hotel project.

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted.

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ANALYSIS

Your duties as set forth in Exhibit "A" clearly make you a "consultant" within the meaning of 2 Cal. Adm. Code Section 18700(a). (You have previously been furnished a copy of this Commission regulation.) The regulation defines consultant as follows:

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Adm. Code Section
18700(a)(2)

You have stated that your activities are performed under the direction and control of the City Manager. Exhibit "A" makes reference to the City Finance Director--perhaps they are one and the same. As can be seen from Exhibit "A", you are providing, under contract, counseling and advice and you possess authority as to certain agency (City) decisions. See specifically Tasks 1, 3, 4, 5, 8, 11, 15, 16 and 17. You have been retained by the City to act as its agent and, as such, are really a part-time employee, much like a contract city attorney. Thus, we conclude that the answer to the first question is in the affirmative; you are a public official within the meaning of Section 87100 and are required to disqualify yourself from making or participating in making or using your official position to influence any City decisions in which you have a financial interest as defined in Section 87103.

Thus, you may not, acting in your official capacity, participate in any way in decisions having a major impact (material


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financial effect)^{2/} on the office park project or on your two high-tech clients. However, since your role with the City is substantially limited to the Plaza Hotel project, you may address the City Council or City Staff in your private capacity on behalf of the office park project, so long as you in no way use your official status in doing so.

It should be noted that this is permissible in this instance even through you are not representing solely your own interests^{3/} because you are not a member of the decision-making body nor are you in a budgetary or otherwise controlling position with respect to the decision-making body, and your role with the City is clearly and contractually limited.^{4/}

Should you have any further questions, please do not hesitate to contact me at 916/322-5901.

Sincerely,


Robert E. Leidigh
Counsel, Legal Division

REL:km

cc: Robert Crawford
Healdsburg City Attorney

^{2/} See enclosed copy of 2 Cal. Adm. Code Section 18702 for guidance as to what constitutes a material financial effect.

^{3/} See enclosed copy of 2 Cal. Adm. Code Section 18700(d)(2) and (f)(1).

^{4/} See attached Advice Letter to Howard P. Abelson, No. A-76-546.

Michael Visconti & Associates

CITICORP SAVINGS BUILDING
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(415) 839-2518

MICHAEL VISCONTI ESQ.
PRINCIPAL

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TELEX: 338139
ANSWER BACK:
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August 21, 1984

Mr. Robert Leidigh
Legal Divison
Fair Political Practice Commission
P.O. Box 807
Sacramento, CALifornia 95804

Dear Mr. Leidigh:

Per our discussion of same date, I am forwarding herewith a copy of my letter to the City Attorney of the City of Healdsburg regarding an advice request of your office. I have also attached a scope of service in connection with my duties for the City on the Hotel Project. I would appreciate your office's processing of these data at your earliest convenience and treating this letter as a separate formal advice request in addition to that expected to be forthcoming from the City Attorney of the City of Healdsburg.

Sincerely,



Michael Visconti
Principal

MV/dp

enclosures

cc: Mr. Robert Crawford

Michael Visconti & Associates

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(415) 839-2518

MICHAEL VISCONTI ESQ.
PRINCIPAL

TELEX: 338139
ANSWER BACK:
HQ OAK

August 17, 1984

Robert Crawford, Esq.
City Attorney
City of Healdsburg
City Hall
126 Matheson Street
Healdsburg, California 95448

Dear Mr. Crawford:

A propos our discussion of August 7, 1984, I would like to request by means of this letter, that your office direct a letter to Ms. Barbara Millan, General Counsel of the Fair Political Practices Commission, Post Office Box 807, Sacramento, California. In this letter your office would request an advice letter concerning two (2) queries: first, whether I am considered a "Public Official" or "Consultant" under the Political Reform Act; and second, assuming for the sake of argument, a "Public Official" determination, whether my contractual retention by the City to help obtain an Urban Development Action Grant for the Plaza Hotel, and my acting as developer for the research and development office park (including my privately-compensated provision of services to seek UDAG grant for same project), in any way creates a conflict of interest situation statutorily.

With respect to the first question, after discussing the matter with the legal division of the Fair Political Practices Commission, it would seem advisable to attach a copy of my professional services contract including scope of services regarding the Plaza Hotel Project.

As you know, it is my view that, since my work is ministerial in nature, does not put me in the position of influence over a land use regulatory decision, in general, and, especially with respect to a different, non-adjointing tract of land, and since all my work occurs under the direction of the City Manager, I can not be properly regarded as a "Public Official". Even if I were incorrect in this view, my view is that there is no conflict, since I am not being retained by the City contractually to seek an

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Urban Development Action Grant for the Office Park, only for the Hotel. The two (2) projects are separate and distinct in terms of nature, use and location.

Also, as you are aware, the City and its representatives are entitled to request and receive advice letters from the Fair Political Practices Commission under the statute. The code sections thought to be applicable for these questions are: Government Code Section 82000 et seq., Section 83114(b), Section 84308, Section 87100 and Section 87103.

Thank you for your willingness to consider this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Visconti", with a stylized flourish extending to the left.

Michael Visconti

MV/dp

cc: Michael McDonald

URBAN DEVELOPMENT ACTION GRANT

SCOPE OF SERVICES

Michael Visconti & Associates Responsibilities

Specifically, CONSULTANT proposes to perform the following tasks in connection with the preparation, organization and processing of one Urban Development Action Grant application for the CITY:

Tasks

1. Handle liaison with banking community, private developers, commercial, industrial and residential realty firms, etc.;
2. Critically review candidate UDAG projects for UDAG competitiveness;
3. Devise and execute citizen participation program including public presentations before community groups City Council, business leaders, etc.;
4. Oversee preparation of environmental review record;
5. Oversee compliance with historic preservation requirements;
6. Prepare employment plan;
7. Calculate property tax revenue stream;
8. Handle liaison with local, regional, State and federal administrative and legislative officials, e.g., City public works or engineering staff, planning and legal staff, redevelopment agency, housing and community development, State Historic Preservation Office, State Office of Planning and Research, U.S. Department of Housing and Urban Development (Area and Washington, D.C. offices);
9. Assist in preparation and review of cost estimates for project;
10. Prepare financial analysis for the UDAG project. This will include all required computer analyses;
11. Work with all appropriate public and private financial sources in terms of analyzing the project for adequate private equity and mortgage financing;
12. Provide direct assistance to the City in all negotiations with the developer concerning the structuring of the terms of the UDAG repayment to the CITY;

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13. Aggregate other necessary data in support of the application;
14. Prepare periodic reports to the City's Finance Director;
15. Organize, direct and supervise day-to-day preparation of the grant application;
16. Arrange for and supervise preparation of graphics and clerical support to aid in assembling the grant application;
17. Prepare Notices of Displacement for affected property owners;
18. Oversee compliance with flood protection standards, if applicable, to the project selected for UDAG application purposes.

Amendment of the project and reprocessing for UDAG purposes shall require renegotiation of this Scope of Services.

All of the above work to be performed under the direction of the City Finance Director.