



California Fair Political Practices Commission

March 13, 1986

Gordon C. Phillips
City Attorney
415 Diamond Street
Redondo Beach, CA 90277

Re: Your Request for Advice
Our File No. A-86-050

Dear Mr. Phillips:

Thank you for your letter requesting advice concerning the duties of three members of the staff of the City of Redondo Beach under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

Three members of the staff of the City of Redondo Beach hold valid real estate salespersons licenses with brokers, none within the city limits of the City of Redondo Beach.

In connection with the disposition of City real property, each staff member is responsible for obtaining the appraisals, evaluating and recommending acceptance of high bids, and approving escrow instructions and other documentation.

QUESTION

If the broker for one of the employees submits a bid on behalf of a client, for which the City employee will receive no compensation, must the employee disqualify from the duties described above?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence any 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 if it is reasonably foreseeable that the decision would have a material financial effect distinguishable from the effect on the public generally on, among other interests, a source of income to the official of \$250 or more in the 12 months preceding the decision. Section 87103(c).

Under Commission regulation 2 Cal. Adm. Code Section 18704.3(c), the sources of commission income to a real estate agent in a specific sale or similar transaction include among others, the broker and brokerage business entity under whose auspices the agent works. Accordingly, the three City staff members should not make, participate in, or use their official positions to influence governmental decisions which could have a material financial effect on their respective brokers or brokerage business entities.

A public official "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

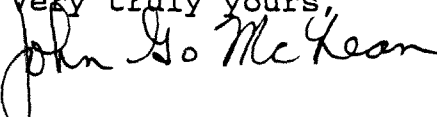
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It seems clear that by obtaining the appraisals (presumably this includes choosing the appraiser), evaluating and recommending acceptance of high bids, and approving escrow instructions and other documentation, these staff members are participating in the making of governmental decisions. The question then is whether these decisions will have a material financial effect on the broker or brokerage business entity.^{2/}

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision on an individual or business entity which is a source of income will be considered material (2 Cal. Adm. Code Sections 18702 and 18702.2, copies enclosed.)

Unless there is a particular situation involving these staff members, I can provide only this general advice about their ability to participate in decisions about the disposition of City real property. If, in the future you wish specific advice about a particular decision, I would be glad to discuss it.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

John G. McLean
Counsel
Legal Division

JGM:plh
Enclosure

^{2/} This advice letter presumes that the broker or brokerage business entity is bidding on behalf of a client. If the broker or brokerage business entity submits a bid on its own behalf, disqualification will be required automatically. (2 Cal. Adm. Code Section 18702.1, copy enclosed.)



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CITY OF REDONDO BEACH
CALIFORNIA

415 DIAMOND STREET
REDONDO BEACH, CALIFORNIA 90277

January 31, 1986

Fair Political Practices Commission
1100 K Street Mall
Sacramento, CA 95814

Gentlemen:

I request an opinion from your office on the following:

FACTS

Three members of the staff of the City of Redondo Beach hold valid real estate salespersons licenses with brokers, none within the city limits of the City of Redondo Beach.

In connection with the disposition of City real property, each staff member is responsible for obtaining the appraisals, evaluating and recommending acceptance of high bids, and approving escrow instructions and other documentation.

ISSUE

If the broker employed by one of the employees submits a bid on behalf of a client, for which the City employees will receive no compensation, must the employees disqualify themselves from the duties described in the second paragraph?

Very truly yours,


Gordon C. Phillips
City Attorney