



California Fair Political Practices Commission

March 4, 1986

George Logan
City Attorney
750 Bellevue Road
Atwater, CA 95301

Re: Your Request for Advice
Our File No. I-86-060

Dear Mr. Logan:

Thank you for your letter requesting advice concerning the duties of Atwater City Councilmember Dennis Cardoza under the conflict of interest provisions of the Political Reform Act.^{1/} Your letter requests advice based upon generalized facts and as such is being treated as a request for informal assistance.^{2/}

FACTS

Councilman Dennis Cardoza owns a parcel of commercial property within 500 feet of a proposed 24-unit residential development. The City Council will shortly be deciding whether to approve the development project.

QUESTION

May Councilmember Cardoza participate in the City Council's decision regarding approval of the 24-unit residential development?

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

^{2/} Pursuant to Commission regulation 2 Cal. Adm. Code Section 18329, informal assistance does not provide the requestor with the immunity set forth in either Government Code Section 83114(a) or (b).

DISCUSSION

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 the decision will have a reasonably foreseeable material financial effect distinguishable from the effect on the public generally, on:

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

Section 87103(b).

In the instant case, Councilman Cardoza owns a parcel of commercial property within 500 feet of the proposed residential project. If the decision confronting the City Council would have a reasonably foreseeable material financial effect on the property, Councilman Cardoza must disqualify himself from participating in the decision.

In general, the effect of a decision is material if it is a "significant" one. 2 Cal. Adm. Code Section 18702(a). Commission regulation 2 Cal. Adm. Code Section 18702(b)(2) (copy enclosed) provides the following monetary guidelines for determining whether the financial effect of a governmental decision on an interest in real property will be considered material:^{3/}

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) 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

2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

^{3/} A new regulation (2 Cal. Adm. Code Section 18702.4) is being considered and may alter the standards in the future. A copy is enclosed.

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(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 the
effect is one thousand dollars (\$1,000) or
more.

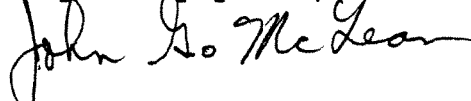
2 Cal. Adm. Code Section
18702(b)(2).

Thus, if it is reasonably foreseeable that this decision will affect Councilmember Cardoza's real property by \$10,000 or more, disqualification is required. Otherwise, disqualification will be required if the affect upon the value of his property will be at least \$1,000 and is also equal to or greater than 1/2% of its current fair market value.

We have not been provided sufficient information to make a determination as to the reasonably foreseeable financial effect of this decision upon Councilmember Cardoza's parcel of property. Accordingly, you should examine the particular facts of the situation carefully in applying the above tests in order to determine whether Councilmember Cardoza must disqualify himself from participating in the City Council's decision regarding the development.

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

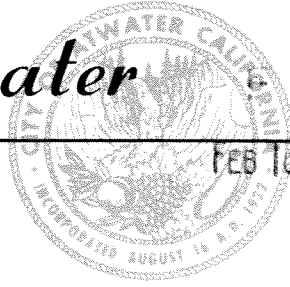
Very truly yours,



John G. McLean
Counsel
Legal Division

JGM:plh
Enclosures

City of Atwater



P P C

FEB 18 2 54 PM '86

CIVIC CENTER
750 BELLEVUE ROAD
ATWATER, CALIFORNIA 95301
PHONE (209) 358-5606

February 13, 1986

Fair Political Practices Commission
1100 K Street
Sacramento CA 95814

Gentlemen:

Councilman Dennis Cardoza owns a parcel of commercial property within 500 feet of a proposed 24 unit residential development. Since there are hundreds of existing residential units within close proximity to this development, it is my opinion that this development will have no foreseeable affect on the value of his property.

Based on this opinion, he intends to vote on the approval of this development at the meeting of February 24, 1986, unless we receive contrary advice from your office prior to that date.

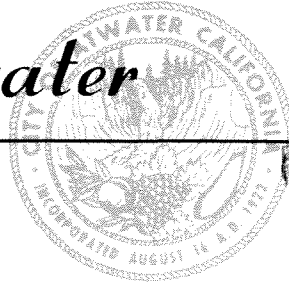
Very truly yours,


George Logan
City Attorney

GL:fmb

cc: City Council

City of Atwater



FEB 10 2 52 PM '86

CIVIC CENTER
750 BELLEVUE ROAD
ATWATER, CALIFORNIA 95301
PHONE (209) 358-5606

February 12, 1986

Fair Political Practices Commission
1100 K Street
Sacramento CA 95814

Gentlemen:

Councilman Dennis Cardoza owns a parcel of commercial property within 500 feet of a proposed 24 unit residential development. Since there are hundreds of existing residential units within close proximity to this development, it is my opinion that this development will have no foreseeable affect on the value of his property.

Based on this opinion, he intends to vote on the approval of this development at the meeting of March 10, 1986. Please receive contrary advice from your office prior to that date.

Please disregard
letter dated 2-12-86
Sincerely yours,
Logan
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GL:fmb

cc: City Council