



# California Fair Political Practices Commission

April 21, 1986

Debra E. Corbett  
Deputy City Attorney  
City of Oceanside  
321 North Nevada  
Oceanside, CA 92054

Re: Your Request for Advice  
Our File No. A-86-081

Dear Ms. Corbett:

This is in response to your request for advice on behalf of Oceanside City Councilmember Sam Williamson. The facts, as stated in your letter and in our subsequent telephone conversation, are as follows.

## FACTS

Councilmember Williamson and his two adult children constitute a three agent full line insurance agency. The agency actively seeks new business in all categories of insurance needs including business, auto, residential and commercial. The Councilmember has made no-interest loans to the agency and is being repaid out of agency funds on an informal basis. There is no formal partnership agreement between the three agents. At the present time, the commissions of all three agents are put into a general fund, and after payment of all agency bills, the remaining funds are split between the two agents who are Councilmember Williamson's children. To date, Councilmember Williamson has not taken any income from the agency. It is anticipated that once the business is providing a certain level of income to the two agents who are Councilmember Williamson's children, Councilmember Williamson will begin to draw income from the business. However, it has not been specifically determined what level of income the Councilmember's children must be receiving before the Councilmember will begin to draw income from the business, or how much income the Councilmember will draw from the business.

The City Council in Oceanside also sits as the Oceanside Redevelopment Agency.

QUESTION

You have asked whether Councilmember Williamson, or other members of the insurance agency, may write insurance for clients who currently, or who in the future may, reside or do business in projects that were approved by the City or its Redevelopment Agency while Councilmember Williamson was on the City Council. You have also expressed concern that Councilmember Williamson may not in some cases know that his decision will affect a client of the insurance agency.

ANALYSIS

The Political Reform Act (the "Act")<sup>1/</sup> does not contain provisions which prohibit a public official from obtaining financial interests. However, the Act does prohibit a public official from making, participating in, or using his official position to influence a governmental decision in which the official knows or has reason to know he has a financial interest. Section 87100. Therefore, the Act does not prohibit Councilmember Williamson or any other member of his insurance agency from selling insurance to any of its clients, but it does require Councilmember Williamson to disqualify himself from participating in decisions in which he knows or has reason to know he has a financial interest as a result of his agency's insurance sales.

Sections 87100 and 87103 also require disqualification if an official has reason to know that it is reasonably foreseeable that a decision will materially affect a source of his or her income. As a general rule, an official "has reason to know" that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would be likely to know the identity of the source of income and would be aware of the decision's probable impact on that source. As you can see, the question of whether an official "has reason to know" that a decision will affect a source of income depends on the specific facts of each situation.

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<sup>1/</sup>Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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:

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

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

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

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e)

While no formal partnership agreement exists, it seems clear that Councilmember Williamson owns an investment interest in the insurance agency (which is presumably worth \$1,000 or more). Also, the insurance agency owes Councilmember Williamson money on some outstanding loans, thereby making the insurance agency a source of income to Councilmember Williamson. Section 82030. Accordingly, Councilmember Williamson may not make, participate in, or attempt to influence 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 the insurance agency.

In addition, if Councilmember Williamson owns a ten percent or greater interest in the insurance agency, income to the insurance agency is attributed to Councilmember Williamson on a pro rata basis. Based on the facts provided, it is our conclusion that Councilmember Williamson owns a ten percent or greater interest in the insurance agency. In fact, he appears to own at least a 1/3 interest in the insurance agency. Accordingly, Councilmember Williamson may not participate in any decision which will have a material effect on a source of income to the insurance agency, when his pro rata share of the income is \$250 or more in the 12 months prior to the time the decision is made.<sup>2/</sup> In this regard, it should be noted that the sources of commission income in a specific sale by an insurance broker or agent include:

- (A) The insurance company providing the policy;
- (B) The person purchasing the policy; and
- (C) The brokerage firm, agency, company or other business entity through which the broker or agent conducts business.

2 Cal. Adm. Code Section  
18704.3(c)(1)(A)(B) & (C)

The full gross value of any commission income for a specific sale or transaction is attributed to each source of income in that sale or transaction. 2 Cal. Adm. Code Section 18704.3(e).

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. These regulations are contained in 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed) and set forth different tests depending on the type of financial interest which would be affected. These tests should be carefully applied in the context of each decision.

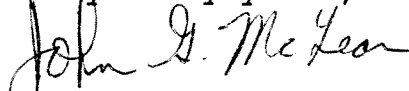
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<sup>2/</sup>"Pro rata share" does not mean the actual amount of the fee to which the filer is entitled, but rather the portion of the fee in which he has an interest by reason of his status as an owner. See Carey Opinion, 3 FPPC Opinions 99 (No. 76-087, Nov. 3, 1977).

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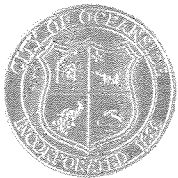
If you have any further questions, or if you wish to discuss a particular factual situation, please contact me at (916) 322-5901.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean". The signature is written in dark ink and is positioned above the typed name.

John G. McLean  
Counsel  
Legal Division

JGM:sm  
Enclosures



CITY ATTORNEY  
CHARLES R. REVLETT

# CITY OF OCEANSIDE

MAR 7 6 42 AM '86

March 5, 1986

ASSISTANT CITY ATTORNEY  
AMY GREYSON

DEPUTY CITY ATTORNEY  
PAMELA K. KLAHN

DEPUTY CITY ATTORNEY  
DEBRA E. CORBETT

Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804

Re: Request for Opinion

Dear Commissioners:

This request for opinion is based upon the following facts:

A council member is an independent contractor in a three-agent full line insurance agency (hereinafter "Agency") which consists of three family members. The agency actively seeks new business in all categories of insurance needs including business, auto, residential and commercial. The council member has made non-interest loans to the agency and is being repaid out of agency funds on an informal basis. At the present time the commissions of all three agents are put into a general fund and after payment of all agency bills the remaining funds are split two ways between the non-council member agents. The council member to date has not taken any income from the agency, but it is anticipated that at some time there will be sufficient funds for the council member to obtain an income from the agency. The agency currently does not own real property or lease in the Redevelopment area.

The council member wishes an opinion from the Commission as to whether he, or other members of the agency, may write insurance for their present insureds who live or move into projects that were approved by the City or its Redevelopment Agency while the council member was on the council. Furthermore, can the council member or another agency member, underwrite insurance needs for new clients who reside or do business in projects approved by the council while the council member was in office? If there is a prohibition, how long after leaving office does it continue?

The council member is cognizant that in some cases, there is a reasonable foreseeability that the council member's decision on a particular project may have a financial effect. There is no question that it would be necessary for the council member to disqualify himself in such a case. It is not reasonably foreseeable to anticipate a present client moving into a project that

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was previously approved by the council member. However, on a number of projects in which a developer may not have determined if a particular real estate firm or insurance firm will be handling the sales connected with the project, it is unlikely that the council member can project what influence he might have that would be different than the public at large. A review of section 18704.3 of the Regulations and sections 87100 et seq. of the General Prohibitions does not clearly answer the question for which an opinion is presently being sought.

If you require any additional information or facts upon which to base your opinion, please feel free to contact me. Thank you in advance for your cooperation in this matter.

Very truly yours,

CHARLES R. REVLETT  
CITY ATTORNEY

A handwritten signature in cursive script that reads "Debra E. Corbett".

DEBRA E. CORBETT  
Deputy City Attorney

DEC:jl

cc: Sam Williamson



# CITY OF OCEANSIDE

MAR 24 8 21 AM '86

CITY ATTORNEY  
CHARLES R. REVLETT

March 20, 1986

ASSISTANT CITY ATTORNEY  
AMY GREYSON

DEPUTY CITY ATTORNEY  
PAMELA K. KLAHN

DEPUTY CITY ATTORNEY  
DEBRA E. CORBETT

Jeannette E. Turvill  
Legal Assistant, Legal Division  
California Fair Political Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Re: Your File No. A-86-081

Dear Ms. Turvill:

Per your letter dated March 12, 1986, in response to my March 5, 1986, inquiry to the Commission, the name and address of the requestor is: Sam Williamson, Council Member and Community Development Commission Board Member, City of Oceanside, 305 North Nevada Street, Oceanside, California 92054.

Enclosed please find an authorization for me to obtain advice on his behalf.

The intent of my March 5, 1986, letter was to request written advice pursuant to Government Code section 83114(b) and 2 Cal. Admin. Code 18329. If the facts set forth in my request were insufficient, please advise me and I will obtain the information as quickly as possible and forward the same to you.

I hope this correspondence provides the necessary information for you to proceed on this request for advice.

Very truly yours,

CHARLES R. REVLETT  
CITY ATTORNEY

*Debra E. Corbett*  
DEBRA E. CORBETT  
Deputy City Attorney

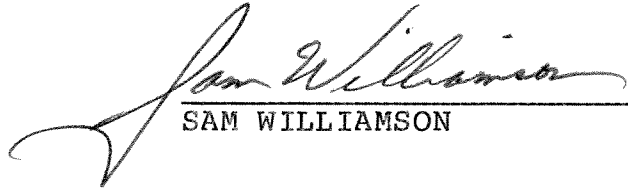
DEC:jl

Encl.

AUTHORIZATION

I, SAM WILLIAMSON, hereby authorize Debra E. Corbett, Deputy City Attorney for the City of Oceanside, to obtain advice from the California Fair Political Practices Commission on my behalf.

Executed, under penalty of perjury, this 20<sup>th</sup> day of March, 1986, at Oceanside, California.

  
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SAM WILLIAMSON

cc: Sam Williamson



# California Fair Political Practices Commission

March 12, 1986

Debra E. Corbett  
Deputy City Attorney  
City of Oceanside  
321 North Nevada  
Oceanside, CA 92054

Re: Your Request for Advice  
Our File No. A-86-081

Dear Ms. Corbett:

We have received your March 5, 1986 letter requesting written advice concerning a possible conflict of interest.

We will be happy to provide written advice; however, in order to respond to your letter, we will need the additional information listed below. Regulation 2 Cal. Adm. Code Section 18329 (copy enclosed) requires that this information be provided before we can act on your request for advice.

(1) We need the name and address of the councilmember who is the subject of your letter and your statement that you have been authorized by this member to obtain advice on his or her behalf.

(2) Throughout the body of your letter you refer to your request for an opinion from the Commission. I believe what you intend is a request for written advice. When you respond with the name and address of the councilmember, be sure to clarify your intent to request written advice.

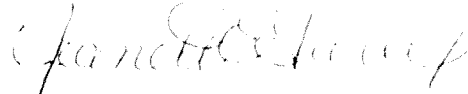
Please provide this information by April 11, 1986, so that we can respond to your letter in a timely manner. If you cannot provide the information by that date, please contact this office. If we do not hear from you by April 11, 1986, we will have to assume that you have withdrawn your request for advice.

Debra E. Corbett  
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When we have received the additional information, your request for advice will be assigned to a member of our staff for review and response. Written advice is generally provided within 21 working days after all pertinent information has been received.

Please contact this office at (916) 322-5901 if you have any questions regarding this letter.

Sincerely,



Jeanette E. Turvill  
Legal Assistant  
Legal Division

JET:plh  
Enclosure