



California Fair Political Practices Commission

August 21, 1986

Mr. Fred V. Spallina
City Attorney
City of Porterville
341 N. Third Street
Porterville, CA 93257

Re: Your Request for Advice
Our Advice No. A-86-232

Dear Mr. Spallina:

This is in response to your letter seeking advice under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

You have asked what the criteria is for determining a conflict of interest when a councilmember owns shares of a publicly owned corporation that does business in the jurisdiction of the councilmember. You specifically asked if Councilmember Boyd Leavitt may participate on a Committee for the Main Street Program if he holds an investment interest in a J.C. Penney store located on Main Street.

CONCLUSION

The Political Reform Act would not prohibit Councilmember Leavitt from participating on the Committee for the Main Street Program. Mr. Leavitt may not; however, participate in any decision in which J.C. Penney appears before the Committee or on any decision which would have a reasonably foreseeable material financial effect on J.C. Penney.

DISCUSSION

Councilmember Boyd Leavitt owns 500 shares in the J.C. Penney Company valued at \$83 per share. J.C. Penney stock is traded on the New York Stock Exchange and the company is listed in the most recent Fortune Service 500 Directory. J.C. Penney operates a store on Main Street in Porterville.

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

Mr. Fred V. Spallina
August 21, 1986
Page 2

Councilmember Leavitt was appointed to serve on the Committee for the Main Street Program. The Committee for the Main Street Program is a public agency comprised of city councilmembers, city staffers and public members. The Main Street Program calls for the state to designate selected California cities as main street cities who will receive statewide and national expertise on how to enhance their downtown areas.

Government Code Section 87100 provides that no public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows, or has reason to know he or she has a financial interest.

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 the official or a member of his or her immediate family, or on any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more. (Section 87103(a)).

The Commission's regulation 2 Cal. Adm. Code Section 18702.1 provides that when a business entity appears before an official in connection with the decision, and the official has a direct or indirect investment in the business entity valued at \$1,000 or more, the official may not participate in the decision unless it can be shown that the decision will not be distinguishable from its effect on the public generally, or would not have a financial effect on the business entity.

A person or business entity "appears" before an official when it initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request; or is a named party in the proceeding concerning the decision before the official.

Mr. Leavitt would be disqualified from participating in a decision where J.C. Penney appears before the Committee, unless the exceptions noted above could be proven.

Another possible instance where disqualification may be necessary would be a decision which may have a reasonably foreseeable material financial effect (whether direct or indirect) on J.C. Penney. It would not be necessary for J.C. Penney to appear before the Committee or be the subject of the decision.

Mr. Fred V. Spallina
August 21, 1986
Page 3

The Commission has adopted a regulation, 2 Cal. Adm. Code Section 18702.2, which determines when a decision will have a "material" financial effect on a business entity. The regulation sets out the fiscal impact a decision must have on companies in order for the decision to be material.

Section 18702.2(c) provides that the effect of a decision will be material to a business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. non-industrial corporations if the decision will increase or decrease gross revenues by \$1,000,000 or more; increase or decrease expenditures by \$250,000; or increase or decrease assets or liabilities by \$1,000,000 or more.

Should the Committee have a decision before it which could have a reasonably foreseeable material financial effect on J.C. Penney, Mr. Leavitt would be subject to disqualification. As an example, should the Committee decide to upgrade the exterior facings of commercial buildings on Main Street, J.C. Penney would be materially affected if they were required to expend \$250,000 or more on exterior improvements.

It should also be mentioned that the committee as a public agency should adopt a conflict of interest code. Its members are officials of a public agency and are all subject to the disclosure and disqualification provisions of the Political Reform Act.

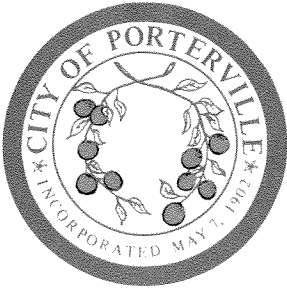
If I can be of assistance to you in developing your code, or need to discuss the disqualification provisions further, please feel free to call me at (916) 322-5901.

Sincerely,



Jeanette E. Turvill
Legal Assistant
Legal Division

JET:km



CITY OF PORTERVILLE

OFFICE OF THE CITY ATTORNEY

JUL 17 2 13 PM '86

July 15, 1986

FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Opinion Letter

Dear Madam or Sir:

One of our councilmembers, Boyd Leavitt, owns some shares of J.C. Penney stock. J. C. Penney operates a store on Main Street in Porterville.

Mr. Leavitt was recently appointed by our mayor to serve on a committee for the Main Street Program. This program calls for the state to designate selected California cities as main street cities who will receive statewide and national expertise on how to enhance their downtown areas. See Government Code Section 15399 et seq.

The committee is comprised of two councilmembers, some city staff personnel, some citizens who are members of the downtown merchant's organization, and some citizens who are not affiliated with the downtown area.

What is the criteria for determining a conflict of interest when a councilmember owns shares of a publicly owned corporation that does business in the area that the councilmember may be making decisions about?

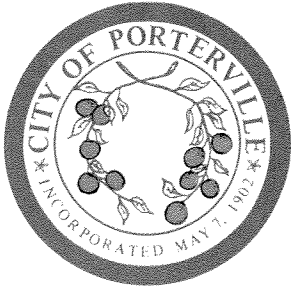
Thank you in advance for your consideration of this matter.

Very truly yours,

FRED V. SPALLINA
City Attorney

FVS/ka

cc: Boyd Leavitt



CITY OF PORTERVILLE

OFFICE OF THE CITY ATTORNEY

July 29, 1986

FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Opinion Letter
Your Advice No. A-86-232

Dear Madam or Sir:

One of our councilmembers, Boyd Leavitt, owns some shares of J. C. Penney stock. J. C. Penney operates a store on Main Street in Porterville. Mr. Leavitt owns 500 shares currently valued at \$83.00 per share on the New York Stock Exchange.

Mr. Leavitt was recently appointed by our mayor to serve on a committee for the Main Street Program. This program calls for the state to designate selected California cities as main street cities who will receive statewide and national expertise on how to enhance their downtown areas. See Government Code Section 15399 et seq.

The committee is comprised of two councilmembers, some city staff personnel, some citizens who are members of the downtown merchant's organization, and some citizens who are not affiliated with the downtown area. This committee is a public agency.

What is the criteria for determining a conflict of interest when a councilmember owns shares of a publicly owned corporation that does business in the area that the councilmember may be making decisions about?

Thank you in advance for your consideration of this matter.

Very truly yours,


FRED V. SPALLINA
City Attorney

This request for and advice letter has been authorized by me.

Dated: July 29, 1986.


BOYD LEAVITT, Councilmember,
City of Porterville

FVS/ka