



California Fair Political Practices Commission

April 29, 1987

Wynne S. Furth
Law Offices of Best, Best
and Krieger
P.O. Box 1028
Riverside, CA 92502

Re: Your Request for Advice
Our File No. I-87-079

Dear Ms. Furth:

You have requested advice on behalf of Patrick Gatti, a member of the La Verne City Council, concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter does not concern a specific governmental decision; therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

As owner of a florist shop in the Downtown Business Improvement District, is Councilmember Gatti prohibited from serving as a member of the Downtown Business Improvement District Advisory Board?

CONCLUSION

The Act does not prohibit Councilmember Gatti from serving on the Downtown Business Improvement District Advisory Board;

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

however, it prohibits him from participating in any decision regarding the district which will have a reasonably foreseeable material financial effect on his florist shop or his leasehold interest in the property on which it is located. He may not participate in the advisory board's recommendations on any decision from which he is disqualified.^{3/}

FACTS

The City of La Verne has recently created a Downtown Business Improvement District (the "district") under provisions of the Streets and Highways Code. Streets and Highways Code Section 36500 describes the purpose for creation of such districts as follows:

The purpose of this part is to authorize cities to impose assessments or charges, or both, on businesses within a parking and business improvement area which is in addition to any assessments, fees, charges, or taxes imposed in the city and to use such proceeds for the benefit of businesses within such parking and business improvement area by doing any of the following:

- (a) The acquisition, construction, or maintenance of parking facilities for the benefit of the area.
- (b) Decoration of any public place in the area.
- (c) Promotion of public events which are to take place on or in public places in the area.
- (d) Furnishing of music in any public place in the area.
- (e) The general promotion of business activities in the area.

Councilmember Gatti leases property located within the improvement district. He owns and operates a florist shop on the property. By virtue of operating his shop, Councilmember Gatti would pay assessments to the district.

^{3/} I recently spoke with your associate Ronald Van Blarcom. Mr. Van Blarcom indicated that you have already considered any issues which this factual situation raises under the common law doctrine of incompatibility of public offices. The Commission does not provide advice regarding this issue.

Councilmember Gatti wishes to be a member of the Downtown Business Improvement District Advisory Board (the "advisory board"). The advisory board was created and its members are appointed by the city council. Its purpose is to advise the city council on matters regarding the improvement district. However, the advisory board has no authority to allocate funds collected by the district. Decisions regarding the district's assessments, budget and expenditures are made by the city council. The anticipated budget for the coming year is approximately \$8,000.

The improvement district itself covers approximately 52 acres. Businesses within the district constitute less than 50 percent of the businesses within the City of La Verne.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. Regulation 18700.1(a) provides:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

The members of the advisory board are appointed by the city council and the district is subject to the city council's budgetary control. Thus, under the regulation, Councilmember Gatti would be attempting to influence the city council's decision by participating as a member of the advisory board in making recommendations to the city council. Accordingly, when Councilmember Gatti has a financial interest in a decision of the city council, he is also disqualified from participating in the advisory board's recommendations regarding that decision.^{4/}

^{4/} Since we have reached this conclusion, we need not analyze whether members of the advisory board are "public officials" within the meaning of the Act.

A public official has a financial interest in a decision 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:

(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.

Section 87103(a), (b) and (c).

Councilmember Gatti has an investment interest in his florist shop and in the real property on which it is located.^{5/} Accordingly, he may not make, or participate in, any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the florist shop or the real property on which it is located. In the present situation, it is reasonably foreseeable that the city council's decisions regarding the district will have financial effects upon Councilmember Gatti's florist shop and the real property upon which it is located. (Brown Opinion, 4 FPCC Ops. 19, 21 (No. 77-024, Feb. 7, 1978) copy enclosed.) Therefore, the question becomes whether the effect of these decisions upon Councilmember Gatti's economic interests will be material and distinguishable from the effect upon the public generally.

^{5/} In a telephone conversation with your associate, Ronald Van Blarcom, I was advised to assume that the leasehold interest in the property on which the florist shop is located, has a value of \$1,000 or more.

Materiality

Given the relatively small size of the district's anticipated budget for the upcoming year, it seems unlikely that many of the decisions with which the advisory board will be involved will have a material financial effect on Councilmember Gatti's economic interests. However, your associate, Mr. Van Blarcom, has indicated that the budget is based upon an assessment on the gross revenues on businesses in the district and that it is anticipated that the budget will grow as new business is attracted to the district.

Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in determining whether the effect of a decision on an official's economic interests will be "material." Regulation 18702.1 describes certain special situations in which an effect is considered material regardless of its dollar value. These situations include the following:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;^{6/}

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or more, or in which the official is an officer, director, partner, trustee, employee, or holds any position of management, appears before the official in connection with the decision;

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision

^{6/} A business entity "appears before" an official if it is a named party to the proceeding or initiates the proceeding by filing an application, claim, appeal or similar request. (Regulation 18702.1(b).)

of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more....

(Regulation 18702.1(a)(1), (2) and (3).)

However, it is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material. Whether an effect on a business entity in which an official has an investment, or which is a source of income to an official, will be considered material under the "dollar value" tests depends on the financial size of the business entity. (Regulation 18702.2.)

For a small business such as Councilmember Gatti's florist shop, the tests set out in Regulation 18702.2(g) are most likely applicable. It provides:

(g) For business entities which are not covered by (c), (d), (e) or (f) the effect of a decision will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

(Regulation 18702.2(g).)

With regard to effects on real property, an effect of \$10,000 or more on the fair market value of real property is material. When the effect is between \$1,000 and \$10,000, it may be material, depending on the value of the real property. (Regulation 18702(b)(2).) An effect below \$1,000 is deemed not material. (Regulation 18702(b)(2)(B).)

Public Generally

Regulation 18703 (copy enclosed) provides that the effect of a governmental decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. The Commission has interpreted the "public generally" provision to cover those persons within the jurisdiction of the official in question. (Owen Opinion, 2 FPPC Ops. 77, 81 (No. 76-005, June 2, 1976), copy enclosed.) In the present situation, we are analyzing decisions which will be made by the La Verne City Council. Therefore, the public generally is all, or a significant segment, of the persons in the City of La Verne.

In the Brown Opinion, supra, the Commission concluded that commercial property owners in a municipal improvement district which constituted approximately 50 percent of the commercial property in the city did not constitute a significant segment of the public. The Commission stated:

In this case, the relevant category of downtown commercial property owners is a small one relative to either the class of all San Clemente commercial property owners or the entire San Clemente business community. Approximately 50% of the commercial property in the city is located outside the proposed assessment district. As in the case of the Davis commercial lessors, we do not believe that the class of downtown commercial property owners can be considered a significant segment of the public. Because the improvement project is limited to the downtown area, commercial property in the improvement district will reap direct benefits and incur direct costs that will not be shared by other commercial property in the city. In fact, increased downtown business and the concomitant increase in downtown property values may be gained at the expense of commercial property in other parts of the city. Therefore, the effect of the proposed decisions will be distinguishable from their effect on the public generally.

Brown Opinion, supra, at p. 23.

In the present situation, Councilmember Gatti is a commercial lessee rather than a commercial lessor. Nonetheless, the businesses within the district constitute less

Wynne S. Furth
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than 50 percent of the businesses within the City of La Verne. The businesses within the district will be assessed fees based on their gross incomes and will reap the direct benefits of the district's decisions. In these factual circumstances, the effect of decisions involving the district on Councilmember Gatti's interests will be distinguishable from the effect on the public generally.^{7/}

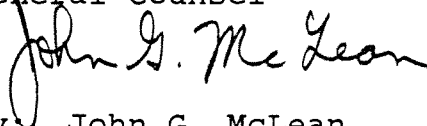
SUMMARY

Councilmember Gatti must disqualify himself from making or participating in any decision regarding the district which will have a reasonably foreseeable material financial effect on his florist shop or the property on which it is located. He may not participate in the advisory board's recommendations on any decision from which he is disqualified.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosures
cc: Ronald Van Blarcom

^{7/} In the Owen Opinion, supra, at pp. 82-83, the Commission held that a city merchant who leased space in the "core area" of the City of Davis could participate in decisions regarding the "core area" so long as the decisions did not singularly affect his interests. However, in that situation, the retail merchants to be affected constituted a major part of the business community.

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April 17, 1987

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John G. McLean, Esq.
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: 87-079

Dear Mr. McLean:

Pursuant to our telephone conversation of April 16, 1987, enclosed please find a copy of Ordinance No. 733.

Very truly yours,

Ronald A. Van Blarcom

Ronald A. Van Blarcom
for BEST, BEST & KRIEGER

RVB/tl

Enc.

cc: Mr. Patrick Gatti

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February 26, 1987

Fair Political Practices Commission
428 J Street
Sacramento, California 95814

Attention: General Counsel

Re: Request for Advice on Behalf of Councilmember
Patrick Gatti of La Verne, California

Dear Sirs:

FACTS PRESENTED

The City of La Verne, California has recently created a Downtown Business Improvement District under the authority of the Streets and Highways Code. City Councilmember Patrick Gatti leases property presently valued in excess of \$40,000, located within the improvement district. He owns and operates a florist shop on the property. He wishes to be a member of the Advisory Board of the Downtown Business Improvement Association ("DBIA") for the District.

DBIA Boardmembers must be payers of assessments in the improvement district. By virtue of operating his shop, Councilmember Gatti would pay assessments to the district. It is the Boardmembers' role to advise the City Council on matters regarding the improvement district. However, they have no authority to allocate funds collected by the district. Decisions regarding the DBIA budget and expenditures are made by the City Council. The anticipated budget for the coming year is approximately \$8,000.

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The improvement district itself covers approximately 52 acres. Businesses within the DBIA constitute less than 50% of the businesses within the City of Laverne.

QUESTION PRESENTED

Would Councilmember Gatti be prohibited from serving as a member of the Advisory Board of the DBIA by Government Code Section 87100 because the DBIA makes recommendations to the City Council on matters in which he is financially interested?

ANALYSIS

California Government Code Section 87100 states the basic rule regarding governmental conflicts of interest. The Section provides as follows:

"No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Under Section 87103 an official has a financial interest in a decision "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally" on any business entity or real property in which the public official has a direct or indirect investment in excess of than \$1,000. Councilmember Gatti's interest in the florist shop is worth more than \$1,000.

A similar situation is found in 4 FPPC Opinions 19. There 50% of the commercial property in the City of San Clemente was located outside a proposed improvement district. Therefore, it was opined that "the effect of the proposed decisions (within the improvement district) will be distinguishable from their effect on the public generally." The opinion went on to reason that two councilmembers, who owned property within the improvement district, must therefore disqualify themselves from decisions concerning creation of the improvement district.

Under 4 FPPC Opinions 19, Councilman Gatti must likewise disqualify himself from voting with the City Council on matters

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which relate to the Downtown Business Improvement District. By the same token it appears he would be using his official position to influence a governmental decision in which he had a financial interest, if, in the role of DBIA Boardmember, he made recommendations to the City Council. Therefore, we have advised him that he may not serve as a DBIA Boardmember.

2 Cal.Admin. Code Section 18700.1(a) expounds upon the prohibition against using of an official position to influence.

With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, official, employee or consultant of the agency. Attempts to influence, include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer."

In this instance, decisions regarding the improvement district are made by the City Council. Therefore, by definition, it seems that Councilmember Gatti would be using his official position to influence those decisions if he "appears before or otherwise attempts to influence" the City Council "for the purpose of influencing" their decisions.

Section 87100 also provides that no official may participate in making a governmental decision in which he has a financial interest. It may be that service as a DBIA Boardmember will lead to prohibited "participation" on Mr. Gatti's part as well. In 1 FPPC Opinions 58, a mayor, disqualified by a conflict of interest from voting on certain matters, was prohibited from chairing a meeting during the city council's consideration of the same matters. Chairing the meeting was considered participation. In all likelihood, making recommendations to the City Council on decisions in which Councilmember Gatti is prohibited from voting upon as a City Council member because of his financial interests could be deemed "participation."


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CONCLUSION

We have advised Councilman Gatti that he should not serve as a DBIA Boardmember. However, we seek your advice on the question presented above. If you require more information before you are able to respond to this request for advice, please do not hesitate to call.

Thank you for your attention to this matter.

Very truly yours,



Wynne S. Furth
for BEST, BEST & KRIEGER

WSF/tl

ORDINANCE NO. 733

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA VERNE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ESTABLISHING AN ADVISORY BOARD FOR THE DOWNTOWN LA VERNE BUSINESS IMPROVEMENT DISTRICT.

The City Council for the City of La Verne DOES ORDAIN as follows:

Section 1. There is hereby added to the Municipal Code of La Verne Chapter 2.54 entitled "Downtown La Verne Business Improvement District Advisory Board", Sections 2.54.010 through 2.54.150 which are to read as follows:

2.54.010. Purpose and Intent. It is the purpose and intent of the City Council to establish an advisory Board to the Downtown La Verne Business District pursuant to Streets and Highways Code Section 36503.

2.54.020. Created. There is created a established an Advisory Board for the Downtown La Verne Business Improvement District.

2.54.030. Membership - Appointment. The Advisory Board of the Downtown La Verne Business District shall consist of seven (7) members who shall be appointed by the Mayor with the approval of the City Council.

2.54.040. Qualification for membership: Residence in the City of La Verne for one (1) year and/or membership in the Downtown La Verne Business Improvement District.

2.54.050. Term of Office. The first three (3) members appointed shall serve for the term of one (1) year, and the remaining four (4) members shall serve for the term of two (2) years. Thereafter, their successors shall be appointed for terms of two (2) years. If vacancies shall occur otherwise than by expiration of term, they shall be filled by appointment for the unexpired portion of the term.

2.54.060. Presumption of Vacancy. A vacancy is deemed to have occurred whenever any member of the Advisory Board is absent from three (3) consecutive meetings without giving the secretary thereof notice prior to the meeting of his or her intended absence.

2.54.070. Removal of Members. Any member of the Advisory Board may be removed by a majority vote of the City Council.

2.54.080. Advisory Personnel. The City Manager or his designee shall furnish any necessary administrative and technical support to the Advisory Board.

2.54.090. Quorum. Four (4) members shall constitute a quorum for the transaction of business.

2.54.100. Organization. At the first meeting in February of each year, the Advisory Board shall meet, organize and choose its officers, determine the time of meetings and review its rules of procedure. The officers shall all be members of the Advisory Board.

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ADMITTED IN NEW YORK, NEVADA
WASHINGTON, D. C. COURT OF CLAIMS

February 26, 1987

Fair Political Practices Commission
428 J Street
Sacramento, California 95814

Attention: General Counsel

Re: Request for Advice on Behalf of Councilmember
Patrick Gatti of La Verne, California

Dear Sirs:

FACTS PRESENTED

The City of La Verne, California has recently created a Downtown Business Improvement District under the authority of the Streets and Highways Code. City Councilmember Patrick Gatti leases property presently valued in excess of \$40,000, located within the improvement district. He owns and operates a florist shop on the property. He wishes to be a member of the Advisory Board of the Downtown Business Improvement Association ("DBIA") for the District.

DBIA Boardmembers must be payers of assessments in the improvement district. By virtue of operating his shop, Councilmember Gatti would pay assessments to the district. It is the Boardmembers' role to advise the City Council on matters regarding the improvement district. However, they have no authority to allocate funds collected by the district. Decisions regarding the DBIA budget and expenditures are made by the City Council. The anticipated budget for the coming year is approximately \$8,000.

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The improvement district itself covers approximately 52 acres. Businesses within the DBIA constitute less than 50% of the businesses within the City of Laverne.

QUESTION PRESENTED

Would Councilmember Gatti be prohibited from serving as a member of the Advisory Board of the DBIA by Government Code Section 87100 because the DBIA makes recommendations to the City Council on matters in which he is financially interested?

ANALYSIS

California Government Code Section 87100 states the basic rule regarding governmental conflicts of interest. The Section provides as follows:

"No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Under Section 87103 an official has a financial interest in a decision "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally" on any business entity or real property in which the public official has a direct or indirect investment in excess of than \$1,000. Councilmember Gatti's interest in the florist shop is worth more than \$1,000.

A similar situation is found in 4 FPPC Opinions 19. There 50% of the commercial property in the City of San Clemente was located outside a proposed improvement district. Therefore, it was opined that "the effect of the proposed decisions (within the improvement district) will be distinguishable from their effect on the public generally." The opinion went on to reason that two councilmembers, who owned property within the improvement district, must therefore disqualify themselves from decisions concerning creation of the improvement district.

Under 4 FPPC Opinions 19, Councilman Gatti must likewise disqualify himself from voting with the City Council on matters

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which relate to the Downtown Business Improvement District. By the same token it appears he would be using his official position to influence a governmental decision in which he had a financial interest, if, in the role of DBIA Boardmember, he made recommendations to the City Council. Therefore, we have advised him that he may not serve as a DBIA Boardmember.

2 Cal.Admin. Code Section 18700.1(a) expounds upon the prohibition against using of an official position to influence.

With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, official, employee or consultant of the agency. Attempts to influence, include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer."

In this instance, decisions regarding the improvement district are made by the City Council. Therefore, by definition, it seems that Councilmember Gatti would be using his official position to influence those decisions if he "appears before or otherwise attempts to influence" the City Council "for the purpose of influencing" their decisions.

Section 87100 also provides that no official may participate in making a governmental decision in which he has a financial interest. It may be that service as a DBIA Boardmember will lead to prohibited "participation" on Mr. Gatti's part as well. In 1 FPPC Opinions 58, a mayor, disqualified by a conflict of interest from voting on certain matters, was prohibited from chairing a meeting during the city council's consideration of the same matters. Chairing the meeting was considered participation. In all likelihood, making recommendations to the City Council on decisions in which Councilmember Gatti is prohibited from voting upon as a City Council member because of his financial interests could be deemed "participation."

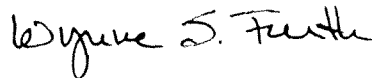
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CONCLUSION

We have advised Councilman Gatti that he should not serve as a DBIA Boardmember. However, we seek your advice on the question presented above. If you require more information before you are able to respond to this request for advice, please do not hesitate to call.

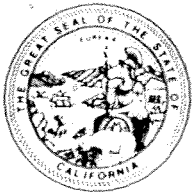
Thank you for your attention to this matter.

Very truly yours,



Wynne S. Furth
for BEST, BEST & KRIEGER

WSF/tl



California Fair Political Practices Commission

March 11, 1987

Wynne S. Furth
Best, Best & Krieger
P.O. Box 1028
Riverside, CA 92502

Re: 87-079

Dear Mr. Furth:

Your letter requesting advice under the Political Reform Act was received on March 10, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Patrick Gatti