



California Fair Political Practices Commission

January 29, 1988

Byron D. Athan
City Attorney
City of San Ramon
2222 Camino Ramon
San Ramon, CA 94583-1350

Re: Your Request for Advice
Our File No. I-87-321

Dear Mr. Athan:

You have requested advice on behalf of San Ramon City Councilmember Mary Lou Oliver concerning her duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} This letter confirms the telephone advice I provided to you on January 26, 1988.

QUESTION

Councilmember Oliver has an investment interest in a bank located in the Crow Canyon redevelopment project area in the City of San Ramon. Another San Ramon redevelopment project area, known as the Alcosta Area, is approximately five miles away from the Crow Canyon Area. You have asked if Councilmember Oliver may participate in the following redevelopment agency decisions:

1. Approval or disapproval of owner-participants' proposed projects.
2. Approval or disapproval of specific uses of property if no change in zoning is required.
3. Selection of a developer for a 52-acre residential housing project in the Crow Canyon Area.

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

CONCLUSION

Councilmember Oliver may participate in decisions concerning the Alcosta Area. With regard to decisions concerning the Crow Canyon Area, Councilmember Oliver generally may participate in decisions concerning owner-participants' proposed projects and in decisions concerning specific uses of property when no change in zoning is required. In cases where there are specific facts which indicate that a particular decision will have a reasonably foreseeable material financial effect on the bank in which she has an investment interest, she may not participate.

Councilmember Oliver should disqualify herself from participating in decisions concerning the proposed residential housing project in the Crow Canyon Area unless there are specific facts which indicate that the proposed project will not have a reasonably foreseeable material financial effect on the Bank of San Ramon. We do not have sufficient facts to draw a final conclusion on this point, but the analysis section of this letter provides guidance as to what factors to consider.^{2/}

FACTS

The City Council of San Ramon sits as the legislative body for the San Ramon Redevelopment Agency. The city has designated two project areas for redevelopment. It is possible that one or more financial institutions will be located in each of the project areas.

One project area is known as the Alcosta Area. It consists of approximately 45 acres and has been zoned for retail, office, manufacturing, recreational and residential uses.

The other project area is known as the Crow Canyon Area. It consists of approximately 325 acres and has been zoned for retail, office, institutional, medical office, and residential uses.

The city council is currently considering a 52-acre residential project proposed for the Crow Canyon Area. The

^{2/} Because we do not have sufficient facts to reach a final conclusion we consider your request to be for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

project would consist of 1,400 dwelling units. It would be the major housing component of the Crow Canyon Area.

Councilmember Oliver and her husband have invested approximately \$26,000 in Mission Valley Bancorp, a holding company which owns 100 percent of the Bank of San Ramon. Councilmember Oliver's ownership interest in Mission Valley Bancorp and its wholly-owned subsidiary is less than 10 percent. The Bank of San Ramon is located in the Crow Canyon Area, approximately one mile from the proposed residential housing development.

The Bank of San Ramon is a single-branch bank performing general commercial bank services, such as passbook savings accounts, money market accounts, business savings accounts, regular and special checking accounts, business accounts, and short-term business loans. The bank does not make, or expect to make, real estate or long-term loans.

At present there are seven other financial institutions within a one-half mile radius of the Crow Canyon Area, of which five are full-service banks and two are savings and loan institutions. One more full-service bank is proposed to be located in the Crow Canyon Area, and three more are proposed to be located within a one-half mile radius of the Crow Canyon Area. These proposals are separate from the proposed residential housing project.

ANALYSIS

Section 87100 prohibits any public official from making, participating in or using her official position to influence a governmental decision in which she has a financial interest. 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 the effect on the public generally, on, among other interests:

- (a) 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).

Councilmember Oliver has an investment interest worth \$26,000 in Mission Valley Bancorp. Accordingly, she must disqualify herself from participating in any decisions which would foreseeably and materially affect Mission Valley

Bancorp. (Section 87103(a).)^{3/} This includes any decision which would foreseeably and materially affect Bank of San Ramon, the wholly-owned subsidiary of Mission Valley Bancorp. (Regulation 18706, copy enclosed.) Thus, it is necessary to determine whether the redevelopment decisions in question will have a reasonably foreseeably material financial effect on the Bank of San Ramon.

Foreseeability

For purposes of conflict of interest analysis, the reasonably foreseeable effects of a decision must be considered. An effect is reasonably foreseeable if there is a substantial likelihood it will occur. Certainty is not required. However, an effect that is but a mere possibility is not reasonably foreseeable. (Witt v. Morrow (1977) 70 Cal. App. 3d 817; In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Materiality

It also is necessary to determine whether the decisions in question will materially affect the Bank of San Ramon. In this regard, Regulation 18702.2(e) (copy enclosed) provides that a decision has a material effect if it would foreseeably increase or decrease the gross revenues, assets or liabilities of the Bank of San Ramon by \$30,000 in a fiscal year, or increase or decrease the bank's expenses by \$7,500 in a fiscal year.^{4/}

In determining whether the effect of a redevelopment decision is reasonably foreseeable and material, it is appropriate to consider that the purpose of redevelopment is to improve real property and business values in the redevelopment area. (Downey Cares v. Downey Community Development Commission (1987) 196 Cal. App. 3d 983.) Based on these intended effects,

^{3/} The effect on Mission Valley Bancorp also must be distinguishable from the effect on the public generally. (Section 87100.) None of the facts provided support a conclusion that the "public generally exception" applies, therefore it is not discussed in this analysis.

^{4/} Regulation 18702.2(e) applies to business entities which qualify for public sale in California pursuant to Corporations Code Section 25110, but are not traded on a national over-the-counter exchange. Based on the facts in your letter, Mission Valley Bancorp is covered by Regulation 18702.2(e).

Byron D. Athan
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we previously advised you that another investor in Mission Valley Bancorp, San Ramon Mayor Wayne Bennett, was required to disqualify himself from major policy decisions concerning the Crow Canyon Area but could participate in decisions concerning the Alcosta Area. (Athan Advice Letter, No. A-86-094.)

In our previous letter regarding Mayor Bennett, we stated that the major policy decisions concerning the Crow Canyon Area included decisions concerning the project area boundaries, financing decisions, approval of an environmental impact report on the project area, and decisions about types of uses and major public improvements in the project area. We further advised that once the basic policy decisions had been reached, Mayor Bennett generally could participate in the decisions which implement, but do not change those policies. We cautioned, however, that if there are specific facts which indicate that a particular implementing decision would materially affect the Bank of San Ramon, Mayor Bennett must disqualify himself from that decision.

Our advice to Mayor Bennett applies equally to Councilmember Oliver. Councilmember Oliver may participate in decisions concerning the Alcosta Area. However, she should disqualify herself from participating in the basic policy decisions concerning the Crow Canyon Area and from any implementing decisions which, based on the specific factors involved, would materially affect the Bank of San Ramon.

The decisions concerning an owner-participant's project or use of a particular parcel without zoning change are implementing decisions. Councilmember Oliver generally may participate in these decisions unless there are specific facts which indicate that a material financial effect on the Bank of San Ramon is reasonably foreseeable. For example, approval to locate a new bank within one block of the Bank of San Ramon is the type of implementing decision from which Councilmember Oliver should disqualify herself.

In our telephone conversation, we discussed the proposed residential project for the Crow Canyon Area. You indicated that this residential project will be the major housing component of the Crow Canyon Area. The size of the proposed project is 52 acres, or approximately one-sixth of the total acreage within the Crow Canyon Area. These facts support a conclusion that the decisions on the proposed residential housing project are major decisions and that their effect on the Bank of San Ramon is likely to be material.


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However, it also is important to note that the proposed residential housing project is located approximately one mile from the Bank of San Ramon, and that there also are seven other financial institutions in or near the Crow Canyon Area. We do not have any specific information on the proximity or accessibility of the other financial institutions to the proposed residential project. However, if other financial institutions are equally proximate or convenient to the proposed residential project as is the Bank of San Ramon, these facts could support a conclusion that the foreseeable effects of the proposed housing project on the Bank of San Ramon would not be sufficient to reach the thresholds in Regulation 18702.2(e).

You and Councilmember Oliver should discuss and weigh these competing factors. We do not have sufficient information about the proposed residential housing project and its proximity and accessibility to other financial institutions in or near the Crow Canyon Area to determine if there are sufficient facts to support a conclusion that the decisions concerning the proposed project will not materially affect the Bank of San Ramon. If you wish to discuss this matter further, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures

City of San Ramon

2222 Camino Ramon
San Ramon, California 94583-1350
(415) 866-1400

F P P C
DEC 21 9 12 AM '87

December 17, 1987

Gregory W. Baugher, Executive Director
State of California
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Re: Request for Opinion
OLIVER, Mary Lou

Dear Mr. Baugher:

Reference is made to your letter, File No. 87-004, denying the request contained in letter, dated June 22, 1987 (copy attached), for the Commission to issue an opinion.

Accordingly, an advice letter is requested with particular reference to the question as to whether Councilperson Oliver may participate in the following decisions of the Redevelopment Agency:

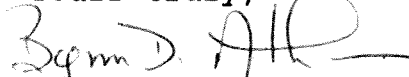
1. Selection of a developer for a project;
2. Approval or disapproval of an owner-participant's proposed project; and
3. Approval or disapproval of specific uses of the property if no change in zoning required.

There has been no change in the factual situation set forth in letter dated June 22, 1987.

I have been authorized by Councilperson Oliver to request this advice letter.

Thank you for your cooperation in this matter.

Yours truly,


BYRON D. ATHAN
City Attorney

Encl: a/s

City of San Ramon

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San Ramon, California 94583-1350
(415) 866-1400

COPY

June 22, 1987

State of California
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Re: Request for Opinion
OLIVER, Mary Lou

Dear Commissioners:

Request that the Commission issue an opinion pursuant to Section 83114(a) of the Government Code as to whether a City Councilperson is disqualified from participating in governmental decisions pertaining to a redevelopment project under the following factual situation:

F A C T S

1. The City Council of the City of San Ramon is the legislative body for the redevelopment agency.
2. The City has designated two project areas for redevelopment
 - A. Alcosta Area consisting of approximately 45 acres.
 - B. Crow Canyon Area consisting of approximately 325 acres.
3. The Alcosta Area has been zoned for retail, office, manufacturing, recreational and residential uses and such uses for the area are being contemplated by the Agency. The Crow Canyon Area has been zoned for approximately 730,000 square feet retail use, 1,000,000 square feet office, 400,000 square feet institutional uses, 650,000 square feet hotel space, 350,000 square

COPY

feet medical office space, and 500 dwelling units. It is possible that one or more financial institutions will be located in each of the project areas.

4. The two redevelopment areas are approximately five miles apart.
5. The City Councilperson and her husband have invested approximately \$26,000 in the holding company, Mission Valley Bancorp, which owns 100% of the Bank of San Ramon. The capitalization of Mission Valley Bankcorp is \$12,000,000 so that the City Councilperson's interest would be approximately 2/10ths of one percent (.002). The capitalization of the Bank of San Ramon is \$3,000,000. The holding company also owns and operates two other banks; the Bank of Pleasanton and the commercial Bank of Fremont.
6. The Bank of San Ramon is a single branch bank performing general commercial bank services, such as passbook savings accounts, money market accounts, business savings accounts, regular and special checking accounts, business accounts, and short term business loans. The bank does not expect to make real estate or long term loans.
7. The Bank of San Ramon leases space in the Crow Canyon Area from a non-affiliated entity for the conduct of its general financial services. The lease was negotiated at arms length and is for a period of ten years with two possible five year extensions. The rental is within the range of current rents for the area and the lease provides for annual CPI adjustments in addition to a second year increase in the basic rent.
8. There are twelve other banks and five savings and loan associations currently conducting financial operations within the City of San Ramon.
9. Neither the Councilperson nor her husband are officers or employees of the Bank of San Ramon or of any other financial institution.

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Letter - Fair Political
Practices Commission
June 22, 1987

The Councilperson's name and address is:

Mary Lou Oliver
2770 Dos Rios Drive
San Ramon, CA 94583

Ms. Oliver has authorized me to request this commission opinion.

Thank you for your cooperation in this matter.

Yours truly,

BYRON D. ATHAN
City Attorney

87-321

City of San Ramon

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DEC 21 9 12 AM '87

December 17, 1987

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There has been no change in the factual situation set forth in letter dated June 22, 1987.

I have been authorized by Councilperson Oliver to request this advice letter.

Thank you for your cooperation in this matter.

Yours truly,


BYRON D. ATHAN
City Attorney

Encl: a/s

City of San Ramon

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San Ramon, California 94583-1350
(415) 866-1400

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June 22, 1987

State of California
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

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OLIVER, Mary Lou

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Letter -Fair Political
Practices Commission
June 22, 1987

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4. The two redevelopment areas are approximately five miles apart.
5. The City Councilperson and her husband have invested approximately \$26,000 in the holding company, Mission Valley Bancorp, which owns 100% of the Bank of San Ramon. The capitalization of Mission Valley Bankcorp is \$12,000,000 so that the City Councilperson's interest would be approximately 2/10ths of one percent (.002). The capitalization of the Bank of San Ramon is \$3,000,000. The holding company also owns and operates two other banks; the Bank of Pleasanton and the commercial Bank of Fremont.
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Letter - Fair Political
Practices Commission
June 22, 1987

The Councilperson's name and address is:

Mary Lou Oliver
2770 Dos Rios Drive
San Ramon, CA 94583

Ms. Oliver has authorized me to request this commission
opinion.

Thank you for your cooperation in this matter.

Yours truly,

BYRON D. ATHAN
City Attorney



California
Fair Political
Practices Commission

December 21, 1987

Byron D. Athan, City Attorney
City of San Ramon
2222 Camino Ramon
San Ramon, CA 94583-1350

Re: 87-321

Dear Mr. Athan:

Your letter requesting advice under the Political Reform Act was received on December 21, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

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,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *DJG*

DMG:jaj