



California Fair Political Practices Commission

August 18, 1988

Frank Gillio
City Attorney
City of Millbrae
150 W. Iowa, #203
Sunnyvale, CA 94086

Re: Your Request for Advice
Our File No. A-88-250

Dear Mr. Gillio:

This is in response to your request for advice on behalf of Mayor Paul Van Iderstine and Councilmember Janet Fogarty regarding their responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/}

QUESTIONS

1. May Mayor Van Iderstine and Councilmember Fogarty participate in decisions regarding the adoption of a proposed redevelopment plan when the real estate businesses with which they are affiliated are located within the boundaries of the plan area?

2. May the mayor and the councilmember participate in decisions regarding adoption of the redevelopment plan if they agree not to handle the sale of any real property or business within the project area as it is ultimately approved?

3. If the mayor and the councilmember are prohibited from participating in decisions regarding adoption of, or amendment to the redevelopment plan, what redevelopment decisions would they be permitted to participate in?

CONCLUSIONS

1. Both the mayor and the councilmember are prohibited from participating in decisions regarding adoption or amendment

^{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.

Frank Gillio
August 18, 1988
Page 2

of the proposed redevelopment area because of their financial interests located within the boundaries of the proposed redevelopment area.

2. Even if the mayor and the councilmember were to stop handling any real property or business within the redevelopment area themselves, so long as they are receiving income through the businesses located within the redevelopment area, they are prohibited from participating in decisions regarding the boundaries of the proposed area.

3. The mayor and the city councilmember may participate in decisions regarding individual project areas, so long as the decisions will not have a material financial effect on the real estate businesses for which they work.

FACTS

Mayor Paul Van Iderstine is a licensed real estate salesperson, employed by Fox and Carskadon as manager of the Millbrae office. He is a salaried employee of Fox and Carskadon. While Mr. Van Iderstine would receive a commission on any real estate sale which he closed, he is presently not selling real estate because of the demands of his job as manager.

Councilmember Janet Fogarty is a licensed real estate broker. She currently acts as a part-time real estate agent in the offices of Real Vest. Councilmember Fogarty receives commissions for sales which she closes as a real estate agent. She also reviews files for Real Vest and has discussed the possibility of being paid a salary for this work.

Neither Mayor Van Iderstine nor Councilmember Fogarty has any ownership interest in the real estate offices for which they work.

The Millbrae City Council serves as the redevelopment agency for the City of Millbrae. The redevelopment agency and city council are conducting a series of joint hearings concerning a proposed redevelopment plan. The offices of both Real Vest and Fox and Carskadon are located within the proposed redevelopment area.

Mr. Van Iderstine and Ms. Fogarty are prepared to agree not to handle the sale or purchase of any real property or business within the proposed redevelopment area. Neither is in a

Frank Gillio
August 18, 1988
Page 3

position to make a similar commitment on behalf of the real estate offices with which they are associated.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official positions to influence any governmental decision in which they know or have reason to know they have a financial interest. 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 the effect on the public generally, on the official or any member of his or her immediate family, or on:

(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.

Section 87103.

Both Mayor Van Iderstine and Councilmember Fogarty are real estate professionals. Both have received more than \$250 in income from their respective real estate offices within the past twelve months. Thus, their real estate offices are sources of income to each of them. (Sections 82030(a) and 87103(c); see also Regulation 18704.3, copy enclosed, regarding sources of commission income.) Because Mayor Van Iderstine is manager of the Fox and Carskadon office, he also has a management interest in the real estate firm. (Section 87103(d).)

Consequently, Mr. Van Iderstine and Ms. Fogarty must disqualify themselves from decisions which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the real estate businesses for which they work. (Section 87103.)

California's redevelopment law was enacted for the purpose of protecting and promoting sound development and revitalization of blighted areas. (See Health and Safety Code Sections 33035 and 33037.) The natural consequence of redevelopment is stimulation of business, and increase in real property values in and around the redevelopment project area. Consequently, the Commission has consistently concluded that it is foreseeable that there will be a general increase in business profits and real property values located in or near project areas as a result of redevelopment. (In re Oglesby (1975) 1 FPFC Ops. 71, Advice Letters to Haight, No. A-81-509, and Roberts, A-88-051, copies enclosed.)

Real estate businesses located within or near redevelopment areas, therefore, are in a unique position to benefit from redevelopment decisions. These businesses, and the professionals affiliated with them, earn their income from commissions based on a percentage of the value of property sold. This connection between redevelopment decisions and the likelihood of increased income to real estate businesses located in the area provide the requisite foreseeability that Mayor Van Iderstine and Councilmember Fogarty will benefit in a manner distinguishable from the public generally. (See Downey Community Development Commission v. Downey Cares (1987) 196 Cal. App. 3d 983, and In re Oglesby, supra, at p. 83.)

Regulation 18702.2 (copy enclosed) provides guidelines to ascertain whether the effect of a decision on a business interest is material. The standards provided in the regulation are based on the financial size of the business entity in which the public official has an interest. Thus, if we assume that the real estate firms in which the mayor and councilmember work are relatively small businesses, it would be appropriate to apply Regulation 18702.2(g), which provides that the effect of a decision will be material if:

(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

Frank Gillio
August 18, 1988
Page 5

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

Thus, assuming Regulation 18702.2(g) is the appropriate measuring tool, a decision will have a material financial effect on either real estate business if it will increase or decrease gross revenues, or the value of assets or liabilities, by \$10,000, or will result in the business entity incurring or avoiding expenses of at least \$2,500 in a fiscal year.

Because the real estate business is so directly tied to redevelopment activity and the offices for which the mayor and city councilmember work are located in and doing business within the proposed redevelopment area, we conclude that the real estate offices will be materially affected by the decisions regarding adopting or amending the redevelopment area. Thus, both Mayor Van Iderstine and Councilmember Fogarty are prohibited from participating in decisions regarding the adoption or amendment of the redevelopment area.

It is important to note that Section 87103 specifically defines a source of income in terms of income provided to, received by or promised to the public official within twelve months of a decision. Thus, if the mayor and councilmember were to totally sever their financial relationships with these businesses today, they must disqualify themselves from participation in decisions which will affect the real estate businesses for the next twelve months. This is true whether or not they are personally involved in the sale of property within the redevelopment area.

Typically, once the decisions regarding the boundaries of the redevelopment area or project areas have been made, the redevelopment authority begins the process of designing specific projects in designated project areas. Frequently these project areas encompass small portions of the larger redevelopment area. Whether the mayor and councilmember may participate in decisions regarding these individual projects depends of the proximity of the project to the financial interests of the real estate firms. (See Lyders Advice Letter, No. A-82-158 and Scudder Advice Letter, No. A-88-181, copies enclosed.)

Without facts concerning an individual project area decision, it is not possible to provide a more specific response to that portion of your question at this time. If, at

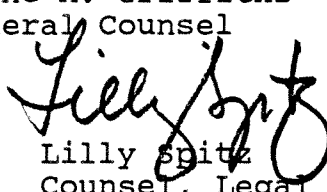
Frank Gillio
August 18, 1988
Page 6

some future point, Mayor Van Iderstine or Councilmember Fogarty are faced with decisions regarding individual project areas in which they may have a financial interest, we will be happy to provide you with further advice.

I hope this analysis is helpful to you. Please contact me at (916) 322-5901 if you have any questions.

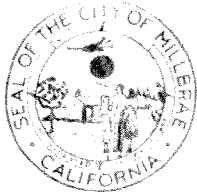
Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosures



*City of Millbrae
California*

June 28, 1988

OFFICE OF
CITY ATTORNEY
150 W. Iowa #203
Sunnyvale, CA 94086

Diane Griffiths
Chief, Legal Division
California Fair Political Practices Commission
4528 J Street Suite 800
Sacramento, CA 95814

**RE: REQUEST FOR ADVICE
MILLBRAE REDEVELOPMENT AGENCY**

Dear Ms. Griffiths:

I am the City Attorney for the City of Millbrae, a General Law City. The City is governed by a five member City Council.

This letter requests an opinion concerning possible conflicts of interest which may be encountered by two Councilmembers.

Paul Van Iderstine, who is also the Mayor, is a licensed real estate sales person who is employed by FOX AND CARSKADON, as the Manager of the Millbrae office. While Mr. Van Iderstine would receive a commission on any real estate sale which he closed, he advises that presently he is not selling real estate because of the demands of his job as Manager of the real estate office. He is paid a salary for his services as the Manager.

Janet Fogarty is a licensed real estate broker. However, presently she does not conduct her own real estate brokerage business. Instead she acts as a part-time real estate agent in "REAL VEST," a real estate office. Councilmember Fogarty also reviews files for REAL VEST and has discussed the possibility of being paid a salary for this work. Normally, her compensation is in the form of real estate commissions for sales which she closes as a real estate agent.

Diane Griffiths
Page Two
June 28, 1988

Neither Mr. Van Iderstine nor Ms. Fogarty owns any interest in the FOX AND CARSKADON or in REAL VEST.

FACTUAL BACKGROUND

On May 12, 1987 the City Council established the Millbrae Redevelopment Agency by Ordinance No. 520. The City Council declared itself to be the Redevelopment Agency pursuant to the California Health and Safety Code Sec 33.200.

The Redevelopment Agency subsequently designated "Survey Area No. 1" to identify a potential redevelopment project and a project area (October 23, 1987) and selected a Redevelopment Project Area and approved a Preliminary Redevelopment Plan (January 13, 1988)

Currently the Redevelopment Agency and City Council are conducting a series of joint hearings concerning a proposed Redevelopment Plan. No decision has been made concerning the Plan. However, the boundaries of the recommended Redevelopment Project Area which included single and multiple family zoned properties as well as commercially zoned properties has been revised to eliminate single family and duplex residential zoned properties.

Both the REAL VEST and FOX AND CARSKADON real estate offices physically are located within the footprint of the revised Project Area.

It should be noted that both Mr. Van Iderstine and Ms. Fogarty are prepared to agree not to handle the sale or purchase of any real property or business within the proposed Redevelopment Project Area. Presently neither is in a position to make a similar commitment on behalf of the real estate offices with whom they are associated.

Under the provisions of the Political Reform Act (Government Code Sec 81,000 et seq) and its implementing regulations (2 Cal. Adm. Code §18110 et seq)

Diane Griffiths
Page Three
June 28, 1988

"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" (Sec 87100).

The applicable portion of Section 87130 of the Government Code provides:

"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:

.....
(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.

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I am aware of previous opinions in which the Fair Political Practices Commission (herein called the "Commission") has presumed that the adoption of a redevelopment plan will increase property values inside (and often outside) the redevelopment project area. (See Gillmor opinion (1977) 3 FPPC 38). The FPPC has also been concerned when public officials who are real estate agents are faced with redevelopment decisions (1 FPPC 71, 80-81). Ownership of a real estate business and property in a project area was held to disqualify a Member from voting on a Redevelopment Plan Amendment by the Court in Downey Cares v. Downey Community

Diane Griffiths
Page Four
June 28, 1988

Development Commission - 1987 - 196 Cal App 3d 983.

However, I am advised that to date the Commission has not adopted a regulation which would prohibit an Agency Member from voting in the particular situation described in this letter.

Therefore, the City requires your advice as to whether if the public officials concerned voted on the proposed Redevelopment Plan it would be reasonably foreseeable to them that the decision would have an effect on each of them or on a financial interest of the officials concerned which is material and distinguished from its effect on the public generally.

QUESTION PRESENTED

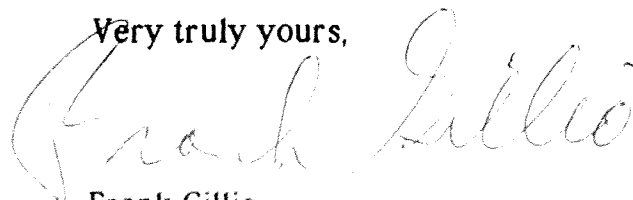
1. Would Mayor Van Iderstine and/or Councilmember Fogarty be precluded from making or participating in the making of a decision concerning the proposed Redevelopment Plan before the Council and Agency?

2. Would your answer be different if either or both of the public officials concerned agreed not to handle the sale of any real property or business within the Redevelopment Project Area ultimately approved?

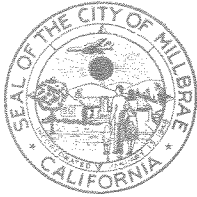
3. If either or both of the public officials concerned are prohibited from voting upon the Redevelopment Plan, or any Amendment thereto, what Redevelopment activities would they be permitted to participate in or vote on?

Please let me know if I can provide any further information to you with respect to these questions.

Very truly yours,

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

Frank Gillio
City Attorney



*City of Millbrae
California*

JUN 30 6 01 AM '88

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CITY ATTORNEY

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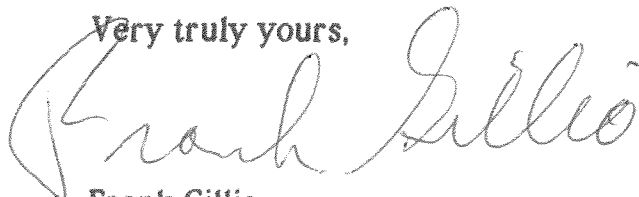
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