



California Fair Political Practices Commission

May 23, 1989

Bruce M. Jacobs
Gilroy City Attorney
Jacobs & McDonald
Post Office Box 458
Gilroy, CA 95021-9458

Re: Your Request for Informal
Assistance
Our File No. I-89-017

Dear Mr. Jacobs:

You have asked several questions about the conflict of interest provisions of the Political Reform Act (the "Act").¹ Your letter makes no reference to a specific pending decision or the future actions of a specific city official. Therefore, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

In this letter we make no comment on past conduct of any public official. We have read newspaper articles which refer to the past conduct of one city councilmember in Gilroy; however, the Commission's policy is to decline to provide advice on past conduct. (Regulation 18329(c)(4)(A).)

QUESTIONS

Regulation 18702.3 sets forth various tests for determining whether the effect of a decision on an official's real property is considered material. You have the following questions about application of Regulation 18702.3:

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.

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).)

1. If the official's residence is within 300 feet of real property that is the subject of a governmental decision, is the effect of the decision on the official's residence considered material?

2. Regulation 18702.3 provides that, under certain circumstances, an effect of \$10,000 or more on the fair market value of real property in which the official has an interest is considered a material effect. Over what time span is the \$10,000 effect calculated?

3. If the official owns a one-half interest in real property, what effect on the value of the property is considered material?

4. If all property in the community is expected to increase in value by the same amount, is there a material financial effect on the official's real property?

CONCLUSIONS

1. If the official's residence is within 300 feet of real property that is the subject of a governmental decision, the effect of the decision on the official's residence is considered material unless the decision would have no financial effect on the official's residence.

2. The \$10,000 effect is not restricted to any specific time period. Instead, the test is whether the \$10,000 effect will be likely as a result of the decision in question.

3. If the official owns a one-half interest in real property, a \$10,000 effect on the real property is considered material.

4. If all property in the community is expected to increase in value by the same amount, there would be a material financial effect on the official's real property. However, the official would be able to participate in the decision because the effect on his economic interests would not be distinguishable from the effect on the public generally.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a 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, among other interests:

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

Section 87103(b).

The Commission has adopted various regulations for determining whether the effects of governmental decisions will be material. These regulations vary depending on whether the effect on the official's economic interests is direct or indirect, and the type of economic interest affected. (Regulation 18702, copy enclosed.) Regulation 18702.3 (copy enclosed) governs decisions which indirectly affect real property in which an official has an interest. You have asked for clarification of the standards in this regulation.

Regulation 18702.3 provides different standards depending on the distance between the property in which the official has an interest and the property which is the subject of the decision. If the property in which the official has an interest is within 300 feet of the property which is the subject of the decision, the effect on the official's economic interest is considered material "unless the decision will have no financial effect upon the official's real property interest." (Regulation 18702.3(a)(1).)

If the official's real property is located more than 300 feet from the property which is the subject of the decision, but within 2,500 feet of that property, the effect of the decision is considered material if the decision is likely to increase or decrease (1) the fair market value of the real property in which the official has an interest by \$10,000 or more, or (2) the rental value of the property by \$1,000 or more per 12-month period. (Regulation 18702.3(a)(3).) The \$10,000 increase or decrease in fair market value must be reasonably foreseeable as a result of the decision. There is no specific time frame specified in which the effect must occur. (See In re Legan (1985) 9 FPPC Ops. 1, 6-12, copy enclosed.)

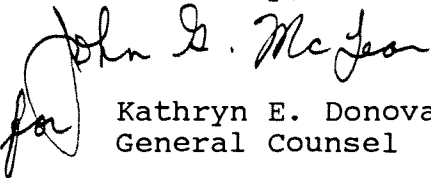
Furthermore, the \$10,000 threshold effect on fair market value is met if the real property in which the official has an interest will be affected by \$10,000 or more. (Section 87103(b), Regulation 18702.3(a)(3).) Thus, if the official has only a partial interest in the real property, such as a fractional interest or a leasehold interest, the official must consider the effect on the value of the parcel in which he or she has that interest. Under Section 87103(b) and Regulation 18702.3, the \$10,000 test is not applied to the official's partial interest.

Even if it is determined that a decision will foreseeably and materially affect real property in which an official has an interest, the official may participate in the decision if the effect on the property will be substantially the same as the effect on the public generally. (Section 87103.) In a city, the "public generally" consists of all persons who reside or do business in the

city. (In re Owen (1977) 2 FPPC Ops. 77, 81, copy enclosed.) Therefore, it also is necessary to consider the effect of the decision on persons similarly situated to the official. For example, if the a decision will affect the official's residence in substantially the same manner as it will affect all other residences in the city, the "public generally" exception applies and the official may participate in the decision. (Regulation 18703; In re Owen, supra; In re Legan, supra; In re Ferraro (1978) 4 FPPC Ops. 62, copies enclosed.)

If you have any further questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "John E. McLean". To the left of the signature is a small, stylized mark that looks like "fa".

Kathryn E. Donovan
General Counsel

KED:plh

Enclosures

JACOBS & McDONALD

BRUCE M. JACOBS
KENNETH E. McDONALD

ATTORNEYS AT LAW
PRINCEVILLE AT FIRST
POST OFFICE BOX 458
GILROY, CALIFORNIA 95021-0458

TELEPHONE
(408) 842-3141

December 30, 1988

Mr. Robert Leidigh
Fair Political Practices Commission
Legal Division
428 J Street, Suite 800
Sacramento, CA 95814

Re: Commission Regulation 18702.3

Dear Mr. Leidigh:

As city attorney for the City of Gilroy, I would like to ask the following questions pertaining to the above Commission Regulation:

1. If the official's real property within the radius of 300 feet is his/her residence, does this constitute a material financial effect?
2. Over what time span does the \$10,000.00 increase in market value have to occur--one day, one week, one month, one year?
3. If the official owns a one-half fractional interest, does his/her interest have to increase \$10,000.00 (\$20,000.00) for the entire property?
4. If all property in the community is expected to increase \$10,000.00, does this constitute a material financial effect or since all property is effected the same, is there no material effect?

I would appreciate your advice on these questions.

Very truly yours,



Bruce M. Jacobs
City Attorney

BMJ:ip
(dictated but not read)

JAN 11 1989

JACOBS & McDONALD

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I would appreciate your advice on these questions.

Very truly yours,



Bruce M. Jacobs
City Attorney

BMJ:ip
(dictated but not read)



California Fair Political Practices Commission

January 5, 1989

Bruce M. Jacobs
City Attorney
Jacobs & McDonald
P.O. Box 458
Gilroy, CA 95021-0458

Re: 89-017

Dear Mr. Jacobs:

Your letter requesting advice under the Political Reform Act was received on January 3, 1989 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. Code of Regs. 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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Acting General Counsel

KED:ld