



California Fair Political Practices Commission

March 29, 1990

Betsy Strauss
City Attorney
City of Fairfield
1000 Webster Street
Fairfield, CA 94533

Re: Your Request for Advice
Our File No. A-90-184

Dear Ms. Strauss:

This is in response to your letter requesting advice on behalf of Fairfield Mayor Gary J. Falati regarding his responsibilities as a member of the Local Agency Formation Commission under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

May Mayor Falati participate in Local Agency Formation Commission decisions concerning the annexation of property to the City of Fairfield which is within 450 feet of property that he has contracted to purchase.

CONCLUSION

Mayor Falati must disqualify himself from participating in any decision concerning property within 450 feet from property he has contracted to purchase, if the decision will foreseeably increase or decrease the fair market value of his real property interest by \$10,000 or more or the rental value of his property by at least \$1,000 in a 12-month period.

FACTS

Mayor Falati has contracted to buy a home in a new subdivision adjacent to the boundary that separates the City of

^{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.

Fairfield from Solano County. The Local Agency Formation Commission ("LAFCO") is currently considering a proposal to annex a portion of county property into the city. The property Mayor Falati has contracted to purchase is 450 feet away from the property that is the subject of the annexation decision.

ANALYSIS

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A "public official" is defined in Section 82048 and Regulation 18700 (copy enclosed) as every natural person who is a member, officer, employee, or consultant of a state or local government agency. This definition would include a member of the LAFCO.

Section 87103 specifies that a public official has a financial interest^{2/} 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 a member of his or her immediate family or on:

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).

Mayor Falati has contracted to purchase property in the City of Fairfield near the boundary between the city and Solano County. The contract to purchase the property creates a beneficial interest in the real property that presumably has a value of more than \$1,000. Consequently, the mayor's interest in the real property is a potentially disqualifying economic interest as defined in Section 87103.

However, Section 87103 specifies that a public official has a financial interest in a decision only 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's economic interest.

^{2/} Contributions are not disqualifying financial interests under the conflict-of-interest provisions of the Act. (Section 87103; Section 82030.) However, because LAFCO members are appointed and the annexation decision involves a specific applicant, the restrictions of Section 84308 may be applicable. If the applicant in this letter provided contributions to Mayor Falati of \$250 or more in the last 12 months, you should contact us for follow-up advice concerning Section 84308. A pamphlet on Section 84308 has been enclosed for your information.

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

In addition to a foreseeable financial effect, the effect on the mayor's real property interest must also be material. Regulation 18702.3 (copy enclosed) provides that the effect of a decision on real property in which an official has an economic interest is material if:

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Mayor Falati's real property is within 450 feet of the property subject to the annexation decision. Consequently, the mayor must disqualify himself from participating in any decision concerning that property that could foreseeably increase or decrease the fair market value of his real property interest by \$10,000 or more or the rental value of his property by \$1,000 in a 12-month period. (Regulation 18702.3(a)(3)(A).)

We cannot determine the magnitude of the financial effect that will be caused by the annexation decisions on Mayor Falati's real property. We must leave this factual determination of materiality to Mayor Falati within the guidelines provided by Regulation 18702.3.

Regulation 18702.3(d) does, however, set forth factors that Mayor Falati must consider in determining whether the decisions will have a material financial effect on the value of the real property in which he has an interest:^{3/}

^{3/} The factors to be considered are not limited to the factors specified in Regulation 18702.3(d).

1. The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

2. Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

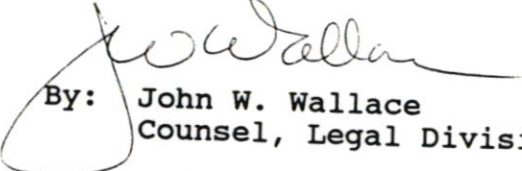
3. ... whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, the effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

Finally, even where an official determines that he or she has an economic interest which will be financially affected by the decision, the official may participate if the effect on the official's interest is not distinguishable from the effect on the public in his jurisdiction. (Regulation 18703; In re Legan (1985) 9 FPPC Ops. 1, copies enclosed.) However, because Mayor Falati's property is so close to the property subject to LAFCO's decision, it appears unlikely that the "public generally" exception would apply under these facts.

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

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures