



# California Fair Political Practices Commission

April 20, 1990

Harold R. Densmore  
City Attorney  
City of Newman  
1200 O Street  
P.O. Box 787  
Newman, CA 95360

Re: Your Request for Advice  
Our File No. A-90-228

Dear Mr. Densmore:

This is in response to your letter requesting advice on behalf of Newman City Councilmember Kenneth Rodriguez with respect to his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTIONS

1. May Councilmember Rodriguez participate in a Newman City Council decision to rezone property owned by his spouse's employer?
2. Does Councilmember Rodriguez have conflicts of interest with respect to other city council decisions due to his spouse's professional relationship with Stephens Realtors?

## CONCLUSIONS

1. Since a source of income is the subject of the city council decision, Councilmember Rodriguez may not participate in the decision.
2. Councilmember Rodriguez may not participate in any governmental decision initiated by a source of income, or in any proceeding in which a source of income is a named party or the subject of the proceeding. In addition, Councilmember Rodriguez may not participate in any decision that will foreseeably have a material financial effect on a source of income indirectly.

<sup>1</sup> 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.

FACTS

The Newman City Council will be considering a request to rezone property from residential to commercial. The real estate broker representing the applicant is Stephens Realtors. Stephens Realtors is a closely held corporation. The owner of the corporation also owns property that is in the area to be rezoned. Councilmember Rodriguez's spouse works for Stephens Realtors as a real estate agent.

ANALYSIS

The Act was enacted by the people of the State of California by initiative in 1974. The purpose for the conflict-of-interest provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, 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. As a Newman City Councilmember, Councilmember Rodriguez is a public official under the Act. (Section 82048.)

Potentially Disqualifying Economic Interests

Section 87103 specifies that 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 the official or a member of his or her immediate family or on:

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(c).

In addition, Section 82030 provides that the income of an individual also includes any community property interest in the income of a spouse. Consequently, if any person or business has been a source of income to the councilmember of \$250 or more, or to the councilmember's spouse of \$500 or more within the past 12 months, the source of income is a potentially disqualifying economic interest as defined in Section 87103.

You stated that the councilmember's spouse is a real estate agent with Stephens Realtors. Thus, Stephens Realtors is a source of income to the councilmember and his spouse.<sup>2</sup> Further, since Mr. Doug Stephens is apparently the sole owner of Stephens Realtors, we would also treat Mr. Stephens personally as a source of income to Councilmember Rodriguez and his spouse.

This is consistent with our past advice. In the Hentschke Advice Letter (No. A-80-069, copy enclosed), we addressed similar facts. In Hentschke, a Carlsbad Planning Commissioner was employed by a closely held corporation. The planning commission was confronted with a decision that would not affect the corporation, but would substantially affect the president/majority shareholder of the corporation in his personal capacity. We said:

In keeping with the purposes of the Act we conclude that in this case the president/majority shareholder of the corporation for which Mr. Larson works may also be considered a source of income to Mr. Larson. Although for other purposes the corporation would be considered Mr. Larson's source of income, there can be no question that in a closely-held corporation situation such as here the president/majority shareholder of a corporation effectively controls the employment relationship itself. Accordingly we conclude that the majority shareholder is a source of income to Mr. Larson and he should therefore disqualify himself from any decision which would have a material financial effect on the shareholder.

We believe this rule would apply here as well. Thus, both Stephens Realtors and Mr. Stephens personally are sources of income to Councilmember Rodriguez and his spouse for purposes of the Act. Consequently, the councilmember may not participate in any decision that will have a reasonably foreseeable material financial effect either Stephens Realtors or Mr. Stephens personally.

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<sup>2</sup> Regulation 18704.3 (copy enclosed) provides that the sources of commission income in a specific sale or similar transaction for a real estate agent include: (A) The broker and brokerage business entity under whose auspices the agent works; (B) The person the agent represents in the transaction; and (C) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker. Further, Regulation 18704.3(d) provides that for purposes of determining whether disqualification is required under the provisions of Sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

### Foreseeability

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.) According to your facts, the city council decision concerns real property in which Mr. Stephens has an ownership interest. Thus, financial effects on Mr. Stephens resulting from the decision are certain.

### Materiality

The Commission has adopted differing guidelines to determine whether an effect is material, depending on the specific circumstances of each decision. For example, where a source of income is directly before the city council, as an applicant or the subject of the decision, Regulation 18702.1(a)(1) (copy enclosed) provides that the effect of the decision on a source of income is deemed material and disqualification is required. (Combs Advice Letter, No. A-89-177, copy enclosed.) We emphasize that Section 87103(c) requires an analysis of the effect of the decision on the source of income to the official, not simply on the official's own income.<sup>3</sup>

A source of income is directly before the city council when the source initiates the proceeding by filing an application, claim, appeal, or similar request, or is a named party in, or the subject of, the proceeding. A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity. (Regulation 18702.1(b).)

According to your facts, Stephens Realtors will be representing the developer before the city council. However, the proposed actions also concern property owned by Mr. Stephens. Consequently, we would conclude that Mr. Stephens is not only before the city council in a representative capacity for the applicant, but since his property is also a subject of the proceedings, we would conclude that Mr. Stephens is also the subject of the proceedings.

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<sup>3</sup> We have received a letter from Thomas E. Panelli, attorney for the developer on the project in question. Mr. Panelli asserts that Councilmember Rodriguez may vote on the zoning decision because the decision would not affect the amount of income that Councilmember Rodriguez or his spouse would receive from Stephens Realtors. Mr. Panelli has failed to consider the effect of the decision on the sources of income to Councilmember Rodriguez, as required by Section 87103(c).

Thus, pursuant to Regulation 18702.1(a)(1) the effect of the zoning decision is deemed to foreseeably and materially affect a source of income to Councilmember Rodriguez because a source of income is directly involved in a decision before the city council. Accordingly, Councilmember Rodriguez may not participate in the decision concerning the project.<sup>4</sup>

#### Future Decisions

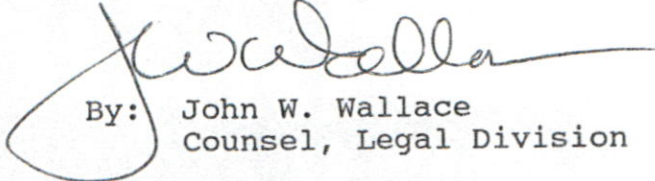
Because Doug Stephens and Stephens Realtors are both sources of income to Councilmember Rodriguez, the councilmember may not participate in any decision that will reasonably foreseeably have a material financial effect on them. Consequently, where either source of income is directly before the councilmember as an applicant or the subject of the decision, Regulation 18702.1(a) provides that the effect of the decision on the source of income is deemed material and disqualification is required. (Webb Advice Letter, No. I-89-415, copy enclosed.)

Where neither source of income is directly before Councilmember Rodriguez, the councilmember must still disqualify himself where the sources of income will be indirectly affected. Whether a particular effect is material would be determined by examining the extent of the foreseeable financial effect on the source of income pursuant to Regulations 18702.2 and 18702.6 (copies enclosed).

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

cc: Thomas E. Panelli

Enclosures

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<sup>4</sup> In some cases, even where an official determines that he or she has a financial 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 generally. (Regulation 18703, copy enclosed.) However, since the city council decision is particular to Mr. Stephens' property, we do not believe the exception would apply under these facts.