



California Fair Political Practices Commission

March 21, 1991

Susan Schectman
City Attorney
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

Re: Your Request for Advice
Our File No. A-90-296

Dear Ms. Schectman:

You have requested advice on behalf of Councilmember John Schneider concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is based upon the facts provided in the letter from your office, my numerous telephone conversations with you, and your recent letter and clarification of certain facts on February 25, 1991.

The following advice only concerns Mr. Schneider's ability to participate in future decisions of the city council or redevelopment agency. We make no comment on Mr. Schneider's participation in any past discussions or decisions. (Regulation 18329(c)(4)(A), copy enclosed.)

QUESTION

Under the Act, may Councilmember Schneider participate in future decisions regarding projects in the Rockaway Beach redevelopment area?

CONCLUSION

Councilmember Schneider may participate in future redevelopment decisions which do not have a reasonably foreseeable material financial effect on any of his economic interests. Because Mr. Schneider is a real estate agent who may do business in or near the redevelopment area, each decision will have to be considered on a case-by-case basis, with an evaluation of the economic interest involved.

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.

FACTS

Mr. Schneider is a member of the city council of the City of Pacifica and also serves on the redevelopment agency. The city has already approved the redevelopment plan and the Rockaway Beach specific plan. Now there are a number of decisions about the redevelopment project which will come before the city council and the redevelopment agency.

Mr. Schneider is a real estate agent and an employee of Marc Realty Company; he works as an independent contractor and does not have an ownership interest in Marc Realty Company. During 1989-90, he received a loan of over \$10,000 from Marc Realty Company. He also has an ownership interest of less than 10% in Schneider Four Corporation, which engages in real estate activity.

In December 1989, a contract of sale was entered into for the sale of the Lighthouse Hotel in the Rockaway Beach area within the City of Pacifica. The hotel is located within 300 feet from the redevelopment project. Mr. Schneider served as the agent for the seller, McKellar and Associates, Inc. The sale closed escrow on April 3, 1990 and Mr. Schneider earned a commission of \$144,000.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) 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 its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more.

(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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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(a)-(e).

As a public official, Councilman Schneider may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any business entity in which he has an investment of \$1,000 or more or on any source of income of over \$250 within 12 months prior to the decision. (Section 87103(a) and (c).)

Mr. Schneider is a real estate agent and receives commission income for his services. Regulation 18704.3(c), copy enclosed, provides that the sources of commission income for a real estate agent in a specific sale or similar transaction 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.

The full gross value of the commission income for a specific sale is attributed to each source of commission income in that sale or transaction. (Regulation 18704.3(d).) Marc Realty and McKellar and Associates, Inc. are sources of commission income to Mr. Schneider, the agent for the seller of the Lighthouse Hotel. Therefore, for 12 months from the date of the close of escrow on April 3, 1990, he must disqualify himself from participating in any decision before the city council or redevelopment agency which will foreseeably and materially affect either of these sources of income. In addition, he must disqualify himself from participating in any decision which will foreseeably and materially affect any of his other economic interests (e.g. Schneider Four Corporation in which he has an investment interest of more than \$1,000). (Section 87103.)

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra, at 823.)

The purpose of any redevelopment plan is to promote sound development and redevelopment of blighted areas. The anticipated result of redevelopment is an increase in property values and an improved business climate within the project area, which benefits the community as a whole. The very nature of redevelopment projects has led the Commission to find that it is reasonably foreseeable that there will be a financial effect on real property values and business interests located within or near project areas. (In re Oglesby (1975) 1 FPPC Ops. 71, Advice Letters to Haight, No. A-81-509, and Phillips, No. A-87-166, copies enclosed. See also Downey Cares v. Downey Community Development Com., supra, at 983.)

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 real estate agents like Mr. Schneider will benefit in a manner distinguishable from the public generally. Oglesby, supra.

Materiality

Regulation 18702 sets forth the guidelines for determining whether an official's economic interest in a decision is "materially" affected as required by Section 87103. If the official's financial interest is directly involved in the decision, Regulation 18702.1 applies to determine materiality. However, if the official's financial interest is indirectly affected by the decision, Regulations 18702.2 to 18702.6 apply to determine whether the effect of the decision is material.

Mr. Schneider has several economic interests which may be indirectly affected by certain decisions regarding future projects in or near the redevelopment area. Regulation 18702.2 (copy enclosed) provides guidelines to ascertain whether the effect of a decision on a business entity indirectly involved in the decision 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 Marc Realty and the Schneider Four Corporation 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:

(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

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


Since McKellar and Associates, Inc. was also a source of income to Mr. Schneider within the past 12 months, you must determine if this corporation will be foreseeably and materially affected by any decisions regarding projects in or near the redevelopment area. Please refer to Regulation 18702.2 to determine the appropriate financial standard to apply.

For each decision before the city council or the redevelopment agency, you will have to ascertain if Mr. Schneider has a financial interest in the decision which will be foreseeably and materially affected. Under the Act, McKellar and Associates, Inc. is a source of income from April 3, 1990 and for 12 months thereafter. Every time Mr. Schneider earns commission on a sale, Marc Realty is a source of commission income pursuant to Regulation 18704.3(c). Marc Realty is also a source of income because of the loan of over \$10,000 to Mr. Schneider (Section 82030.) We have no facts about Schneider Four Corporation, other than that it is a real estate corporation and Mr. Schneider has an investment interest of more than \$1,000 and an ownership interest of less than 10 percent.

I trust this answers your questions. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel

By: 
Jill R. Stecher
Counsel, Legal Division

SH:JRS:plh
Enclosures