



California Fair Political Practices Commission

July 25, 1990

Leslie H. Hurst
Jamestown Planning Commissioner
17415 Highway 108
Jamestown, CA 95327

Re: Your Request for Informal Assistance
Our File No. I-90-359

Dear Ms. Hurst:

This is in response to your letter requesting assistance with respect to the conflict-of-interest provisions of the Political Reform Act.^{1/} Since your advice request does not refer to a specific governmental decision, but instead seeks general guidance, we are treating your request as one for informal assistance pursuant to Regulation 18320(c) (copy enclosed).^{2/}

QUESTIONS

1. As a Jamestown Planning Commissioner and owner of a retail store in your jurisdiction, for how long must you disqualify yourself from decisions concerning a gold mine which has been a purchaser of goods from your retail store?
2. May you participate in Jamestown Planning Commission decisions which concern a business located within 300 feet of your residence and retail store?

CONCLUSIONS

1. A source of income is only a potentially disqualifying financial interest if the person or business has been a source of income of \$250 or more within 12 months prior to the time when the

^{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).)

decision is made. Thus, after 12 months have elapsed from the time the mining company made payments for purchases the mining company is no longer an economic interest.

2. You may not participate in decisions concerning real property within 300 feet of your real property unless there will be no financial effect on your real property interest.

FACTS

You have provided the following facts in your letter of May 18, 1990, and in your telephone call to this office on April 11, 1990. You are the Chairman of the Jamestown Planning Commission. You also own property in your jurisdiction on which you have a retail feed store and your residence.

A frequent applicant before the planning commission has been the local mining company. You stated that you have disqualified from participating in decisions concerning the mining company because the mining company had purchased straw from your store on July 17, 1989, the purchase constituting more than one-tenth of one-percent of your gross sales. In addition, the nearest boundary of the mining company's property is within 300 feet of your business and residence.

ANALYSIS

The Political Reform Act (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. 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 Jamestown Planning Commission.

Section 87103 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:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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

* * *

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103(a)-(d).

In your letter you stated that a local mine has been a source of income to you through your retail store of \$250 or more in the past 12 months. Consequently, the mining company is a potentially disqualifying economic interest as defined in Section 87103(c). However, you stated that on July 17th of this year, that 12 months will have passed since the \$250 payment was received. Section 87103(c) applies only to sources of income of \$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. Thus, after 12 months have elapsed, the source is no longer an economic interest.

In addition, however, you stated you have an interest in real property in your jurisdiction which is presumably worth more than \$1,000. Thus, your real property is also a potentially disqualifying economic interest under the Act. (Section 87103(b).) Consequently, you may not participate in any decision that will reasonably foreseeably have a material financial effect on either your real property.

You have not provided information with respect to a specific planning commission decision. However, generally, 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, the foreseeable effect on your real property must also be material to require disqualification. The Commission has adopted differing guidelines to determine whether an effect is material, depending on the specific circumstances of each decision.

Regulation 18702.3 (copy enclosed) provides in relevant part that the effect of a decision on real property in which an official has a direct, indirect or beneficial ownership interest, is material if:

The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interests.

Regulation 18702.3(a)(1).

Your property is within 300 feet of the mining company's property that is the subject of your question. Since your real property is in such close proximity to the property which is the subject of the decision, you may not participate in the decision concerning the mine company's property unless it will have no financial effect on your real property. It appears that any decision concerning the mining company's property as a whole would have some financial effect on your property. Thus, you may not participate in those decisions.^{3/}

Segmentation

You have also asked if, due to your property interests, you

^{3/} You also state in your letter that your understanding is that where participation is legally required and you are selected by the drawing of lots that you may participate only in the decision for which the drawing was held. That is an accurate reflection of the requirements of Section 87101 and Regulation 18701 (copy enclosed) of the Act. Please note, that Regulation 18701 permits full participation with respect to the decision in an open meeting of the agency.

are disqualified as to all the decisions concerning the mining company. Generally, each governmental decision is analyzed independently to determine if there will be a foreseeable material financial effect on an official's financial interest. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) Thus, if a planning commission decision concerned a road 2,000 feet from the nearest boundary of your property, and this decision was not interrelated to decisions concerning other, closer portions of the mining company's property, you may participate.

Where other decisions concerning the mining company are not interrelated to decisions from which you would be disqualified, the following procedure should be followed to permit you to participate:

(1) The decisions in which you have a disqualifying financial interest should be segregated from the other decisions.

(2) The decisions from which you are disqualified should be considered first, and a final decision reached by the planning commission without you participating in any way.

(3) Once a decision has been made on the portions of the decision in which you have a disqualifying interest, you may participate in the deliberations regarding other portions of the decision, so long as those deliberations do not result in a reopening or in any way affect the decisions from which you were disqualified. (Huffaker Advice Letter, No. A-86-343, copy enclosed.)

However, in many cases a series of decisions will be too interrelated to be considered separately. (Miller Advice Letter, No. A-82-119, copy enclosed.) For example, if the decision concerning the road is presented to the planning commission as an alternative to a road on a portion of the mining company's property within 300 feet, you would not be able to participate in any of the decisions. (Nord Advice Letter, No. A-82-038, copy enclosed.) This is because the determination of the road decision would effectively determine the results of the decisions for which you would be disqualified. Where the decisions are too interrelated to be decided separately, you must disqualify yourself as to all the decisions under consideration. (Scher Advice Letter, No. A-88-479, copy enclosed.)

Further, where a decision applies to the mining company's property generally, such as permissible uses of the property or zoning designations, the entire mining company property is considered the property subject to the decision and you may not participate. This is so despite the fact that the company may use only a distant portion of their property for the specific use at this time. Generally, one must look to the potential benefits of the decision, not that actual use at the time of the decision. (In re Legan, (1985) 9 FPPC Ops. 1; Hill Advice Letter, No. A-87-110; copies enclosed.)

Public Generally

As noted above, public officials with interests that will be financially affected by a decision may participate if the effect on their property is not distinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it would affect a significant segment of the public. (Regulation 18703, copy enclosed; In re Legan, supra.)

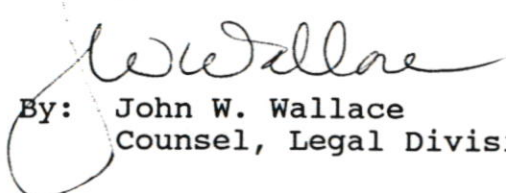
The "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) This is so because all the residents of the jurisdiction are constituents of the official. (In re Legan, supra.) Consequently, for the public generally exception to apply to this situation, the decision on the mining company's property must affect a significant segment of the planning commission's jurisdiction in substantially the same manner as it would affect your real property.

You did not provide information with respect to the entire population of your jurisdiction. However, because your property is so close to the property which will be subject to the planning commission's decision, it appears unlikely that your property will be affected in a manner similar to the rest of the jurisdiction. In addition, it appears unlikely that those persons within 300 feet of the mining company constitute a significant segment of the jurisdiction. Consequently, absent unusual facts, the "public generally" exception would not apply to decisions concerning the mining company.

Should you have any further questions regarding this matter or a specific decision that you would like advice on, please feel free to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: John W. Wallace
Counsel, Legal Division

SH:JWW:dg
Enclosures