



California Fair Political Practices Commission

July 12, 1990

Luis A. Rodriguez
Senior Assistant City Attorney
City of Orange
300 E. Chapman Avenue
Orange, CA 92666

Re: Your Request for Advice
Our File No. A-90-360 Revised

Dear Mr. Rodriguez:

You are seeking advice on behalf of City of Orange Mayor Don E. Smith, regarding his duties and responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Pursuant to Regulation 18329 (copy enclosed), we provide you with advice as Mr. Smith's authorized representative.

The following advice is based upon the facts provided in your letter of May 14, 1990 and in your prior telephone conversations with this agency. By letter dated June 12, 1990, you have indicated that there is a pending governmental decision.

QUESTION

A forthcoming decision before the city council will concern a committee recommendation to expand an existing municipal parking lot by constructing a parking structure. Mayor Smith owns numerous rental properties within 2500 feet of the property that is the subject of the acquisition decision. Can he participate in this decision?

CONCLUSION

Mayor Smith may participate in the decision to expand the parking lot provided the decision will not have a foreseeable material financial impact on any of the properties he owns in the area of the parking lot.

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

A council-appointed citizens committee was asked to study existing and long-term parking needs of a portion of the city. The committee's recommendations included expansion of a municipal parking lot into a parking structure, increasing the parking stall capacity from 88 to 212 vehicles. The city council affirmed the conclusions and recommendations of the committee and is presently undertaking decisions with respect to design and development of the improvement.

Because Mayor Smith owns a variety of properties within 2500 feet of the two acre site,³ he has to date refrained from participation in decisions on this matter. You have provided an analysis from a professional real estate appraiser which concludes that the proposed public improvement concerning the municipal parking lot will not impact the market value of the mayor's properties.

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, a member of official's immediate family, or on any real property in which the official has a direct or indirect interest worth one thousand (\$1,000) or more. (Section 87103(b).)

Because he is the mayor of the City of Orange, and an elected member of the city council, Mr. Smith is a public official. (Section 82048.) Therefore, Mr. Smith must disqualify himself from any city council decision which will have a reasonably foreseeable material financial effect on him or on his real property interest that is distinguishable from the public generally. (Section 87103(b).)

Foreseeable Material Financial Effect

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. While certainty is not required, an effect that is merely a possibility is not

³ You have indicated the approximate distances from the parking lot site as follows: 254, 254½, 256½ Grand Street (duplex and garage apartment), 1026 feet; 531, 541 E. Chapman Avenue (two-story office-professional building), 1270 feet; 605 E. Maple, 219 E. Cleveland (single family residence), 2005 feet; 702 E. Chapman (Mayor Smith's residence), 1200 feet; and 123-125 S. Harwood (single family residence and garage apartment), 1700 feet.

reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal.App.3d 983; In re Thorner (1975) 1 FPPC Ops. 198.)

In order to determine whether the foreseeable effect of a decision is material as to real property in which an official has an interest, the Commission has adopted Regulation 18702.3 (copy enclosed). You have informed us that several properties owned by Mr. Smith are located within 2,500, but more than 300, feet from the site of the municipal parking lot. For projects between 300 and 2,500 feet from an official's property, the effect of the decision will be considered material if it 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.

(Regulation 18702.3(a)(3)(A) and (B).)

Whether the effect of the decision is positive or negative is of no consequence under the Act. (Young Advice Letter, A-89-149, copy enclosed.)

A professional appraiser has determined that the impact on Mayor Smith's properties resulting from the city's decisions on the proposed public improvement on the municipal parking lot will not meet the requisite threshold amounts as provided in Regulation 18702.3(a)(3), and - in fact- will not impact the market value of any of the properties.⁴ Should the impact of the city council's decisions on each of the individually identified properties fall below the financial thresholds specified in the regulation, Mayor Smith's participation in decisions on the parking lot site would be permitted.

While this advice is limited to the forthcoming decision before the city council with respect to matters concerning the design and development of the parking structure, subsequent decisions concerning the property will continue to require the same analysis because Mayor Smith's property would continue to be located within a 2,500-foot distance from the parking lot: the same analysis applying the thresholds of Regulation 18702.3(a)(3) would be required to determine whether he was able to participate in the subsequent decisions. In any of these decisions, if the impact on any of Mayor Smith's properties was at or above the requisite threshold amounts, his participation in the use decision would be

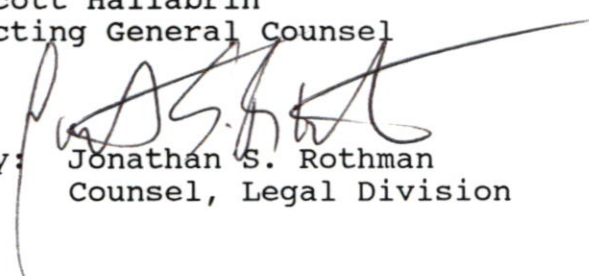
⁴ The Commission does not act as a finder of fact. The advice provided in this letter is applicable only to the extent the facts provided are correct and that all material facts have been presented. (In re Oglesby, (1975) 1 FPPC Ops. 77, copy enclosed.)

prohibited.⁵ The appraiser's opinion that you have provided, as part of the facts upon which our advice is provided, is in effect applicable only to the design and development decision concerning the structure to be built on the parking lot.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Jonathan S. Rothman
Counsel, Legal Division

SH:JSR:plh

Enclosures

⁵ Regulation 18702.3(d) provides some factors to consider in determining the magnitude of the financial impact on the mayor's property. Such factors include the proximity of the properties and the magnitude of the proposed project in relationship to his properties, whether it is reasonably foreseeable that the decision on the redevelopment property will affect the development potential or income producing potential of the mayor's properties, and whether it is reasonably foreseeable that the acquisition property decision will result in a change of 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.