



# California Fair Political Practices Commission

February 24, 1993

Gary L. Caldwell, Director  
Department of Public Works  
108 Court Street  
Jackson, CA 95642-2379

Re: Your Request for Advice  
Our File No. A-92-647

Dear Mr. Caldwell:

You have requested advice under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

Are you prohibited from making recommendations on a proposed residential development which is within 2500 feet of your residence?

## CONCLUSION

You are not prohibited from making recommendations on the proposed development provided your recommendations will not have a material financial effect on your residence.

## FACTS

You are the Director of Public Works for the County of Amador and recommend conditions of approval for developments in the county. There is currently a development proposal consisting of 125 residential lots which is approximately 1500 feet from your personal residence.

Your property is currently listed for sale and your real estate broker has concluded that the development will not increase or decrease the value of your property by \$10,000.

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<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.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.

An official has a financial interest in a governmental decision within the meaning of Section 87100 if it is reasonably foreseeable<sup>2/</sup> that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of the official's immediate family, or on:

(b) 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).)

We are assuming that the value of your principal place of residence meets the \$1,000 threshold. Thus, you would be prohibited from participating in decisions which would have a material financial effect on your real property interest.

To determine if a decision will have a material effect, we look at Commission Regulation 18702.3 which provides that the effect of a decision is material if 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 of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of \$10,000 or more on your personal residence. (Regulation 18702.3(a)(3).)

You indicated your property is approximately 1,500 feet from the proposed development. Accordingly, you would not be permitted to recommend conditions of approval of the development if the development could increase or decrease the value of your property by \$10,000.

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<sup>2/</sup> 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.)

We have previously advised that a public official is required to make a reasonable good faith effort to determine the financial effects of a decision on his interests in real property. (McLaughlin Advice Letter, No. I-91-141.) You stated that your property is currently on the market. Your real estate broker provided a letter stating that it was his opinion that a deviation of \$10,000 either up or down is unrealistic.<sup>3/</sup> Please note that pursuant to subdivision (d) of Regulation 18702.3, factors which must be considered in determining whether a governmental decision will have a material financial effect on an official's real property include, but are not limited to:

(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) In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

(Regulation 18702.3(d).)

The Commission cannot determine whether there will be a material financial effect on the your property or evaluate the accuracy of the appraisal letter. However, it is important to note that formal written advice is the application of the law to a particular set of facts provided by the requestor. (Regulation 18329.) Thus, any immunity that flows from this letter is only applicable to the extent that the underlying facts you have submitted are accurate.

Thus, for example, if it is reasonable to rely on the assessment of materiality made by the broker, you may participate

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<sup>3/</sup> In rendering advice, the Commission does not act as a finder of fact. (In re Oglesby (1975) 1 FPPC Ops. 71, 77.)

in making recommendations on the proposed development.<sup>4/</sup> Conversely, if your reliance on the broker's opinion was unreasonable, you may be in violation of the Act if you participate in making recommendations on the development. It would be to your benefit that a thorough assessment of financial effects is made and that the facts and analysis on which the assessment is based are thoroughly documented.

We do note that it does not appear that the factors in Regulation 18702.3(d) were considered in reaching the conclusion. Consequently, it would not appear that reliance on the broker's bare conclusions, conclusions which did not take into account Regulation 18702.3(d), would be advisable.

Accordingly, once you have made a reasonable good faith estimate to determine the material financial effect on the value of your property, and that effect is less than \$10,000, you would not be prohibited from recommending conditions of approval on the proposed residential development.

I trust this answers your question. If we can be of further assistance, please feel free to contact the Legal Division at (916) 322-5901.

Sincerely,

Jeff Marschner  
General Counsel



By: Jeanette E. Turvill  
Political Reform Consultant  
Legal Division

JM/JET/jt

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<sup>4/</sup> For example, in the Stone Advice Letter, No. A-92-133a, we advised that if the person performing the appraisal was qualified to determine the values of the real property in issue and determined, based on the Commission's materiality regulations, that the government decisions would have no material financial effect on the official's real property interests, his determinations and the official's reliance would be considered a good faith effort to assess the materiality of the pending decisions on the official's real property interests.