



# California Fair Political Practices Commission

May 14, 1993

Frederick G. Solely  
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City of Vallejo  
P. O. Box 3068  
Vallejo, California 94590

Re: Your Request for Advice  
Our File No. A-93-107

Dear Mr. Solely:

This is in reply to your request for advice concerning the duties of Vallejo Planning Commissioners Janet Capello, Richard D. Evans, Thomas R. Egidio, Verna E. Mustico and Betty Walker under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTIONS

1. Does the Act restrict Commissioners Capello, Evans, Egidio, Mustico or Walker in their participation in the following planning commission decisions?

a. Adoption of a Negative Declaration concerning proposed land use designation and zoning changes for the St. Vincent's Hill, Vallejo Heights and Washington Park Neighborhoods.

b. Changes in the land use designations and zoning for the Washington Park neighborhood?

c. Changes in the land use designations and zoning for the St. Vincent's Hill neighborhood?

d. Changes in the land use designations and zoning for the Vallejo Heights neighborhood?

2. May commissioners who are disqualified from voting to approve or disapprove, in one vote, all of the decisions listed in Question 1 above nevertheless vote on those specific decisions for

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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.

which they are not disqualified? If commissioners are permitted to vote on those specific decisions for which they are not disqualified, is there any particular order in which the voting must be done?

3. For those planning commissioners listed above who are real estate brokers/agents, is a person they are currently representing under contract in the prospective sale or purchase of real property considered a source of income to them under the Act if no commission has been received by the broker/agent-commissioner prior to the government decision?

4. What effort must these commissioners make to ascertain whether they have disqualifiable sources of income which may be affected by the government decisions listed in Question 1 above?

5. If, due to conflict of interest disqualifications under the Act, the planning commission will not have the minimum number of four members necessary for the commission to take action, will the rule of "legally required participation" apply, and if so, how? Is the Vallejo City Council an alternative source by which these decisions can be made, thereby prohibiting application of the rule of "legally required participation" to the planning commission for the purpose of making these decisions?

#### CONCLUSIONS

##### Questions 1 and 2.

If decisions "a" through "d" as set forth in Question 1 are to be decided on the basis of one vote that either approves or disapproves them all, then a planning commissioner who has any conflict of interest as set forth in the Summary of Potential Conflicts of Interest (see Attachment 1 to this letter) may not make, participate in making or use his or her official position to influence the planning commission's decisions.

If, on the other hand, decisions "a" through "d" as set forth in Question 1 are segmented, that is, the negative declaration, land use designation changes and zoning changes are decided separately for each of the three neighborhoods, then a planning commissioner who has a conflict of interest relating to the decisions relating to that neighborhood only as set forth in the Summary of Potential Conflicts of Interest (see Attachment 1 to this letter) may not make, participate in making or use his or her official position to influence the planning commission's vote on decisions concerning that neighborhood.

In stating this conclusion, we assume that a vote concerning one neighborhood will not have an effect on the decisions concerning the other neighborhoods. On that basis, the particular order in which these decisions are made will not alter our analysis.

Question 3

For those planning commissioners who are real estate brokers/agents, the following persons are considered to be their sources of income:

(a) Persons from whom they have actually received commission income of \$250 or more during the 12-month period before the applicable government decision, and

(b) Promised income from persons whom they represent in a sale that is pending (i.e. the sale is in escrow) at the time of the applicable government decision and from whom they will receive commission income of \$250 or more.

Question 4

An official cannot participate in a government decision which will have a reasonably foreseeable material financial effect on his or her source of income of \$250 or more, of whom the official knows or has reason to know, during the 12-month period prior to the decision. If the small business owned (wholly, partially, or by the spouse) by a planning commissioner has records for the 12 month period prior to the decision which contain: (a) the name of a source of income to the business, (b) the amount of income paid to the business, and (c) the source of income's address, then, the commissioner will have reason to know if any of those persons are sources of income to him or her.

Question 5

If, due to conflict of interest disqualifications under the Act, the planning commission will not have the minimum number of four members necessary to take action and there is no alternative way for the city to make these decisions, the rule of "legally required participation" will apply and permit the commission to act. However, only the number of disqualified members that is necessary to achieve the quorum of four may be requalified to participate in these actions. These requalified members should be selected at random and make certain disclosures on the record prior to their participation. (See the discussion below for details of this procedure.)

The rule of "legally required participation" will not apply if the City of Vallejo, under its existing law, can legally make these decisions without participation by the planning commission. We believe that your office is in the best position to make this determination and we thus offer no opinion on this specific issue.

FACTS

The City of Vallejo is a Charter City, with a population of approximately 109,000. The City of Vallejo's Planning Commission

consists of seven members appointed by the city council for four years. A quorum is four or more members of the commission. The affirmative vote of at least four members is necessary to adopt any resolution or motion. Any question on which the vote is tied is lost. In the event of a tie vote, the presiding officer or any commissioner may request the secretary to carry over the item to the next regular meeting where a full Commission will be present.

The Planning Commission of the City of Vallejo is considering General Plan Amendment #1055 and Zoning Map Amendment #1057 (Consideration of Possible Changes in the Land Use Map Designations and the Zoning Classifications for Approximately 2,500 Properties Located in the Washington Park, St. Vincent's Hill, and Vallejo Heights Neighborhoods). The planning department staff report describes the project as "Consideration of possible changes in the Land Use Map designations and the Zoning classifications for properties located in the Washington Park, St. Vincent's Hill, and Vallejo Heights neighborhoods. In general, large multifamily projects and properties where the predominant surrounding developments are multifamily in nature, Medium Density and High Density Zoning being recommended; projects that were developed under the PUD ordinance, which no longer exists, are being recommended for rezoning to PDR (the current equivalent); and the other residential areas are being recommended for Low Density Residential Zoning."

The changes proposed by staff will significantly decrease the number of units that can be added to these neighborhoods, and will significantly increase the number of nonconforming units. A nonconforming use will still be a legal use. For example, a parcel with a four-plex is rezoned from medium density residential to low density residential. The use of the property becomes nonconforming with the zoning ordinance, but it is still lawful to have four rental units. With regard to future development of the property, the owner would be limited to constructing one unit per lot. Regardless of whether or not the proposed changes are approved, staff expects most of the future development will likely occur on the 152 vacant parcels in the three neighborhoods. (20 in Washington Park, 32 in St. Vincent's Hill and 100 in Vallejo Heights) If the proposed changes are approved, most of the vacant parcels will be rezoned from high or medium density residential to low density residential (one unit per lot).

The Planning Department Staff is making the following recommendation to the Planning Commission:

"1. Recommend that the City Council ADOPT the Proposed Negative Declaration . . . ; and

2. Recommend that the City Council APPROVE the proposed changes to the Land Use Map of the General Plan for the Washington Park neighborhood area (Map Amendment #1055-A);

3. Recommend that the City Council APPROVE the proposed changes to the Zoning Map for the Washington Park neighborhood area (Zoning Map Amendment #1057-A);

4. Recommend that the City Council APPROVE the proposed changes to the Land Use Map of the General Plan for the St. Vincent's Hill neighborhood area (Map Amendment #1055-B);

5. Recommend that the City Council APPROVE the proposed changes to the Zoning Map for the St. Vincent's Hill neighborhood area (Zoning Map Amendment #1057-B);

6. Recommend that the City Council APPROVE the proposed changes to the Land Use Map of the General Plan for the Vallejo Heights neighborhood area (Map Amendment #1055-C);

7. Recommend that the City Council APPROVE the proposed changes to the Zoning Map for the Vallejo Heights neighborhood area (Zoning Map Amendment #1057-C)."

The process for amending the general plan is governed by Chapter 17.04 of the Vallejo Municipal Code. Under Chapter 17.04, a public hearing is held before the planning commission concerning the proposed amendment. Vallejo Municipal Code §17.04.020 provides: "The approval by the planning commission of the general plan or any part or element thereof, or any amendment. . . thereof, shall be by resolution of the commission carried by the affirmative vote of not less than a majority of its total voting members." Upon approval by the planning commission the amendment is transmitted to the city council, where another public hearing is held. It is the city council which adopts or does not adopt the amendment to the general plan.

The process for amending the zoning ordinance is governed by Chapter 16.86 of the Vallejo Municipal Code. Under Chapter 16.86, a public hearing is held before the planning commission concerning the proposed amendment. Vallejo Municipal Code §16.86.050F provides: "Within ninety days after the planning commission public hearing, it shall file a report with the city council which shall include:

1. A statement of findings that the petition or resolution of intention is, or is not consistent with the general plan of the city; and

2. A recommendation including the reasons for the recommendation as they relate to the above statement of findings."

After receipt of the planning commission's report, a public hearing is held before the city council concerning the amendment. The decision of the city council is final.

It has been learned that several members of the planning commission have potential conflicts of interest within the meaning

of the Act. The economic interests of these commissioners are as follows:

Commissioner Richard Evans is a co-owner of R&B Auto Body (gross income over \$10,000), an auto body repair shop at 33 1/2 Tennessee Street, which is located on property within the St. Vincent's Hill neighborhood. Commissioner Evans is a part owner (more than \$1000 interest) of the real property at 33 1/2 Tennessee Street. Commissioner Evans also owns real property at 322 Indiana Street (more than \$1000 interest) and real property at 401 Yuba Street (more than a \$1000 interest). Both the real property at 33 1/2 Tennessee Street and the real property at 322 Indiana Street are located within a radius of 300 feet from the boundary of the Vallejo Heights neighborhood. Both properties are located more that 300 feet, but within 2,500 feet of the boundary of he Washington Park neighborhood. The property at 322 Indiana is located about 600 feet from St. Vincent's Hill neighborhood. The real property at 401 Yuba Street is approximately 2,200 feet from the boundary of Washington Park. With regard to R&B Auto Body, some customers (sources of income of \$250 or more in the past 12 months) likely live in all three of the neighborhoods. The customers of the business do not equal or exceed 10 percent of the population or households of the City of Vallejo.

Commissioner Verna Mustico owns real property within St. Vincent's Hill neighborhood at 124 Alabama Street. This property provides rental income between \$1,001 and \$10,000 per year. Commissioner Mustico also receives income over \$250 per year from her spouse's tailoring business located at 433 Georgia Street. The business is located less that 300 feet from St. Vincent's Hill neighborhood, and is more that 300 feet, but less that 2,500 feet from Washington Park neighborhood. We are assuming for purposes of our analysis that Commissioner Mustico's spouse owns the real property at 433 Georgia Street. Through her real estate business Commissioner Mustico has sources of income of \$250 or more in each of the three neighborhoods based on real property sales within the past 12 months and current listings.

Commissioner Betty Walker owns real property in Vallejo Heights neighborhood at 148-150 West Baxter (rental property). This property appears to be located more that 300 feet, but less than 2,500 feet from St. Vincent's Hill. The property is more than 2,500 feet from Washington Park. Through her real estate business, ERA B&B Realty, Inc., Commissioner Walker has sources of income of \$250 or more in each of the three neighborhoods based on real property sales within the past 12 months, current listings, and real property management.

Commissioner Thomas Egidio owns a one-third interest in real property on Tennessee Street, which is located more than 300 feet, but less that 2,500 feet from Washington Park neighborhood. Commissioner Egidio is the owner of a real estate brokerage business, Egidio Realty Inc., and has sources of income of \$250 or

more in each of the three neighborhoods based on real property sales within the past 12 months, current listings, and real property management.

Commissioner Janet Capello owns real property at 267 Valle Vista Avenue, which is more than 300 feet, but less than 2,500 feet from Vallejo Heights neighborhood.

For purposes of this analysis, we are assuming for each of the businesses described that either the commissioner or the commissioner's spouse owns at least 10 percent interest therein worth at least \$1,000 or more.

#### ANALYSIS

Section 87100 prohibits public officials from making, participating in making, or otherwise using their official position to influence a governmental decision in which they have an economic interest. Planning commissioners are public officials. (Section 82048.)

Among other things, Section 87103 specifies that an official has an economic interest in a decision, within the meaning Section 87100, 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 on a member of the official's 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.

#### Making, Participating in Making, or Attempting to Influence a Governmental Decision

A public official makes a governmental decision or participates in the making of a governmental decision whenever the public official votes on a matter, commits the agency to a course of action, or enters into any contractual agreement on behalf of

the agency. (Regulation 18700(b).) Additionally, a public official participates in a governmental decision when, acting within the authority of his or her position, the public official:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

Regulation 18700(c).

With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, an official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer. (Regulation 18700.1.)

Accordingly, if it is reasonably foreseeable that the economic interests of any of these planning commissioners will be materially affected by a planning commission decision concerning the Vallejo Heights, St. Vincent's Hill or Washington Park neighborhoods, the affected commissioners must not only disqualify themselves from participating in formal decisions of the planning commission which may affect such interests, but they must also abstain from attempting to influence such decisions by communicating with other members of the planning commission or with planning commission staff regarding the decisions.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. To be foreseeable, the effect of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App.3d 817; In re Thorner (1975) 1

FPPC Ops. 198. 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.)

### Materiality

The Commission has adopted several regulations which define material financial effect. Regulation 18702 sets forth the general guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, Regulation 18702.1 applies to determine materiality. If the official's financial interest is indirectly affected by the decision, Regulations 18702.2 through 18702.6 apply to determine whether the effect of the decision is material. We have enclosed copies of Regulations 18702.1, 18702.2, 18702.3, 18702.4, 18702.6 and 18704.3 for your reference. These regulations will be discussed in our analysis below.

### General Analysis of the Economic Interests of the Planning Commissioners

The various economic interests of these five planning commissioners fall into the following categories: real property ownership; business ownership; and income from the real property or business owned. Set forth below is an analysis of how the Act's conflict of interest provisions and related Commission regulations will apply to determine whether these economic interests will create a conflict of interest for the various decisions to be made by these planning commissioners.

#### A. Real Property Ownership

Assuming it is foreseeable that these decisions, as applied to a specific neighborhood will have some financial impact on the value of real property owned by a commissioner and located in or near the neighborhood, the primary question is whether the financial impact upon the commissioner's real property will be "material." We must therefore refer to Regulations 18702.1 through 18702.6 for guidance.

Regulation 18702.1(a)(3)(A) states that a decision is material if it involves the rezoning of or a similar decision affecting an official's real property. Furthermore, Regulation 18702.3(a)(1) provides that a decision is material as to real property owned by an official if that property is located within 300 feet of the boundaries of real property that is the subject of a decision. On the basis of these provisions, where a planning commissioner owns real property that is either inside the boundaries or within 300 feet of the boundaries of a particular neighborhood, the official cannot participate in proposed decisions concerning that neighborhood.

Regulation 18702.3(a)(3) states that a decision is material as to real property owned by an official if that property is located outside 300 feet but less than 2,500 feet from the boundaries of real property that is the subject of a decision and the financial effect of the decision meets the thresholds set forth in Regulation 18702.3(a)(3)(A) or (B). Therefore, where a planning commissioner owns real property that is located outside 300 feet but less than 2,500 feet from the boundaries of a particular neighborhood and the thresholds of Regulation 18702.3(a)(3)(A) or (B) are met, the official cannot participate in the proposed decisions concerning that neighborhood.

If a commissioner owns real property that is outside a radius of 2,500 feet from a particular neighborhood, the commissioner's ownership of that property does not prevent his or her participation in the proposed decisions concerning that neighborhood. However, the commissioner must refer to other portions of this letter to determine if he or she has other economic interests that will prevent participation in the proposed decision.

B. Business Ownership

Assuming it is foreseeable that these decisions as applied to a specific neighborhood will have some financial impact on a business located in or near the neighborhood and owned by a commissioner, another question is whether the financial impact upon the commissioner's business will be "material." We likewise refer to Regulations 18702.1 through 18702.6 to make this determination.

Since these decisions pertain to the general use of real property and not directly to specific businesses located on the property, the effect of these decisions on a commissioner's business would be indirect, rather than direct. To determine whether the indirect effect of a government decision will be "material" as to an official's business, we look to Regulation 18702.2.

As is set forth in Regulation 18702.2, whether the effect of a government decision is material as to a business interest depends on the size and nature of the business. Generally, the larger the business, the more the financial impact of the decision must be to meet the materiality threshold. We have received no facts from you that indicate under which of these regulation's subdivisions the various business interests of these commissioners would fall. We do note, however, that all of these businesses appear to be of the types that would not have their shares publicly traded or would be of sufficient size for subdivisions (a) through (f) of the regulation to apply. Rather, it would appear that Regulation 18702.2(g) would be the applicable subdivision. If that is the case, then a commissioner may not participate in any of these decisions on any of the three

neighborhoods that will have a financial effect on his or her business that meets the thresholds of subdivision (g).

As explained in the summary of the Facts above, our assumption is that, for each of the businesses you describe, either the commissioner or the commissioner's spouse owns at least a 10 percent interest therein worth at least \$1,000 or more.

C. Income from the Real Property or Business Owned

As discussed above, the various planning commissioners own real property or businesses in or near the three neighborhoods for which these proposed decisions are contemplated. These decisions may not only financially affect these properties and businesses, they can also foreseeably financially affect persons who live in or near these neighborhoods who have provided income to commissioners through the properties or businesses. For example, if a commissioner leases his real property located in one of these neighborhoods to another, this tenant is a source of income to the commissioner whose leasehold could be financially affected by a land use designation or zoning change to the neighborhood. Or, if a commissioner, through his or her real estate business, sold real property to a person who now lives in one of these neighborhoods, that person is a source of income to the commissioner if the sale took place within the 12-month period before the land use designation or zoning decision.

Real property owned by a source of income to an official and located in an area subject to these proposed decisions is deemed to be indirectly affected by the decision, and thus subject to the materiality standards set forth in Regulation 18702.6. (See Regulation 18702.1(b), defining when a person is directly involved in a governmental decision.) Therefore, Regulation 18702.6, which sets forth the materiality threshold when a source of income is indirectly affected by a government decision, will apply. As set forth in Regulation 18702.6(b), reference must be made to Regulations 18702.3 or 18702.4 where the source of income's real property interest is affected by the decision.

Please note the following when assessing whether a commissioner's source of income will be affected by the government decision. Section 87103(c) applies not only to actual income received from the "source" within 12 months prior to the time when the decision is made. It also applies to income "promised to" the official within the same time period. Consequently, we have concluded that real estate commission income is deemed to be "promised" income when the real estate sale from which a public official who is also a real estate broker or agent will derive a commission is pending (i.e., the sale is in escrow), even though it is prior to payment of his or her commission. (Bewley Advice Letter, No. I-92-609.) Furthermore, Regulation 18704.3, particularly subdivisions (c)(2) and (c)(3), apply to determine who the sources of income are to real estate brokers and agents.

Finally, Section 82030(a) provides that where the public official or the official's spouse owns a 10 percent interest or greater in a business, the sources of income to the business are also considered to be sources of income to the official. In this situation, the amount of the official's income is his or her (or his or her spouse's) pro rata share of the total income received by the business.

#### Segmentation of the Decisions

As set forth in our Conclusion to Questions 1 and 2 above, where all of these proposed decisions are to be decided by one vote of the planning commission, any commissioner who has a conflict of interest relating to any of these neighborhoods must disqualify himself or herself from participation in the decisions. However, if separate votes take place as to each neighborhood, then the commissioners who have no conflicts relating to those decisions for specific neighborhoods may participate in those specific decisions. (See Miller Advice Letter, No. A-82-119.) In such a case, there is no particular order in which the decisions must take place.<sup>2/</sup>

#### Ascertaining Disqualifiable Sources Income

You have asked to what extent the various planning commissioners must attempt to identify potential disqualifying sources of income for the purpose of determining whether they can participate in these decisions.

An official need not disqualify from participation in a government decision unless "he knows or has reason to know he has a financial interest" in the decision. (Section 87100.) We have stated that an official "has reason to know" that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would be likely to know the identity of the source of income and would be aware of the decision's probable impact on the source. (Price Advice Letter, No. A-85-165.)

For the officials here, the potential sources of income involve either persons from whom they have received rent payments or real estate commissions during the 12 months prior to the government decision or persons from whom they have rendered other services (for Commissioner Evans: auto body repair; for Commissioner Mustico: tailoring services rendered by her spouse).

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<sup>2/</sup> One limitation on the permissible segmentation of decisions is that segmentation is not permitted where the decisions may be too interrelated to be considered separately, as where one decision will have a substantial impact on another decision yet to be made. (Woodhead Advice Letter, No I-91-266.) This does not appear to be the case here, if the decisions were made separately on each neighborhood.

Presumably, the commissioners would actually remember (and thus "know") some of these sources of income and therefore would be disqualified from participating in decisions materially affecting those persons. As to those sources of income that a commissioner cannot remember, we believe the commissioner "has reason to know" of those sources if the business has records for the 12-month period prior to the government decision which indicate: names of the persons who have paid income to the business, the amount of the income, and the person's address. From that information, the commissioner should be able to reasonably ascertain whether the source of income lives on property that is foreseeably affected by the decisions and provided income to the commissioner of \$250 or more during the prior 12 months. We apply this requirement here due to the presumably relatively small size and business volume of these businesses.

#### Public Generally

Section 87103 provides, in pertinent part, that an official does not have a conflict of interest in a government decision where the effect of the decision on the official is not distinguishable from its effect on the public generally. The population size of the neighborhoods subject to these decisions does not appear to be sufficient to constitute a "significant segment of the public." (See Regulation 18703.) Therefore, we have not analyzed the public generally issue because it does not appear to apply.

#### Legally Required Participation

Section 87101 permits an otherwise disqualified official to make or participate in the making of a governmental decision when his or her participation is legally required. Regulation 18701 states that "a public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision."

You indicate that the planning commission cannot act on the decisions concerning these three neighborhoods without four votes. Therefore, if under the laws governing the City of Vallejo's decision-making, there is no alternative authority to the planning commission which can make these decisions when more than three of the seven commissioners are disqualified from voting, the rule of legally required participation will apply.

We believe that your office is in the best position to determine whether in fact an alternative method is available under the City of Vallejo's laws to make these decisions in place of the planning commission. Therefore, we offer no opinion on this question. The balance of the discussion below will deal with the manner in which otherwise disqualified officials may participate in decisions under the rule of legally required participation.

Regulation 18701 sets forth the general parameters of the legally required participation exception. As stated above, the exception does not apply where an alternative authority can legally make the decision. (Regulation 18701(a).) Also, the exception does not apply merely for the purpose of allowing an official to vote to break a tie. (Regulation 18701(c)(1).) Nor can the exception be applied when, for some reason other than due to disqualifications created under the Act, a quorum of the public body cannot be convened. (Regulation 18701(c)(2).)

To apply this exception, not all officials who have been disqualified can be requalified to vote, but only the number sufficient for the commission to achieve the necessary number of members to act (in this case, four members). (In re Hudson, (1978), 4 FPPC Ops. 13, 17.) To select who those officials will be, the preferred method is by any random means which is "impartial and equitable". (In re Hudson, (1978) 4 FPPC Ops. 13, 18.)


Finally, once an official has been requalified to participate in a decision due to the rule of legally required participation, the official must:

- (1) Disclose as a matter of official public record the existence of his or her other financial interest;
- (2) Describe with particularity the nature of the financial interest before he or she makes or participates in making the decision;
- (3) State the reason there is no alternative source of decision-making authority;
- (4) Participate in the decision only in a legally required open meeting of the agency, or in a legally permitted closed session of the agency where participation by the official is legally required for the agency to act. However, the requalified member can fully participate in the discussion at the open meeting. (Schectman Advice Letter, No. A-92-198.)

(Regulation 18701(b).)

I hope that this letter has been of assistance. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

  
Scott Hallabrin  
Assistant General Counsel

SH:ak  
Enclosures