



California Fair Political Practices Commission

June 16, 1993

Thomas C. Wood
City Attorney
City of Chino Hills
Law Offices of Burke, Williams & Sorensen
3200 Bristol Street, Suite 640
Costa Mesa, CA 92626

Re: Your Request for Advice
Our File No. A-93-199

Dear Mr. Wood:

You have requested advice on behalf of the mayor and councilmembers in the City of Chino Hills regarding their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

The city council is considering three options regarding the Landscaping and Lighting District ("district"), as discussed below.

1) May Councilmembers Thalman, Larson and Wickman, who each own residential property in an area considered for annexation to the landscaping and lighting district, participate in the city council decision concerning whether that area should be annexed to the district? (Option I)

2) May Councilmember Norton-Perry, who owns residential property in the existing landscaping and lighting district, participate in city council decisions concerning whether (a) to annex an area into the existing district (Options I and II), and (b) to revise the assessment method for certain multiple residential units to increase their assessments relative to other residential units (Option III)?

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.

CONCLUSIONS

1) Under the Act, Councilmembers Thalman, Larson and Wickman may not participate in the decision (Option I) to annex Area "A" into the existing landscaping and lighting district, since they own residential property in Area "A". However, they may participate in the decisions regarding Options II and III.

2) The "public generally" exception of the Act would permit Councilmember Norton-Perry to participate in the assessment district decisions under Options I, II and III.

FACTS

The City of Chino Hills is in the process of revising its Landscaping and Lighting District ("district"). The city is considering revision of the boundaries of the district, revising certain methods of assessment and levying the assessment for fiscal year 1993-94.

Four councilmembers own residential property in areas affected by the decisions to revise the district. Mayor James S. Thalman, Mayor Pro Tem Gary G. Larson and Councilmember Michael G. Wickman live in single-family residences which are located in an area (Area "A") considered for possible annexation to the district. Councilmember Gwenn E. Norton-Perry lives in a single-family residence located within the existing district. Each councilmember has a financial interest in his or her residence in excess of \$1,000.

The city council is considering three options regarding the district:

Option I: Should Area "A", encompassing existing residential dwelling units, be annexed into the district?

Option II: Should Area "B", encompassing 1,569 acres which are approved for development but unbuilt, be annexed into the district?

Option III: Should the assessment method which determines the assessment for 1,665 multiple-family units presently assessed lower than single-family dwellings, be altered to increase these assessments?

If Options I, II or III were acted upon affirmatively by the council, the amount of the assessment upon the existing 10,588 property owners in the district would decrease by a small amount from what it would be if these options were rejected. The exact amounts of the fiscal year 1993-94 assessments cannot be determined at this time, but the amount of the average assessment is likely to be about \$330 and the likely decreases would range from 2 percent to 28 percent.

If Option I were acted upon affirmatively, Mayor Thalman, Mayor Pro Tem Larson and Councilmember Wickman would each have a new assessment levied against his property by reason of being annexed into the district. Their financial interests would be affected similarly to the other 4,097 owners in Area "A"; this segment represents 8.9 percent of the city's population. Councilmember Norton-Perry's financial interest would be affected similarly to the remaining other 10,587 owners already in the district; this segment represents 23 percent of the city's population.

You stated that if Option II were acted upon affirmatively, the effect on Councilmember Norton-Perry would be comparable to that for Option I. If Option III were acted upon affirmatively, the effect on Councilmember Norton-Perry's financial interest would be similar to approximately 10,015 single-family residential property owners already in the district; this segment represents 22 percent of the city's population.

The population of Chino Hills is 46,000. Area "A" contains about 4,100 dwelling units and has approximately 12,300 residents. Area "B" contains 54 parcels and has a maximum of 54 owners. The existing district encompasses approximately 12,270 residential dwelling units and 34 parcels of commercial property. There are approximately 10,588 persons who own property within the district and who pay the assessments. The number of residents living within the district is about 36,810. The 1,665 multiple-family units being considered for an assessment increase are owned by approximately 573 persons.

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 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).

Accordingly, the mayor and councilmembers may not make, participate in making, or attempt to use their official position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect, distinguishable

from the effect on the public generally, on their real property interests.

Section 82033 defines "interest in real property" as:

...any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.

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.) 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

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 economic interest is directly involved in the decision, Regulation 18702.1 applies to determine materiality. If the official's economic interest is indirectly affected by the decision or if the effect of the decision is not material under Section 18702.1, it must be determined if the effect is material under Regulations 18702.2 through 18702.6.

All of the officials have real property which will in some way be affected by decisions regarding the district. Regulation 18702.1(a)(3) provides that a governmental decision will have a material financial effect on an official's real property interest where:

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which

the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property;

(Emphasis added.)

Under Option 1, Area "A" (where Councilmembers Thalman, Larson and Wickman own residential property) would be annexed into the district and a new fee would be assessed upon the councilmembers' properties. Therefore, under subsection (A) above, the Option I decision would have a material financial effect on their property. All three options would have a material financial effect on Councilmember Norton-Perry, since her assessment would be modified by a small decrease. Therefore, none of the councilmembers may participate in the decisions regarding the assessment district, unless the "public generally" exception applies.

"Public Generally" Exception

Public officials with interests that will be materially affected by a decision may still participate in the decision if the decision's 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. (Section 87103 and Regulation 18703.) The "public" consists of all the persons residing, owning property or doing business in the jurisdiction of the public official. (In re Owen (1976) 2 FPPC Ops. 77.)

You stated that the population of the existing district is 36,810, which represents eighty percent of the population of the city. The Commission has never adopted a strict arithmetic formula for determining what constitutes a significant segment of the public.² However, in order to apply the "public generally" exception, the affected population must be large and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops. 62.) Approximately 10,015 persons in the district own single-family residences and 573 persons own multiple-family units; 36,810 residents live in the district. Thus, the population affected by any revisions to

² However, the Commission will consider a proposed regulation at its July 1993 meeting which could establish an arithmetic formula to assist in determining what constitutes the "public generally." If that regulation is adopted, our advice could change at that

the assessment district appears to be heterogeneous in nature and eighty percent of the population represents a significant segment of the public.

Councilmember Norton-Perry

The "public generally" exception would permit Councilmember Norton-Perry, who owns a single-family residence in the existing district, to participate in the assessment district decisions under Options I, II and III. Any decisions regarding the district will affect her property in the same manner as a significant segment of the population.

Councilmembers Thalman, Larson and Wickman


Annexation to the existing district would financially affect the properties of Councilmembers Thalman, Larson and Wickman by levying a new assessment. There are 4,097 other property owners in Area "A", which represents 8.9 percent of the city's population. Since the Option I decision whether to annex "Area A" into the existing district would only affect 8.9 percent of the population of the city, the "public generally" exception does not apply to Councilmembers Thalman, Larson and Wickman.

However, if Area "A" is annexed into the existing district, the "public generally" exception would then permit Councilmembers Thalman, Larson and Wickman to participate in the decisions under Options II and III. Since eighty percent of the population resides in the existing district (without the inclusion of Area "A"), a decision to annex Area "B" and to change the assessment method for multiple-family units would affect a significant segment of the population in the same manner. If Area "A" is not annexed into the district, Councilmembers Thalman, Larson and Wickman may also participate in the decisions under Options II and III since their property interests would not be affected.

I trust this answers your questions.

Sincerely,

Jeff Marschner
General Counsel

By:  Jill Stecher
Legal Counsel

JM:JS:ak