



California Fair Political Practices Commission

June 4, 1993

Paula Kimbrell
Assistant City Attorney
City of Oxnard
300 W. Third Street
Oxnard, CA 93030

Re: Your Request for Informal Assistance
Our File No. I-93-200

Dear Ms. Kimbrell:

This is in response to your letter requesting advice on behalf of the City of Oxnard regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your advice request is general in nature, we are treating your request as one for informal assistance.²

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Does the Act prohibit or restrict the City of Oxnard's use of general fund monies to pay for appraisals of real property owned by the city officials to determine if there is a conflict of interest?

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).)

CONCLUSION

The Act does not prohibit or restrict the City of Oxnard's use of general fund monies to pay for appraisals of real property owned by the city officials to determine if there is a conflict of interest. However, this advice is limited to the provisions of the Political Reform Act.

Please note, however, other laws outside the Political Reform Act may restrict the use of public funds for this purpose. (See e.g., Penal Code Section 424.) You should contact the Attorney General's office for advice with respect to other provisions of the law.

DISCUSSION

Significance of Appraisals

Section 87100 prohibits any public official from making, participating in making, or otherwise using the official's position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any real property in which the public official has a direct or indirect interest worth \$1,000 or more. (Section 87103(b).)

Generally, the determination of materiality is based on a monetary threshold. For example, Regulation 18702.3 provides that the effect of a decision on real property in which an official has an economic interest is material if:

(3) 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 (or the proposed boundaries) of the property which is the subject of the decision and the decision 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.

The Commission cannot determine whether there will be a material financial effect on an official's property. Thus, in

many cases public officials have found it necessary and useful to obtain an appraisal of the property.³

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 decisions would have no material financial effect on the official's real property interests, the appraiser's 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.

The City of Oxnard would like to establish a procedure whereby city general funds may be used to pay for appraisals of the real property interest of city officials where such an appraisal becomes necessary due to a potential conflict of interest.

Use of Public Funds

The primary issue raised by your letter is the propriety of using Oxnard general fund money to pay for appraisals of real property owned by the city officials to determine if there is a conflict of interest.

The Commission has no authority to determine whether such expenditures are legitimate government expenditures. We can only advise as to whether such expenditures are a violation of the provisions of the Political Reform Act. Other provisions of the law which may apply to these facts, such as Penal Code Section 424 which deals with the misuse of public moneys, are outside the jurisdiction of the Commission. (See, e.g. Penal Code Section 424; Stanson v. Mott (1976) 17 Cal. 3d 206; People v. Sperl (1976) 54 Cal. App. 3d 640; and People v. Battin (1978) 77 Cal. App. 3d 635.) Penal Code Section 424 is interpreted and enforced by the district attorney and the Attorney General.

³ Regulation 18702.3(d) sets forth factors that must be considered in determining whether a decision will have a material financial effect on a public official's real property. They 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) Whether it is reasonably foreseeable that the decision will result in a change to 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 of the neighborhood.

Receipt of Free Appraisals

According to your facts, the City of Oxnard is establishing a procedure whereby the city will pay for appraisals of the real property in which city officials have an interest in the event that the real property may be materially and foreseeably affected by a decision. The payments would be made from the city's general funds.

According to your facts, the payments from the city for the appraisals would be necessary to determine if the officials could participate in a governmental decision. Such a payment would be similar to a reimbursement for expenses incurred by city officials by virtue of their public employment.

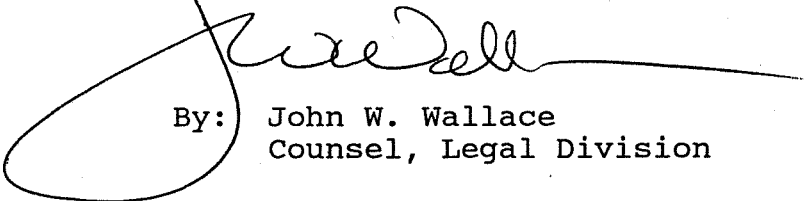
Section 82030 provides that the reimbursement for expenses and salary provided by a local governmental agency is excluded from the definition of "income" pursuant to Section 82030(b)(2). (Fogelman Advice Letter, No. I-90-618.) Thus, the payments would not result in the city's officials incurring additional reporting obligations.

Of course, as we discussed on February 2, 1993, this conclusion would be different were private parties to pay for the appraisals, or donate funds to the city earmarked for a specific official's appraisal. So long as this is not the case, the procedure would not result in additional obligations under the Act.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁴

Sincerely,

Jeff Marschner
General Counsel


By: John W. Wallace
Counsel, Legal Division

⁴ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.