



California Fair Political Practices Commission

March 24, 1994

Mark W. Gilbert
Chief Legal Counsel
Sacramento Regional Transit District
P.O. Box 2110
Sacramento, CA 95812-2110

Re: Your Request for Informal Assistance
Our File No. I-94-069

Dear Mr. Gilbert:

This is in response to your request for general assistance under the conflict-of-interest provisions of the Political Reform Act.^{1/} Since you are merely seeking interpretation of Commission regulations and are not seeking advice regarding a specific public official, we will consider your request a request for informal assistance.^{2/}

QUESTION

In analyzing a decision's material financial effect on a public official's leasehold interest in real property, does the public official consider whether the "actual" rent will be affected by the decision, or whether the "market" rent will be affected by the decision?

CONCLUSION

A public official is prohibited from participating in any decision which increase or decreases the "market" value of rent for leased property by \$250 or 5 percent, whichever is greater, during any 12-month period following the decision.

^{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, Sections 18000-18954. 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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

The Sacramento Regional Transit District ("Regional Transit") is in the process of extending existing light rail lines. Several board members and staff members have real property interests which may be affected by decisions regarding the rail extensions. Regional Transit is obtaining appraisals to analyze the financial effect of proposed projects on those real property interests.

You are seeking an interpretation of Commission Regulation 18702.4 which addresses material financial effect on a public official's leasehold interest in real property. Specifically, you are asking if subdivision (d) of Regulation 18702.4 applies to the "actual" rent which will be affected by the decision, or the "market" rent which may be affected. This clarification is necessary to assist the appraisers.

ANALYSIS

No public official at any level of state or local governmental shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. (Section 87100.) An official has a financial interest in a decision if it is reasonably foreseeable^{3/} that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her 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.

(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.

* * *

^{3/} 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.)

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Section 87103(b),(c) and (e).

The term "interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property owned directly, indirectly or beneficially by the public official if the fair market value of the interest is \$1,000 or more.^{4/} (Section 82033.)

The definition of "income" includes loans and forgiveness of indebtedness. (Section 82030.) If any public official's lease payments were ever forgiven or are past due, the landlord would be a source of income. In addition, a landlord could be a source of a gift to a public official who receives a discount on his rent which is not made in the regular course of business to members of the public without regard to official status. (Section 82028.)

You have not indicated if this is the case with any board member or staff member of Regional Transit. Your question only concerns the interpretation of indirect material financial effect on a leasehold interest.^{5/}

Regulation 18702.4 provides that the effect of a decision is material if any of the following applies:

(a) The decision will change the legally allowable use of the leased property, and the lessee has a right to sublease the property;

(b) It is reasonably foreseeable that the lessee will change the actual use of the property as a result of the decision;

(c) It is reasonably foreseeable that the decision will result in a change in the actual use of property within 300 feet of the leased property, and the changed use will significantly enhance or significantly decrease the use or enjoyment of the leased property;

^{4/} Regulation 18729 provides that the value of a leasehold interest is the amount of rent owed during a 12-month period.

^{5/} Other Commission Regulations, such as Regulation 18702.2, Material Financial Effect: Business Entity Indirectly Affected by a Decision must also be applied in those instances in which a business entity is located on a leasehold interest.

(d) The decision will increase or decrease the amount of rent for the leased property by \$250 or 5 percent, whichever is greater, during any 12-month period following the decision; or

(e) The decision will result in a change in the termination date of the lease.

Regulation 18702.4.

Accordingly, if any decision will have these effects on any board member or staff member's leasehold interest, that member may not participate in the decision.

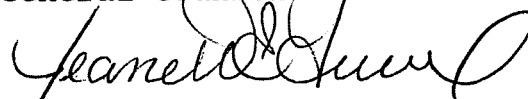
For purposes of appraising whether the decision will increase or decrease the amount of rent by \$250 or 5 percent, as used in subdivision (d) of Regulation 18702.4, it would be most appropriate for appraisers to refer to "market" rent for various reasons. One reason is that utilizing an "actual" rate which could be charged by a landlord is subjective. Although the decision may increase the market rate which a landlord could charge, it may not be desirable to a landlord to increase the rent on a tenant where a long-term landlord/tenant relationship has been established. A conscientious tenant may be maintaining the value of the landlord's property. Additionally, although the "market" rate could be higher than what a tenant is actually paying, a landlord may prefer to rent property at the tenant's current lower rate rather than risk having the property vacated, thus resulting in no rental income to the landlord.

Accordingly, for purposes of determining whether a decision will increase or decrease the "amount of rent" for leased property, your appraisers should consider the increase or decrease to the "market" rate for rent. However, it should be noted that public officials may not participate in any decision which would affect either the "market" or "actual" rate. For example, if an appraiser determines that the "market" rate for rent in the area would remain the same, but the project nevertheless prompts the landlord to alter the rent in the amount by \$250 or 5 percent, whichever is greater, during any 12-month period, Regulation 18702.4 would prohibit a public official from participating in a decision.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division