



California Fair Political Practices Commission

December 7, 1994

Carolyn Confer
Assistant City Attorney
Office of City Attorney
City of Riverside
3900 Main Street
Riverside, CA 92522

Re: Your Request for Advice
Our File No. A-94-345

Dear Ms. Confer:

This is in response to your letter requesting advice on behalf of Councilmember Alex Clifford regarding his responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

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

May Councilmember Clifford participate in the City of Riverside's decisions regarding the development of property under a city-approved specific plan which is located within 300 feet from his residence?

CONCLUSION

Since the decisions will not have a foreseeable material financial effect on his residence, Councilmember Clifford may participate in the city council's decisions regarding the development project.

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.

FACTS

The City of Riverside is considering the specific uses for development of an approximately 120-acre mixed use project known as the La Sierra Project, which is owned by the Riverside Community College District ("RCCD"). This project is within an approved specific plan.

It is anticipated that the project will be divided into separate areas in which the following uses will be authorized: parks; offices; commercial; and institutional. The exact acreage and location for each type of use has not been determined yet. RCCD is currently structuring community meetings to formulate its final plan for submission to the city council.

A portion of the RCCD property is within 300 feet of Councilmember Clifford's residence. Therefore, in order to determine whether the councilmember may participate in governmental decisions regarding this development project, the City of Riverside hired an appraiser to provide a limited scope analysis of the impact of the proposed project on Councilmember Clifford's home.

The analysis was done by Lea Associates, Real Estate Consultants. Lea Associates indicates in letters to the City of Riverside dated September 22, 1994, and November 18, 1994, that the function of the analysis is to assist the City of Riverside and its councilmembers in complying with specific details of Commission Regulation 18702.3. Lea Associates describes the property and methodology used in performing the evaluation. A description of the qualifications of the appraisers in conducting the analysis was also included.

Specifically, Lea Associates discusses the specific factors which were considered prior to reaching their opinion, which include the factors set forth in Regulation 18702.3(d). Lea Associates considered: (1) the proximity of the councilmember's property to the proposed project, which is 130 feet from the proposed project; (2) the development potential of the official's residence and the income-producing potential of the property; and (3) the character of the neighborhood including consideration of traffic, view, privacy, intensity of use, noise levels, air emission, and similar traits of the neighborhood. The analysis concludes that the potential project will have no material financial effect upon Councilmember Clifford's real property interest.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. As a member of the City of Riverside Council, Councilmember Clifford is a public official. (Section 82048.)

Economic Interests

Section 87103 specifies that an official has a financial interest in a decision where it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on any real property in which the public official has a direct or indirect interest of \$1,000 or more. (Section 87103(b).)

Presumably, the councilmember's interest in his residence is greater than \$1,000. Thus, pursuant to Section 87103(b), Councilmember Clifford is prohibited from making or in any way participating in decisions which would have a foreseeable material financial effect on his property that is distinguishable from the effect on the public generally.

Generally, 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.) You indicate in the information you provided that Councilmember Clifford's residence is only 130 feet from the RCCD property. Thus, it appears reasonably foreseeable that the official's property may be affected by the decisions.

However, the effect of a decision on the official's real property interest must also be material. Where an official's real property interest is indirectly affected by a decision, Regulation 18702.3 provides the appropriate standard to determine whether that interest will be materially affected.

Regulation 18702.3 provides in relevant part that the effect of a decision on real property in which an official has a direct, indirect or beneficial ownership interest, is material if:

- (1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

Regulation 18702.3 (a)(1).

(Emphasis added.)

Councilman Clifford's property is within 300 feet of the development project that is the subject of the city's decisions. Thus, since his real property is in such close proximity to the property which may be the subject of the decisions, he may not participate in decisions concerning the development of the property unless it will have no financial effect on his real property.

Appraisals

You have commissioned an appraisal concerning the effect the development project will have on the property interest of Councilmember Clifford. The Commission cannot determine whether there will be a material financial effect on the councilmember's property or evaluate the accuracy of the appraisal. The Commission does not act as the finder of fact. (In re Oglesby, supra.)

However, an appraisal conducted by a disinterested and otherwise qualified real estate professional, who considers the factors listed in Regulation 18702.3(d), will be considered a good faith effort to assess the materiality of pending governmental decisions indirectly affecting a public official's property and an immunizing advice letter from the commission may be issued on that basis. (Chiozza Advice Letter, No. A-94-114; Walter Advice Letter, No. I-92-345; Stone Advice Letter, No. A-92-133a.)

Any such assessment must include consideration of the following factors:

(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)(1) - (3).

In its letter to the city dated September 22, 1994, Lea Associates, stated that "It is the function of this letter to assist the City of Riverside and its councilmembers in complying with specific details of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations. Specifically cited as 18702.3, 'Material Financial Effect: Ownership Interest in Real Property Indirectly Involved in the Decision.'"

It is also stated that the appraisers' analysis included observations of the subject property, its surrounding

neighborhood, and the physical and locational characteristics of the proposed La Sierra project site. Furthermore, according to a letter dated November 18, 1994, Lea Associates describes the specific factors considered, which include the factors set forth in Regulation 18702.3(d). Specifically, Lea Associates considered: (1) the proximity of the councilmember's property to the proposed project, which is 130 feet from the proposed project; (2) the development potential of the official's residence and the income-producing potential of the property; and (3) the character of the neighborhood including consideration of traffic, view, privacy, intensity of use, noise levels, air emission, and similar traits of the neighborhood.

The information you have provided concerning the appraisal states that the RCCD development project will have no material financial effect upon the official's real property interests, despite the fact that Councilmember Clifford's property is within 300 feet of the proposed project. Accordingly, Councilmember Clifford has no disqualifying conflict based on his real property interests and he may participate in the decisions.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.²

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

² 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.