



California Fair Political Practices Commission

March 30, 1995

Ronald R. Ball
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, California 92008-1989

Re: Your Request for Advice
Our File No. I-94-396

Dear Mr. Ball:

As the City Attorney of the City of Carlsbad, you have requested advice on behalf of Carlsbad City Councilmember Matt Hall regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Since you have not provided any facts regarding a specific governmental decision, we are rendering informal assistance.²

QUESTION

May Carlsbad City Councilmember Matt Hall participate in decisions concerning proposed amendments to the Carlsbad Village Design Manual, which is the implementing document for the Carlsbad Village Area Redevelopment Plan?

CONCLUSION

Since we do not have any facts regarding specific decisions, we cannot provide a definitive answer as to which decisions Councilmember Hall may participate in. Please use the analysis provided in this letter as guidance in determining if Councilmember Hall has a conflict of interest with respect to a specific 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).)

Councilmember Hall may not participate in any of the decisions specified in Regulation 18702.1(a)(3)(D) since he has interests in several properties within subarea four of the redevelopment area. He may participate in other decisions concerning amendments to the design manual provided that the decisions are not interrelated to the decisions for which he is disqualified and he has no other conflicts of interest with respect to the decision.

FACTS

Councilmember Hall was elected at the municipal election of November 8, 1994; he will be called upon to vote on certain changes to the Carlsbad Village Design Manual which are now being discussed and formulated by the staffs of the Planning and Redevelopment Department.

The City of Carlsbad adopted its Redevelopment Plan ("plan") in April 1981 for a 25 year period. The overall goal of the Redevelopment Plan for the village area of the City of Carlsbad is to create a pleasant, attractive, accessible environment for living, shopping, recreation, civic, cultural and service functions through the elimination of blight and through restoration and additions of private/public development while preserving and enhancing the existing character of the village area and the surrounding community.

The plan is implemented by the Village Design Manual ("manual") which creates standards for seven subareas of the project area. The manual establishes regulations for all uses within the redevelopment area including lot coverage, building coverage, building setbacks, building and structural height limitations, building intensity, siting of buildings and structures and open space and general landscape guidelines. Within each subarea certain land uses are encouraged, restricted and specified for the overall comprehensive and coordinated development of the entire plan.

Councilmember Hall has certain business interests and property ownerships primarily within subarea four. This subarea has traditionally functioned as a heavy commercial light manufacturing area. The goal of subarea four is to create a light manufacturing/heavy commercial area that will serve the project area.

Councilmember Hall has a one-quarter interest in an automotive business located at 3150 Roosevelt Street known as "Carlsbad Automotive." He has an ownership interest in five parcels located at 3145-3199 Tyler Street, which are currently occupied by automotive businesses. His ownership interest in the properties and the businesses ranges between 25 percent and 50 percent. He also has a 50 percent ownership interest in three lots which are located at the intersections of Roosevelt, Pine and

Tyler Streets. The lots are presently occupied and leased for general commercial purposes ranging from a hair salon to an engineering office.

His interests in these real properties exceed \$1,000 each and the business located at 3150 Roosevelt Street represents a source of income exceeding \$250 per year.

In addition, Mr. Hall owns a home located at 4046 Garfield Street, which is over 2,500 feet from the redevelopment area.

The decisions coming before the city council will be based on the recommendations of its advisory committee's boards and will, in all likelihood, request amendments to subareas of the manual to allow, restrict or prohibit certain land uses, but will not involve the rezoning or redesignation of any specific parcel.

ANALYSIS

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Section 87103 specifies that an official has a financial interest within the meaning of 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 a member of his or her immediate family or on:

- (a) Any business entity in which the public official has a direct or indirect interest 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a)-(d).

According to the facts provided, Councilmember Hall has an ownership interest in several properties and businesses within subarea four of the redevelopment area. His primary residence is located more than 2,500 feet from the redevelopment area. Councilmember Hall is prohibited from making, participating in making or using his official position to influence a governmental decision if it is reasonably foreseeable³ that the decision will have a material financial effect on any of his economic interests, which is distinguishable from the decision's effect on the public generally.

Materiality

Regulation 18702.1(a)(3)(D) applies specifically to redevelopment decisions where the official's economic interest is directly involved in the decision. It provides that a redevelopment decision's effect on an official's interest in real property is deemed to be material and disqualification is required if:

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

Regulation 18702.1(a)(3)(D),
emphasis added.

Thus, if any of the decisions specified above are before the city council, Councilmember Hall must disqualify himself since he

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.)

has an interest in several properties located within subarea four of the redevelopment area.

If Regulation 18702.1(a)(3)(D) above does not apply and decisions concern discrete projects in the redevelopment area, the decisions must be analyzed independently to determine if Councilmember Hall is required to disqualify himself from the decisions. Pursuant to Regulation 18702.1(a)(3), the financial effect of a decision on an official's real property is also material and disqualification required if the decision involves:

(A) 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 the official's real property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the official's real property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the official's real property;...

(E) For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the subject property, but shall not refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category.

Where a decision does not fall into one of the categories set forth above, the official's real property may still be indirectly and materially affected and therefore require disqualification. Under Regulation 18702.3(a) (copy enclosed), the indirect effect of a decision on an official's real property 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.

(2) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or substantially improved services.

(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.

(b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision; unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a)(3)(A) or (a)(3)(B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the real property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

Therefore, if the foreseeable effect of any governmental decision will meet the thresholds set forth in the applicable provision of Regulation 18702.3 above, Councilmember Hall may not participate in the decision. In addition to his property

interests in subarea four, Councilmember Hall owns a home more than 2,500 feet from the redevelopment area. Regulation 18702.3(b) must be used to determine if any decision will have a material financial effect on his home.

Also, you must determine under Regulation 18702.2 (copy enclosed) if any decisions will have a material financial effect on Councilmember Hall's businesses, which are also located in subarea four of the redevelopment area.

In addition, Councilmember Hall has a fifty percent ownership interest in three lots which are leased for general commercial purposes. The businesses or tenants who lease space are a source of income to Councilmember Hall. Depending on the facts of the situation, you must determine under either Regulation 18702.1(a)(1)--source of income directly involved in a decision, Regulation 18702.2--business entity indirectly involved in a decision, or Regulation 18702.6--individual who is a source of income who is indirectly involved in a decision, if there will be a reasonably foreseeable material financial effect on any of the businesses or tenants who lease from Councilmember Hall.

You have inquired if Mr. Hall is disqualified as to all decisions concerning amendments to the design manual, which implements the redevelopment plan. Generally, each decision must be analyzed independently to determine if there will be a foreseeable material financial effect on an official's economic interests, as discussed above. (In re Owen (1976) 2 FPPC Ops. 77.) Where a series of decisions are too interrelated to be considered separately, Councilmember Hall may not participate in any of the decisions.

Where the decisions regarding amendments to the design manual are not interrelated to the decisions for which Councilmember Hall has a conflict of interest, the following procedure should be followed to permit Councilmember Hall to participate:

- (1) The decisions in which he has a disqualifying financial interest should be segregated from the other decisions.
- (2) The decisions in which he is disqualified should be considered first, and a final decision reached without Councilmember Hall participating in any way.
- (3) Once a decision has been made on the portions of the decision in which Councilmember Hall has a disqualifying interest, he may participate in the deliberations regarding other portions of the decision, so long as those deliberations do not result in a reopening or in any way affect the decisions from which he was disqualified. (Huffaker Advice Letter, No. A-86-343, copy enclosed.)

If it is determined that Councilmember Hall will follow the above procedure, he may also participate in the decision to sever the decisions and adopt the above-prescribed procedure.


Public Generally Exception

Finally, a public official with economic interests that will be financially affected by a governmental decision may still participate in a decision affecting those interests if the effect of the decision on his or her interest 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 in the official's jurisdiction. Since we do not have any facts regarding specific decisions, we cannot analyze whether the "public generally" exception would apply. We have enclosed Regulation 18703, which gives the necessary criteria.

I trust this answers your question.

Sincerely,

Steven G. Churchwell
General Counsel


By: Jill Stecher
Counsel, Legal Division

SGC:JS:ak

Enclosures