

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

June 13, 1996

Scott N. Kivel  
City Attorney  
City of Pittsburg  
Law Offices of Michael R. Woods  
18100 Carriger Road  
Sonoma, California 95476-4072

Re: Your Request for Advice  
Our File No. A-96-169

Dear Mr. Kivel:

This is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1</sup> as they pertain to City of Pittsburg City Councilmember Joseph Canciamilla.

QUESTION

May Councilmember Canciamilla participate as an Assessment District director in decisions to continue assessments under the Landscaping and Lighting Act given that the city plants and maintains flower beds at an intersection, one corner upon which is located a funeral home business owned by Mr. Canciamilla on property owned by Mr. Canciamilla's parents and in which he possesses a leasehold interest?

CONCLUSION

Yes, Councilmember Canciamilla may participate in the decision to continue the landscaping and lighting assessment because, based on your facts, the decision will not have a material financial effect on his business entity or his leasehold interest in the property.

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<sup>1</sup> Government Code Sections 81000-91015. Commission regulations appear at Title 2, Sections 18000-18995 of the California Code of Regulations.

FACTS

Your client, Joseph Canciamilla, is a member of the city council of Pittsburg. The Landscaping and Lighting Act of 1972 (Streets and Highways Code Sec. 22500, et seq.), permits local jurisdictions to form assessment districts to, inter alia, install or plant landscaping, and to maintain the landscaping. "Landscaping" means trees, shrubs, grass, or other ornamental vegetation. Directors of the Landscaping and Lighting District in the City of Pittsburg are the councilmembers.

In 1991, according to city employees, the Chairman of the Economic Development Committee of the Chamber of Commerce approached the City of Pittsburg about the possibility of the city joining with some of the property owners on Railroad Avenue to assist in beautification of the main Pittsburg corridor. The committee felt that beautification on Railroad Avenue, specifically the development of feature flower beds, would be a beneficial improvement for the city.

The city did not own surplus property along Railroad Avenue to beautify and the committee recognized that there would have to be some sort of cooperation with the private commercial property owners. The committee approached the business owners at the intersection, including Councilmember Canciamilla, to see if they would be interested in jointly developing and maintaining landscaping improvements.

A verbal agreement was reached with the Pittsburg Funeral Chapel and other businesses. The respective businesses employed private landscaping firms to install new irrigation and landscaping along their frontage of Railroad Avenue as well as constructing a feature flower bed. It is estimated that each one of the private owners paid between \$450 and \$600 for the installation of the actual beds. Irrigation for these flower beds flows from these property owners' water supply without reimbursement from the city. The city in turn agreed to plant the flower beds three times per year and maintain them once they were installed.

Councilmember Canciamilla is a director on the City of Pittsburg Landscaping and Lighting Assessment District. The Assessment District is now preparing to vote to continue the landscaping and lighting assessments which fund the continued planting of the flower beds. You stated in a telephone conversation on May 24, 1996 that the assessment would be imposed on the real property in the jurisdiction, not directly on business entities.

Councilmember Canciamilla owns the Pittsburg Funeral Chapel, having purchased it after the initial installation of the feature flower beds, and leases the real property from his parents. The business is located at 2295 Railroad Avenue at the intersection of Leland Avenue.

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 a public official has a financial interest in a decision 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, members of the official's immediate family or on one of the official's economic interests, including the following:

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

(Section 87103(a)-(b).)

Councilmember Canciamilla has a business entity interest in the Pittsburgh Funeral Chapel. In addition, you stated in your letter that he has a leasehold interest in the property at 2295 Railroad Avenue. Accordingly, Councilmember Canciamilla may not participate in any decision that will have a reasonably foreseeable material financial effect on his business entity or his leasehold interest.

The Commission has adopted a series of regulations which provide guidance concerning whether the foreseeable financial effects of a decision are material. These regulations apply different standards depending on whether the decision will directly or indirectly affect the official's economic interest.

A business entity is directly involved in a decision when that entity initiates the proceeding, is a named party in the proceeding or is the subject of a proceeding. (Regulation 18702.1(b).) If the official's business entity is directly involved, then the official must disqualify himself from the decision. In this instance, the assessments are imposed on the property itself, not on the business. Although the business was initially involved in the placement of the flower beds, the current assessment decision before Assessment District will directly involve the real property, not the business entity.

If the business entity is not directly involved in the decision as described in Regulation 18702.1(b), then you must refer to Regulation 18702.2, which sets out the standard for determining when a business entity indirectly involved in a

decision will be materially financially affected by that decision. For a relatively small business please refer to Regulation 18702.2(g) which provides that the effect is material if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

If you determine, after referring to Regulation 18702.2, that the decision to continue the landscaping and lighting assessment will not have a material financial effect on the funeral home, then Councilmember Canciamilla will not be disqualified from the decision by virtue of his interest in the business.<sup>2</sup> You stated that the assessments, if imposed, would be imposed on the real property in the jurisdiction, not directly on business entities. Therefore, it would appear that the business would not be materially affected.

As noted above, Councilmember Canciamilla has a leasehold interest in the real property that will be subject to the assessment. The effect on Councilmember Canciamilla's leasehold interest will be 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;
- (d) The decision will increase or decrease the amount of rent for the leased property by \$250 or

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<sup>2</sup> Please note that this letter is based on the facts you have presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

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.)

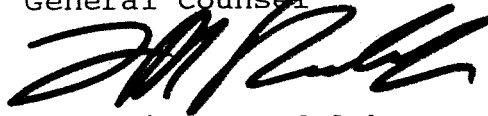
It is a factual question as to whether the decision will have any of the effects mentioned in Regulation 18702.4 on Councilmember Canciamilla's leasehold interest. Your letter states that you have reviewed Regulation 18702.4 and determined that the decision will have none of these effects. If that is the case, Councilmember Canciamilla may participate in the decision.

As you recognized in your letter, an official may participate in a decision that materially affects his economic interests if the decision will affect the official's interest in a manner indistinguishable from the decision's effect on the public generally. Because we have determined that the decision will not materially financially affect Councilmember Canciamilla's interests, we need not reach the question of public generally.

If you have any further questions, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Liane Randolph  
Counsel, Legal Division

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