

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

December 18, 1996

Kevin G. Ennis
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Thirty-eighth Floor
333 South Hope Street
Los Angeles, California 90071-1469

**Re: Your Request for Advice
Our File No. A-96-313**

Dear Mr. Ennis:

This letter is a response to your request for advice on behalf of City of Temecula Councilmember Jeff Stone regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Based on the facts presented, is it reasonably foreseeable that the decision of the agency to acquire property for the roadway widening project and to construct improvements thereon will have a material financial effect, distinguishable from the decision's effect on the public generally, on Councilmember Stone's interest in real property?
2. In determining if the decision will materially affect Councilmember Stone's interest in real property, does subparagraph (a)(2) of Regulation 18702.3 apply given the distance between Councilmember Stone's property and the property sought to be acquired? If it does apply, is there a standard or test for determining if real property will or will not be regarded as receiving "substantially improved" services?
3. If Councilmember Stone has a conflict of interest in decisions relating to the entertainment center, do the facts support a determination that the decisions related to the

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18000 - 18995, of the California Code of Regulations.

roadway widening project can be segregated from other decisions regarding the entertainment center?

4. If Councilmember Stone has a conflict of interest in decisions relating to the roadway improvements, can some of those decisions, such as the determination of appropriate value for the property to be acquired, be segregated and acted upon by Councilmember Stone separate from other decisions relating to the roadway widening project?

5. If Councilmember Stone is precluded from participating in these matters, may he speak to the council at a public meeting as a private citizen on these matters, and particularly the price to be paid for the rights of way?

CONCLUSIONS

1. Councilmember Stone must make the final factual determination as to whether it is reasonably foreseeable that the land acquisition for the roadway improvements will have a material financial effect on his real property interest.

2. Councilmember Stone should apply Regulation 18702.3(a)(3) to determine whether his real property will be materially financially affected.

3. Councilmember Stone must make the final factual determination as to whether the roadway widening project can be segregated from other decisions.

4. Although Councilmember Stone must make the final determination regarding the severability of the decisions, it appears that the determination of value for the property to be acquired may be segregated.

5. Councilmember Stone may speak to the council at a public meeting as a private citizen regarding these matters as long as he speaks only on behalf of himself.

FACTS

Mr. Jeff Stone is a member of the city council of the City of Temecula and a member of the governing board of the Redevelopment Agency of the City of Temecula ("Agency"). Within the city, there exists an area known as the "Old Town." The city has adopted a specific plan for the Old Town Area providing for commercial-retail and tourist oriented development and public improvements to enhance the historical "old west" style of the area. A redevelopment project area has also been established encompassing most of the Old Town Area and the agency has commenced certain redevelopment projects to upgrade and improve that area. One of the redevelopment projects in the Old Town Area is the establishment of a large entertainment center. The Entertainment Center will have: (1) an opera house; (2) a wild west arena; (3) virtual

reality theaters; (4) cabaret/playhouse theaters; (5) "quick draw" and indoor/outdoor exhibitions; (6) restaurants; (7) theme related retail; (8) Old Town Festival Square; and (9) parking facilities.

The conditions of approval of the land use entitlements of the Project require completion of certain public improvements relating to the Old Town Area, including: (1) renovation and expansion of the Old Town First Street Bridge; (2) gateway landscaping for the Old Town Area; (3) the Old Town demonstration block (sidewalk and street scape improvements); (4) Old Town sewer improvements; (5) Old Town water service improvements; and, (6) Old Town storm drain improvements. The project is anticipated to be a significant one for the city, and particularly for the Old Town Area as it is expected to draw a significant number of new tourists into the Old Town Area.

Pursuant to an owner participation agreement between the agency and the developer of the entertainment center, the developer will construct most of the public improvements in order to facilitate traffic flow to and from the new entertainment center. One improvement is the widening of certain roadway segments the run between the Old Town Area and the nearby freeway as well as some roadway improvements near the intersection of these roadways and the freeway. In addition to serving the needs of the proposed entertainment center, these roadway widening improvements are also called for in the city's existing General Plan circulation element as being necessary to facilitate the development of the Old Town Area and to relieve existing traffic congestion that impacts the area.

Financing of the roadway improvements will occur by way of a recently established Community Facilities District ("CFD") under which properties in the district will be assessed to pay the cost of the required improvements. The developer owns or will own all of the properties within the CFD. Councilmember Stone owns a one-sixth interest and holds a deed of trust in a parcel of vacant real property located within the Old Town Area and the redevelopment project area, which was acquired prior to his election to the city council. This property fronts on Main Street and is approximately 45 feet by 165 feet (7,200 square feet) in size. It is located approximately 220 feet from the nearest property line of the property on which the eastern portion of the entertainment center is to be constructed and approximately 460 feet from the nearest property line of the property on which the western portion of the entertainment center is to be constructed. The demonstration block portion of the public improvements will be constructed on Main Street and will include the street and sidewalk in front of Mr. Stone's property.

Up to this time, Councilmember Stone has not participated in any of the actions of the council or agency board in the consideration and approval of the Project, its land use entitlements, CFD bonds and scope of the public improvements. The city council is in the process of acquiring the property that is necessary for the roadway widening improvements specified in the General Plan and called for in the Owner Participation Agreement. One of the properties required for the right of way is approximately 2,425 feet from the nearest boundary of

Councilmember Stone's property. The council will be considering the acquisition of other properties for the roadway rights of way which are located between approximately 800 feet and 1,500 feet from Councilmember Stone's property. It is estimated that less than 10 percent of the property owners in the city own property in the Old Town Area of the city. It is also estimated that less than 10 percent of all properties in the city will be indirectly affected by the roadway improvements to the intersection at issue.

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. As a member of the Temecula City Council, Councilmember Stone is a "public official" as defined in Section 82048.

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 any real property in which the public official has a direct or indirect interest worth one thousand dollars or more. (Section 87103(b).)

According to your facts, Councilmember Stone's real property interest is located near the property that is the subject of the decision. Therefore, if any city decision concerning the Old Town Area will foreseeably materially affect Councilmember Stone's real property in a manner distinguishable from the effect on the public generally, he may not participate in the decision.

The Commission has adopted a series of regulations that provide guidance concerning whether the foreseeable financial effects of a decision are material. (Regulation 18702.) These regulations apply different standards depending on whether the decision will directly or indirectly affect an official's economic interests. Property will be considered to be directly involved, if, among other things, the governmental decision is to designate a survey area, select a project area, adopt a preliminary plan, or make other redevelopment area decisions. (Regulation 18702.1(a)(3)(D).)

The types of decisions you have described appear to impact Councilmember Stone's property indirectly. Your facts indicate that the redevelopment project area has already been established and the specific plan already adopted. None of the decisions appear to fall under Regulation 18702.1(a)(3)(D) or otherwise directly involve Councilmember Stone's property. Therefore, Councilmember Stone's property will be only indirectly affected by the decision. There are four standards in the Commission's regulations to determine if a decision will have a material financial effect on property that is indirectly subject to the decision.

1. The official owns property within 300 feet of property that is the subject of a decision and the decision will have some financial effect on the property. (Regulation 18702.3(a)(1).)

2. If the decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the official's property will receive new or substantially improved services. (Regulation 18702.3(a)(2).)

3. Where the official's real property is beyond a radius of 300 feet from the property which is the subject of the decision, but within 2,500 feet, the effect of a decision will be material only if the decision will affect the value of the official's property by \$10,000 or more, or the rental value of the property by \$1,000 in a 12 month period. (Regulation 18702.3(a)(3).)

4. Finally, if the official's property is located beyond a 2,500 foot radius of the subject property, the effect of a decision is material only if there are specific circumstances regarding the decision which make it foreseeable that the decision will affect the value of the official's property by \$10,000 or more, or the rental value of the property by \$1,000 or more per 12 month period. (Regulation 18702.3(b).)

It is necessarily a factual question as to whether any decision will have a reasonably foreseeable material financial effect on an official's economic interest. In this case, Councilmember Stone has a real property interest in property located within 2,500 feet of proposed roadway improvements. As noted above, in examining the financial effect of real property on an economic interest, the official should consider whether the decision will result in a change to the character of the neighborhood, including the effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood. (Regulation 18702.3(d)(3).) The decision to acquire the property itself may have little effect on Councilmember Stone's residence. If, however, the purchase of the land enables the city to make the necessary roadway improvements, construct the entertainment center, and make other changes contemplated in the Specific Plan, then it may well be that the decision to acquire the land will have a foreseeable material financial effect on Councilmember Stone's residence. We cannot act as the finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Therefore, we cannot make the final determination as to the actual effect the roadway purchases and any decisions resulting from the roadway purchases will have on Councilmember Stone's property.

You asked whether subparagraph (a)(2) of Regulation 18702.3 would apply to Councilmember Stone's property. This section provides that the official must be disqualified if the decision will result in the official's property receiving new or substantially improved services. This provision has generally applied only when the official's property itself will be receiving new services. In the *Strohm* Advice Letter (No. A-95-105), the official's buildable lots would receive a new sewer connection as a result of the decision. In the *Davis* Advice Letter (No. A-92-347), improvements on the street in front of the official's home were analyzed using the substantial improvement standard, but traffic mitigation efforts 2,500 feet from the official's

home were analyzed under the fair market value analysis in subparagraph (a)(3) of Regulation 18702.3.

In this case, the demonstration block you describe in your facts involves sidewalk and street improvements to the public areas in front of Councilmember Stone's property. As a result, subparagraph (a)(2) will apply. It appears that Councilmember Stone would be disqualified from decisions involving the demonstration block because his property will receive new or substantially improved services. The other improvements cited in your letter involve roadway improvements at locations substantially further from Councilmember Stone's property. Councilmember Stone's property will not receive additional services, such as improved water or sewage services. Accordingly, those more removed decisions should be analyzed using the fair market value method in subparagraph (a)(3).

A public official who is disqualified from participating in certain decisions may, nevertheless, be able to participate in certain aspects of the discussions and decisions. In many cases, large and complex decisions, like decisions concerning a general plan, may be divided into separate decisions so that a public official who has a disqualifying interest with respect to one component of the decision, may participate in the other components. Once again, this is necessarily a factual determination. If applicable, the following procedure must be complied with:

1. The decision in which a public official has the disqualifying financial interest is segregated from the other decisions;
2. The decisions concerning issues in which the public official has a disqualifying financial interest are considered first, and the final decision is reached as to those issues without the public official's participation; and,
3. Once final decisions have been made on those issues in which the public official has disqualifying financial interests, the public official may participate and vote regarding other components as long as those deliberations will not result in a reopening or in any way affect the decisions from which the public official was previously disqualified. (*Huffaker* Advice Letter, No. A-86-343.)

Thus, Councilmember Stone may be able to participate in decisions and discussions where he has a disqualifying financial interest if they are segregated and he follows the procedure described above such that he does not participate in those aspects of the decisions in which he has a disqualifying financial interest. You ask whether the facts support a determination that the decisions related to the roadway widening project can be segregated from other decisions regarding the entertainment center. You mention that the roadway widening improvements are necessary to facilitate the Old Town development and necessary to facilitate traffic flow to and from the new entertainment center. Although we cannot make the final factual determination for

you, it appears from your facts that the roadway improvements are a condition precedent to the building of the entertainment center and thus cannot be segregated. If the decision to make the roadway improvements has already been made, however, and the only decisions in front of the council are the negotiations over the property purchases, then it appears that those decisions could be segregated.

Councilmember Stone may speak at a public meeting on these matters if he appears solely to represent himself on matters related to his real property interests. For instance, he may speak on issues related to the roadway improvements that will affect his real property interests.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

By: Liane M. Randolph
Staff Counsel, Legal Division

SGC:LMR:ak

Corrected letter 7/10/97