

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

March 13, 1997

Elizabeth L. Martyn  
Rutan & Tucker  
611 Anton Boulevard, Suite 1400  
Post Office Box 92626-1950  
Costa Mesa, California 92626-1950

**Re: Your Request for Informal Assistance  
Our File No. I-97-099**

Dear Ms. Martyn:

This letter is a response to your request for informal assistance regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that this advice is limited to the Act and does not provide advice on any other conflict of interest provisions.

### QUESTION

Your client is a member of a planning commission that is about to make decisions regarding the development of a parcel of land owned by a business that is a direct competitor of another business that is a source of income to your client. May your client participate in the land use decisions?

### CONCLUSION

Yes. Based on the facts you have provided, your client may participate in the decisions, if the business that is a source of income to the official will not be materially affected.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations. Informal assistance does not provide the requestor with immunity. (Section 83114; 18329(c).)

## FACTS

Your client is a planning commissioner for the City of West Covina. The planning commission will consider a zone change and precise plan for a parcel owned by a local Dodge dealer. The planning commissioner is an attorney. A competing Chrysler dealership within the city is a source of income to him. However, the Dodge dealer is not a source of income to the planning commissioner. The planning commissioner does not own any property within at least one mile of the parcel to be developed.

## ANALYSIS

### Economic Interests

The Act prohibits public officials from making, participating in making, or attempting to use their official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. Your client is a planning commissioner for the City of West Covina. As an official of a local governmental agency, your client is a public official as defined by the Act. (Section 82048.)

An official has a financial interest in a decision if it is reasonably foreseeable<sup>2</sup> that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of 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.

(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

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<sup>2</sup> The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. To be foreseeable, the effect of a decision must be more than a mere possibility; however, certainty is not required. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

director, officer, partner, trustee, employee, or holds any position of management.

(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.”<sup>3</sup> (Section 87103.)

The planning commission for the City of West Covina is planning a zone change and precise plan for a parcel of land owned by a local Dodge dealer. Your client may not participate in or influence these decisions if it will have a material financial effect on any of your client’s economic interests. According to the facts you have provided, your client does not have a real property interest in any property within a mile of the parcel to be developed. Moreover, the owner of the property to be developed is not a source of income to your client. However, a local Chrysler dealership, a competitor of the Dodge dealership, is a source of income to your client.

#### Material Financial Effect

The Commission has adopted a series of regulations for determining whether the foreseeable financial effect of a decision will be material. The standards differ depending on the nature of the decision before the official and the economic interest involved. (Regulation 18702.) If the economic interest is directly involved in the decision before the official’s agency, Regulation 18702.1 provides that the effect of the decision is deemed to be material. An economic interest is directly involved in a decision when the economic interest initiates the proceeding by filing an application, claim, appeal, or similar request, or is a named party in, or the subject of, the proceeding. (Regulation 18702.1(b).) In the facts you have provided, the Chrysler dealership that is a source of income to your client is not directly involved in the decisions regarding the development of the parcel.

Regulation 18702.2 provides the standards for determining whether a decision will materially financially affect a business entity. To apply Regulation 18702.2, you must determine the size of the business entity in which the official has an economic interest. For a relatively small business, for instance, Regulation 18702.2(g) provides that the effect is material if the decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more, or the decision will result in the business entity incurring or avoiding additional expenses or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more, or the decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more. You have not provided any facts regarding the size of the Chrysler dealership. Therefore, we have enclosed a copy of the regulation for your convenience. You note that in your letter, the actions taken do not appear to have a “quantifiable impact” on the planning commissioner’s source of

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<sup>3</sup> The disqualifying amount of a gift is now \$290. (Regulation 18702.1.)

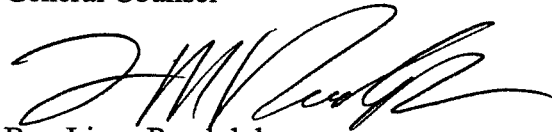
income. Any potential impact must be examined using Regulation 18702.2 as a guide. Only if the planning commissioner determines that the impacts described in Regulation 18702.2 will not occur, may the official participate in the decision. This is a factual determination that you must make. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops.)

Finally, please keep in mind that your client may not participate in the decisions if it will have a material financial effect on his own real property interests. Regulation 18702.3(b) provides the materiality standard for property that is over 2,500 feet from the subject property. I have enclosed a copy of the regulation for your convenience.

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

Sincerely,

Steven G. Churchwell  
General Counsel



By: Liane Randolph  
Staff Counsel, Legal Division

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Enclosures