



RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

July 16, 1997

Sonia Carvalho
Best Best & Krieger LLP
Post Office Box 1028
Riverside, California 92502-1450

**Re: Your Request for Advice
Our File No. A-97-337**

Dear Ms. Carvalho:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

May Councilmember John Rocha participate in the decision pending before the city council regarding property adjacent to his personal residence?

CONCLUSION

Councilmember Rocha may participate in the decision pending before the city council regarding property adjacent to his personal residence as long as there will be no material financial effect on his economic interest.

FACTS

Your office represents the City of Azusa as the city attorney. In a telephone conversation on July 14, 1997, your secretary stated that you are requesting this advice on behalf of Mr. Rocha. A decision is pending before the city council involving property located at 125 W. Sierra Madre Avenue in the City of Azusa (the "Subject Site") wherein the Research and Treatment Institute (RTI), has obtained a conditional use permit (CUP) to operate a group home. The Subject Site currently consists of a vacant in-patient and out-patient health care facility which formerly served psychiatric patients. The city is considering revocation of the CUP.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

John Rocha is a councilmember in the City of Azusa and owns property that is his personal residence located approximately 750 to 800 feet from the Subject Site. Mr. Rocha requested and received on June 10, 1997, an appraisal opinion from Klaas Bos, Certified General Appraiser, Appraisal Group, Inc.

The appraisal states that the economic and any other impact on Mr. Rocha's home from any decision regarding the CUP for the Subject Site would be "negligible or at least minimum" since Mr. Rocha's home is not directly adjacent to or across from the Subject Site, among other reasons, and that any changes in the current values of the homes in the area would be caused by economic recovery and "should not be attributable to any decisions to be made" concerning the Subject Site or the CUP.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. (Section 87100.) 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 its effect on the public generally, on the official or a member of his or her immediate family or on, among other things:

“(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more.” (Section 87103(b).)

Regulation 18702.1(a)(4) provides that an official may not participate in a decision if it will result in the personal expenses, income, assets (other than interest in real property), or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250 in a 12-month period.

An official's residence is an interest in real property, as defined in Section 82033:

“‘Interest in real property’ includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more”

Presumably, Councilmember Rocha, a public official, has a real property interest as described in Section 87103(b).

1. *Making, Participating in Making or Attempting to Influence a Governmental Decision*

If it is reasonably foreseeable that the revocation decision will have a material financial effect on the official's real property interest, the official must disqualify himself or herself from making or participating in making that decision. The official also may not use his or her official position to influence the decision. (Regulation 18700, 18700.1.)

2. *Forseeability*

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, an effect that is merely a possibility is not reasonably foreseeable. (*Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983; In re *Thorner* (1975) 1 FPPC Ops. 198.)

3. *Materiality*

The Commission has adopted several regulations which define what constitutes a material financial effect. Regulation 18702 sets forth the general guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, Regulation 18702.1 applies to determine materiality. If the official's financial interest is indirectly affected by the decision, Regulations 18702.2 through 18702.6 apply to determine whether the effect of the decision is material. Councilmember Rocha has an economic interest which may be affected by the Subject Site. He has a residential real property interest within 2,500 feet of the Subject Site boundaries. Councilmember Rocha's financial interest is indirectly involved.²

Regulation 18702.3 contains guidelines for determining when the effect of a decision is material as to real property which is indirectly involved in the decision. Regulation 18702.3 states in pertinent part:

“(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

² Regulation 18702.1(a)(3)(A)-(E) describes when an official's real property is directly involved in a decision. Regulation 18702.1(a)(3)(A)-(E) does not appear to apply to your facts.

* * *

(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.”

Since Councilmember Rocha’s property is between 300 feet and 2,500 feet of the boundaries of the property which is the subject of the decision, Regulation 18702.3(a)(3) applies. Under Regulation 18702.3(d), there are a number of factors which must be considered in determining whether the decision will have a financial effect of \$10,000 or more. These factors include, but are not limited to:

“(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.”

To determine whether the decision in the Subject Site will have a material financial effect of \$10,000 or more on Councilmember Rocha’s real property interest, he must consider whether it is reasonably foreseeable that the decision will result in a change in the character of the neighborhood by affecting such things as the traffic, view, privacy, intensity of use, noise levels, or similar traits. (Regulation 18702.3(d).)

As noted above, if the official's interest is between 300 and 2,500 feet of the property in question, the official may not participate if the decision will affect the value of the official's property by \$10,000 or more. The appraisal that you attached to your letter states that any effect on Councilmember Rocha's economic interest would be "negligible or at least minimal."

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 affected a public official's property. (*Confer* Advice Letter, No. A-94-345; *Chiozza* Advice Letter, No. A-94-114; *Stone* Advice Letter, No. A-92-133a; and *Mariotti* Advice Letter, No. A-97-248.) However, a decision to participate based on an appraisal will not result in a violation of the Act if and only if the official makes the ultimate factual determination that the appraisal is reliable and correct. Thus, if an official's reliance on the appraiser's opinion is unreasonable, the official may be in violation of the Act if he or she participates in the decision. This could result because the Commission cannot make the factual determination as to the potential financial effect on a public official's property or evaluate the accuracy of appraisals. (*Diaz* Advice Letter, No. A-95-143.) As a result, any immunity that flows from the submission of an appraisal is only applicable to the extent that the underlying facts are accurate. (*Gambord* Advice Letter, No. A-97-042.)

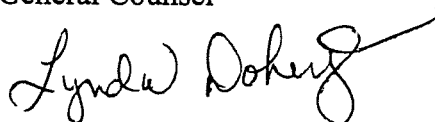
4. *Public Generally*

Public officials with financial interests that will be materially affected by a decision may participate in the decision if the effect on their property 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. (Regulation 18703.) There are no factors to indicate that the public generally exception applies in this case.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lynda Doherty
Consultant, Legal Division