



## FAIR POLITICAL PRACTICES COMMISSION

November 19, 1997

J. Wayne Dernetz  
City Attorney  
City of Vista  
600 Eucalyptus Avenue  
Vista, California 92084

**Re: Your Request for Advice  
Our File No. A-97-493**

Dear Mr. Dernetz:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Is councilmember Estes disqualified from participating in a decision about the development of a piece of property owned by his parents, where his parents have been a source of gifts to him of over \$290 in the past year?

### CONCLUSION

Councilmember Estes is not disqualified from participating in a decision about the development of a piece of property owned by his parents, because he has no economic interest in the decision under the Act. His parents' ownership of the property does not constitute a real property interest of Mr. Estes' under section 87103(b), and gifts from family members do not give rise to a disqualifying conflict of interest under the Act.

### FACTS

Ed Estes, Jr., is a member of the city council of the City of Vista. Mr. Estes' parents are a "source of gifts" to him by virtue of having provided gifts of \$290 or more within the previous twelve months. His parents own undeveloped property within the city that is the subject of a

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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.

development proposal. The property has been leased to a third party developer who proposes to develop a commercial building and operate a commercial use on the property. The developer has applied for necessary permits to undertake the development. The city's planning commission has approved the development application. Nearby residents appealed the planning commission's approval to the city council. The appeal is pending before the city council. Further, Mr. Estes has no direct interest in the property, no financial interest in the developer or the developer's business enterprise, and his parents are neither the applicant nor the appellant.

### ANALYSIS

The Political Reform Act prohibits a 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 87100.) Section 87103 of the Act provides that an official has a financial interest in a decision within the meaning of Section 87100 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, a member of his or her immediate family,<sup>2</sup> or on:

“(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 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 [\$290] 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.

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For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a

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<sup>2</sup> “Immediate family” means the spouse and dependent children of the official. (Section 82029.)

public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.”  
(Section 87103.)

A “public official” is defined as a member, officer, employee, or consultant of a state or local government agency. (Section 82048; Regulation 18700.) City councilmember Estes is considered a “public official” under the Act.

Based on the facts you have described, councilmember Estes does not have an economic interest in the decision regarding development of property owned by his parents. For purposes of section 87103, his parents are not considered members of his “immediate family.” Under section 87103(b), therefore, Mr. Estes does not have an economic interest in real property that is owned by his parents.

In addition, his parents' gifts to him do not constitute a disqualifying economic interest under the Act because gifts from specified family members are exempt from the Act's definition of gift. (Section 82028(b)(3); *Santos* Advice Letter, No. A-96-167; and *Colbert* Advice Letter, No. A-92-639.) Section 82028(a) of the Act defines the term “gift” as: “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Amended by Stats. 1997, Ch. 450.) Section 82028(b)(3), however, provides that the term “gift” does not include:

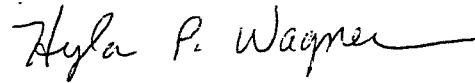
“Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.”

Based on the facts provided, councilmember Estes is not disqualified from participating in a decision about the development of a piece of property owned by his parents, where his parents have been a source of gifts to him of over \$290 in the past year.

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

Sincerely,

Steven G. Churchwell  
General Counsel



By: Hyla P. Wagner  
Staff Counsel, Legal Division

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