



FAIR POLITICAL PRACTICES COMMISSION

February 17, 1998

René Auguste Chouteau
City Attorney
City of Santa Rosa
100 Santa Rosa Avenue
Post Office Box 1678
Santa Rosa, California 95402-1678

**Re: Your Request for Advice
Our File No. I-98-027**

Dear Mr. Chouteau:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Because you are not asking about any particular governmental decision involving the Southwest Area Development Project, we can provide you only with general guidance and informal assistance.² (Regulation 18329.)

QUESTION

May Bob Blanchard participate in decisions regarding the proposed Southwest Area Redevelopment District?

CONCLUSION

Mr. Blanchard may participate in a decision regarding the proposed Southwest Area Redevelopment District if it is not reasonably foreseeable that the decision will have a material financial effect on Mr. Blanchard's real property interest in 1729 Oldfield Way. Each

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329, subd. (c)(3).)

governmental decision involving the Southwest Area Redevelopment District must be evaluated independently.

FACTS

The City of Santa Rosa ("the City") is considering the establishment of a redevelopment district and has proposed a survey area in the southwest quadrant of the City. Bob Blanchard, Chairman of the City of Santa Rosa Planning Commission, owns a condominium dwelling unit which he rents to others. The northerly boundary of the survey area is situated more than 300 feet, but less than 2,500 feet, from Mr. Blanchard's condominium.

You have obtained an opinion of the City of Santa Rosa's Right-of-Way Agent, Mr. John Kunselman, as to the probable effect of the redevelopment area on Mr. Blanchard's real property interest. Mr. Kunselman is an appraiser licensed by the State of California, and in his opinion there will be minimal financial benefit on Mr. Blanchard's condominium which he states to be less than the threshold value specified in Regulation 18702.3(a)(3).

ANALYSIS

Introduction

The Act was adopted by the people of the State of California by initiative in 1974. The purpose of the conflict-of-interest provisions of the Act is to insure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who support them. (Section 81001(b).) In furtherance of this goal, Section 87100 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.

Economic Interests

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 or a member of his or her immediate family or on, among other things, any real property in which the public official has a direct or indirect interest worth \$1,000 or more. Since we assume that Mr. Blanchard's interest in 1729 Oldfield Way is worth at least \$1,000, Mr. Blanchard may not participate in a governmental decision regarding the proposed Southwest Area Redevelopment District if it is reasonably foreseeable that the decision will have a material financial effect on that property.

Foreseeability

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a *substantial likelihood that it will occur*. Certainty is not required. However, if an effect is a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.) We must apply the foreseeability analysis to Mr. Blanchard's financial interest in 1729 Oldfield Way.

Though you have not provided any details about the Southwest Area Redevelopment District, generally speaking, the anticipated result of any redevelopment is to increase the property values and improve the business or social climate within the project area. The very nature of redevelopment projects has led the Commission to find that it is reasonably foreseeable that there will be *some* financial effect on real property values and business interests located within or near a project area. (*In re Oglesby* (1975) 1 FPPC Ops. 71; *Armento* Advice Letter, No. A-90-499.)

Based on the Commission's observation of the reaching effect of a redevelopment plan in and near a project area and based on Mr. Kunselman's appraisal that there may be some impact, albeit minimal, on Mr. Blanchard's real property interest, we find that the foreseeability standard is satisfied.

Materiality

Assuming foreseeability, disqualification is still only required where the foreseeable effect on the public official's economic interest is material. The Commission has adopted a series of regulations that provide guidance concerning whether the foreseeable financial effects of a decision are material. (Regulation 18702.) The standard of materiality differs depending on the type of economic interest involved and whether the economic interest is directly or indirectly involved in a decision.

Mr. Blanchard's interest in real property is outside the proposed survey area, and is therefore indirectly involved. Therefore, Regulation 18702.3 provides the applicable standard. The precise standard depends on the distance of the real property from the boundary of the property which is the subject of the decision. Mr. Blanchard's property is greater than 300 feet, but within 2,500 feet from the boundary of the Southwest Area Redevelopment District. Subdivision (a)(3) of Regulation 18702.3 provides the applicable standard of materiality for that distance:

“(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.”

A review by the City of Santa Rosa’s Right-of-Way Agent, John Kunselman, concluded that the effect of the redevelopment project on Mr. Blanchard’s real property interest would be minimal. Specifically, he opined that the materiality standards in Regulation 18702.3(a)(3) would not be met. If this is the case and the requirements discussed below are met, Mr. Blanchard may participate in council decisions regarding the Southwest Redevelopment District.

An appraisal conducted by a disinterested and otherwise qualified real estate professional who considers the factors listed in Regulation 18702.3(d)³ will be considered a good faith effort to assess the materiality of pending governmental decisions indirectly affecting a public official’s property. (*Bennets* Advice Letter, No. A-97-374; *Confer* Advice Letter, No. A-94-345.) It is unclear whether the appraisal that you have included considers the factors listed in Regulation 18702.3(d).

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 is because the Commission cannot make the factual determination as to the potential financial effect on the public official’s property or evaluate the accuracy of an appraisal. (*Diaz* Advice Letter, No. A-95-143.)⁴ 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. If Mr. Blanchard reasonably relies on the appraisal, then he may participate in the commission’s decision regarding the Southwest Area Redevelopment Area.

In the instant case, you seem to be asking whether Mr. Blanchard may participate in any decision regarding the Southwest Area Development Project at a preliminary stage of the project.

³ Those factors include: 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, effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood. (Regulation 18702.3(d).)

⁴ The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Further, you have provided no details about the Southwest Area Development Project. Therefore, relying on an appraisal given at this stage of the proceedings may not be reasonably relied on if the facts underlying the appraisal materially change and if the factors contained in Regulation 18702.3(d) have not been considered.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Marte Castaños", written in a cursive style.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:tl