



FAIR POLITICAL PRACTICES COMMISSION

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June 8, 1998

Councilman David Hardison
City of Azusa
213 E. Foothill Blvd.
Azusa, California 91702

**Re: Your Request for Advice
Our File No. A-98-142**

Dear Mr. Hardison:

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

QUESTION

As a current city councilmember, may you participate in decisions regarding a development project known as the Rosedale Project?

CONCLUSION

You may participate in the city council's consideration of the Rosedale Project as long as the development of the project will not foreseeably increase or decrease the fair market value of your real property by \$10,000 or more, or the rental value of your property by at least \$1,000 in a 12-month period, or have a reasonably foreseeable material financial effect on any other economic interest of yours.

FACTS

You are currently serving as a member of the city council of the City of Azusa. In the normal course of your duties you will be asked to make decisions on a development project which is now moving through the city's land use approval process.

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

The Monrovia Nursery Company ("nursery") currently owns property within the City of Azusa. The nursery, in association with Lewis Homes of California, has submitted plans to the city for the development of a 520-acre master planned residential community located on the existing nursery property. This proposed development project, known as the Rosedale Project ("project"), will consist of approximately 24 residential neighborhoods, a commercial center, and over 240 acres of parks and open spaces.

You own property located at 1105 N. Dalton, Azusa, which is your personal residence. The property is located approximately 1,975 feet from the boundary line of the above-described project. You have received an appraisal opinion dated August 6, 1997, from Beryl L. Simmerok, a Certified General Appraiser of Re/Max Masters. The opinion states that the economic and any other impact from any decision regarding the project would not have a financial effect on your property.

ANALYSIS

Economic Interests

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 Azusa City Council, you are a public official under the Act. (Section 82048.)

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:

- “(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 investment 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 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. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.”² (Section 87103.)

Finally, 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, or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250 in a 12-month period. Regulation 18702.1(a)(4) does not apply to a financial effect on the value of real property owned directly or indirectly by the official, or a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has an investment interest.

Foreseeability

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.)

Materiality

The Commission has adopted differing guidelines to determine whether the effect of a decision is material, based on the specific circumstances of each decision. For example, if an official's economic interest is directly affected by a governmental decision, Regulation 18702.1 provides the appropriate standard for determining materiality.

A public official is also required to disqualify himself or herself where an economic interest will be indirectly affected by a decision. Regulations 18702.2 - 18702.6 provide differing standards for making this determination.

Real Property

You own real property in the jurisdiction. We assume that you have an interest in your real property of \$1,000 or more. Consequently, you are prohibited from making, participating in, or influencing decisions which would have a reasonably foreseeable material financial effect on your property that is distinguishable from the effect on the public generally.

² The gift limit for the period January 1, 1997, through December 31, 1998, is \$290. (Regulation 18940.2.)

Regulation 18702.3 provides that the indirect effect of a decision on real property in which an official has an economic interest is material if:

"(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."

You have an economic interest which may be indirectly affected by the development project. You have a residential real property interest within 2,500 feet of the development project boundaries. Consequently, you may not participate in the decisions regarding the development project if the decisions will foreseeably increase or decrease the fair market value of your real property by \$10,000 or more or the rental value of your property by at least \$1,000 in a 12-month period. (Regulation 18702.3(a)(3)(A) and (B).)

Regulation 18702.3(d) sets forth factors that must be considered in determining whether a decision will have a material financial effect on real property. These factors are as follows:

"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. [W]hether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, the effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood."

You have received an appraisal dated August 6, 1997, from Beryl L. Simmerok, a Certified General Appraiser of Re/Max Masters. According to your facts, the appraisal states that the economic and any other impact on your property from any decisions regarding the project would not have any financial effect on your property located at 1105 N. Dalton, Azusa.

The Commission cannot determine whether there will be a material financial effect on your property or evaluate the accuracy of the appraisal letter. (*Carvalho* Advice Letter, No. A-97-337; *Diaz* Advice Letter, No. A-95-143; *Curley* Advice Letter, No. A-93-482.)

Thus, for example, if it is reasonable to rely on the assessment of materiality made by the appraiser, you may participate in the decisions regarding the development project. Conversely, if reliance on the appraiser's opinion by you is unreasonable, you may be in violation of the Act if you participate in the decisions. Accordingly, it is to your benefit that a thorough assessment of financial effects is made and that the facts and analysis on which the assessment is based are thoroughly documented.

Your facts do not state whether the appraiser expressly considered the factors in Regulation 18702.3(d) in reaching his written conclusions. Consequently, if he did not consider those factors, reliance on his conclusion would not be advisable.

Once you consider the factors of Regulation 18702.3(d) and any other relevant factors, if it is determined that the project decisions will not have a material financial effect on your real property, you may participate in the decisions. However, as noted earlier, we must leave this ultimate factual determination of materiality to you.

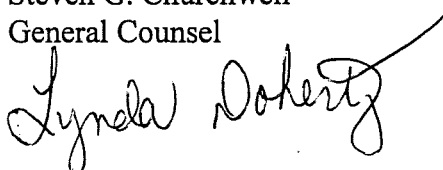
Public Generally

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.) Your letter does not provide enough facts regarding the development project and the specific governmental decisions at issue for us to determine whether the public generally exception would apply.

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

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