



FAIR POLITICAL PRACTICES COMMISSION

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January 14, 1999

Jack L. White
City Attorney
City of Anaheim
200 South Anaheim Boulevard, Suite 356
Anaheim, California 92805

**Re: Your Request for Advice
Our File No. I-98-304**

Dear Mr. White:

This letter is in response to your request for informal assistance¹ regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").²

QUESTION

May Dan Van Dorpe, the chairman of the City Budget Commission who also owns an engineering firm in the city, make recommendations to the city council regarding privatizing the review of all building plans?

CONCLUSION

If Mr. Van Dorpe's engineering firm plans to bid on the contract to review all building plans, he may not participate in the decision to recommend privatization of the review of all building plans if his firm will be financially affected as set forth in regulation 18705.1. If, however, his firm does not plan to bid on the contract, and the firm has no other contemplated connection with the contract, he may participate in the decision to recommend privatization.

¹ Informal assistance may be requested by any person with a duty to advise other persons relating to their duties or actions under the Act. (Regulation 18329(c)(1).) Informal assistance does not provide the requestor with the immunity conferred by formal written advice. (Regulation 18329(c)(3).)

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

FACTS

Dan Van Dorpe, the chairman of the City Budget Commission in Anaheim, owns an engineering firm in the city, which reviews building plans. His firm has previously bid to perform work for the city, but his firm was not selected. The city council has requested the City Budget Commission to advise the council regarding the privatization of city services and functions. Mr. Van Dorpe would like to recommend to the city council that it privatize the review of all building plans.

ANALYSIS

Section 87100 prohibits public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they have a financial interest. As the chairman of the City Budget Commission, Mr. Van Dorpe is a public official for purposes of the Act. (Section 82048.)

What are the official's economic interests?

An 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 on, among other enumerated economic interests: 1) any business entity in which the official has an investment worth \$1,000 or more; 2) any source of income of \$250 or more in value provided to, received by or promised to the official within 12 months prior to the time when the decision is made; 3) any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a), (c) and (d).)

As the owner, Mr. Van Dorpe has an economic interest in his engineering firm for purposes of section 87103(d). Presumably, he has an investment interest in his business worth \$1,000 or more and his business is a source of income to him of \$250 or more within the previous 12 months. (Section 87103(a) and (c).) Accordingly, Mr. Van Dorpe may not make, participate in making, or use his official position to influence any decision if it is reasonably foreseeable that the decision will have a material financial effect on his engineering firm.

Is it reasonably foreseeable that the decision will have a material financial effect on the official's economic interest?

Once the official identifies his or her economic interests, the official must evaluate whether it is reasonably foreseeable that a governmental decision will have a material financial effect on those economic interests. First, the official must determine whether his or her economic interest will be directly or indirectly involved in the decision. (Regulation 18700(b)(4).) Based upon the type of involvement, the official must then apply the appropriate

standard to determine whether the financial impact of the decision will be material. (Regulation 18700(b)(5).) After the official finds the applicable materiality standard, he or she must determine whether it is reasonably foreseeable that the materiality standard will be met.

1. Is the economic interest directly or indirectly involved in the decision?

A business entity is directly involved in a decision if the business entity is the named party in, or the subject of, the proceeding concerning the decision. (Regulation 18704.1(a)(2).) A business entity is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit or contract with the person. (*Id.*) If the business entity is not directly involved in the decision, it is indirectly involved for purposes of applying the materiality standards.

The decision to privatize or to recommend privatization of the review of all building plans does not involve specific parties. Therefore, Mr. Van Dorpe's engineering firm is indirectly involved in the decision.

2. What is the appropriate materiality standard?

When an official's economic interest is indirectly involved in a decision, the official must locate the applicable monetary threshold to determine whether the effect of the decision is material. For business entities indirectly involved in a decision, the appropriate standard to determine materiality is contained in regulation 18705.1(b). The standards provided in the regulation are based on the financial size of the business entity. For relatively small businesses, the effect of a decision is material if:

- “(A) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000, or more; or
- (B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (C) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.” (Regulation 18705.1(b)(7).)

3. Is it reasonably foreseeable that the applicable materiality standard will be met?

An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. (Regulation 18706.) The general rule set forth in the Commission's opinion, *In re Thorner* (1975) 1 FPPC Ops. 198, is that where a business entity in which the official has an economic interest makes a bid on a contract or is preparing to make a bid, a financial effect on the business entity is reasonably foreseeable even if there is substantial competition. This same

rule of foreseeability applies to decisions that lead up to the contract, such as the decision that sets the foundation for the contractual relationship. (*Vagim* Advice Letter, No. I-89-688.) Conversely, if a business entity does not plan to bid on a contract and has no other current or contemplated connection with the contract, it is not foreseeable that the decisions regarding and leading up to the contract will have a financial effect on the business entity.

Accordingly, if Mr. Van Dorpe's engineering firm plans to bid on the contract to review all building plans, it is reasonably foreseeable that the decision to recommend privatizing the review of all building plans will have a financial effect on his firm. (*Lowell* Advice Letter, No. I-95-132.) If the financial effect is material as set forth in regulation 18705.1(b), he may not recommend privatization of the review process to the city council. However, if his firm does not plan to bid on the contract, and the firm has no other contemplated connection with the contract, it is not reasonably foreseeable that the recommendation will have any financial effect on the engineering firm.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Staff Counsel, Legal Division

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