



FAIR POLITICAL PRACTICES COMMISSION

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July 22, 1999

Steven B. Quintanilla
Sabo & Green
35-325 Date Palm Drive, Suite 232
Cathedral City, California 92234

**Re: Your Request for Advice
Our File No. A-99-174**

Dear Mr. Quintanilla:

This letter is in response to your request for advice on behalf of Councilmember Gregory S. Pettis regarding the provisions of the Political Reform Act (the "Act").¹ Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

May Councilmember Gregory S. Pettis participate in decisions regarding the proposed creation and/or establishment of a sewer, street or other public infrastructure assessment district which would encompass the community in which his personal residence is located?

CONCLUSION

Mr. Pettis has a material financial interest in the decisions regarding the proposed assessment district. However, the effect of the decisions regarding the proposed assessment district on Mr. Pettis are indistinguishable from the effect of those decisions on the public in general. Therefore, under the Act, Mr. Pettis may participate in those decisions.

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

FACTS

Mr. Pettis resides in a house that is located in an area known as the Cathedral City Cove (the "cove"). A majority of the homes located in the cove, including Mr. Pettis' home, rely on septic systems for household sewage disposal. In recent years, certain city departments and residents have expressed concern that the continued use of septic systems in the cove may result in a deterioration of the quality of the local groundwater and that there may be a need someday for the city to formally consider establishing an assessment district that will result in the installation of a sewer system that would be paid for by cove residents. In addition to the perceived septic system problem, other perceived infrastructure problems include inadequate street maintenance and the lack of sidewalks, curbs and gutters. It has been suggested publicly through various local media that the city council should formally consider the establishment of an assessment district for those infrastructure-related matters as well. The proposed assessment district(s) for the aforementioned services shall be referred to collectively throughout this letter as "the assessment district."

Mr. Pettis' home is situated on a lot that is less than one-quarter acre in size. The cove community consists of approximately 5,200 residents, which represents approximately 14 percent of the city's population of 36,028. The value of any assessment charged to a specific property owner, including Mr. Pettis, would be determined by a formula that would be based on the value of the benefit provided to each property owner's specific property.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, 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.

To say that a public official has a "financial interest" in a governmental decision, within the meaning of the Act, is to conclude that it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b).) The following advice applies that eight-step analysis to the question of whether Mr. Pettis may participate in any governmental decision regarding the proposed assessment district.

1. Public official.

The Act's conflict of interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18701.) "Public Official," for purposes of the Act, is defined to include every member, officer, employee, or consultant of a state or local agency (with certain exceptions not relevant here). (Section 82048.) "Local government agency means a county, city, or district of any kind, including a school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing." (Section 82041.) As a member of the city council, Mr. Pettis is a public official for purposes of the Act.

2. Making, participating in making, or using official position to influence governmental decisions.

The Act's conflict of interest provisions apply only where the public official "*make[s], participate[s] in making, or in any way attempts to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.*" (Section 87100, emphasis added.) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision. (Regulations 18702-18702.4.)

A city councilmember clearly engages in the kinds of activities specified in Regulation 18702.1 for "making governmental decisions," and thus, the conflict of interest provisions of the Act apply to Mr. Pettis.

3. Identifying Mr. Pettis' economic interest(s).

The Act's conflict of interest provisions apply only to conflicts arising from *economic interests*. (Section 87103.) The "economic interests" from which conflicts of interest may arise are defined in Regulations 18703-18703.5. (Identifying a public official's particular economic interests is the third step in the Commission's regulatory analysis of possible conflicts of interest.) There are six kinds of such economic interests:

- A public official has an economic interest in a *business entity* in which he or she has a direct or indirect *investment*² of \$1,000 or more (Section 87103(a); Regulation 18703.1(a));

² An 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 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 has as an economic interest in a *business entity* in which he or she is a *director, officer, partner, trustee, employee, or holds any position of management* (Section 87103(d); Regulation 18703.1(b));
- A public official has an economic interest in *real property* in which he or she has a direct or indirect interest of \$1,000 or more (Section 87103(b); Regulation 18703.2);
- A public official has an economic interest in any *source of income*, including *promised income*, which aggregates to \$250 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- A public official has an economic interest in any *source of gifts* to him or her if the gifts aggregate to \$300 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4);
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family—this is known as the “personal financial effects” rule (Section 87103; Regulation 18703.5).

The economic interest of Mr. Pettis at issue in this letter is his home in the cove. You state that he owns the home (or is in the process of purchasing it).³ You do not provide us with information concerning how title to the home is or will be held or the value of the home, although we assume that Mr. Pettis’ interest in the home is or will be at least \$1,000 or more. Thus, Section 87103(b) and Regulation 18703.2 apply to Mr. Pettis’ economic interest.

4. Determining whether Mr. Pettis’ economic interest is directly or indirectly involved in any decision he will make, participate in or influence.

The fourth step in analyzing a potential conflict of interest is to determine whether the public official’s economic interest is directly or indirectly involved in the governmental decision at-issue. (Regulation 18700(b)(4).) This step is important because it helps determine (in the fifth step) which test for materiality to use in deciding whether it is reasonably foreseeable that the governmental decision will have a material financial effect on the economic interest. An official’s interest in real property is *directly involved* in a decision when, among other things, the decision will involve the imposition, repeal or modification of any taxes or fees assessed or imposed upon the property. (Regulation 18704.2(a)(3).)

³ You state once in your letter that Mr. Pettis “is in the process of purchasing” his home; elsewhere in the letter you state that he “owns” the home. We are assuming that either Mr. Pettis presently owns the home or will have title to it by the time the decisions regarding the assessment district are to be made. However, please note that if our assumptions are incorrect, the analysis that follows may not be applicable depending on the specific facts of the progress of Mr. Pettis’ purchase.

The Commission has previously advised that the creation of an assessment district is a governmental decision to impose, repeal or modify taxes or fees on real property. (*Sweeney* Advice Letter, No. A-89-639; *Glickfeld* Advice Letter, No. A-89-409.) Accordingly, the city council's efforts to create one or more assessment districts that would result in taxes or fees being assessed to Mr. Pettis' home, is a governmental decision that *directly involves* Mr. Pettis' property.

5. Using the materiality standards to decide if there will be a reasonably foreseeable material financial effect on Mr. Pettis' economic interest.

Under Regulation 18705.2(a), any real property that is directly involved in a governmental decision is *deemed* to experience a material financial impact.

6. Determining if the material financial effect is reasonably foreseeable.

Regulation 18706 provides that "[a] material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards [citations omitted] applicable to that economic interest will be met as a result of the governmental decision." We have determined above that the decision(s) regarding the assessment district will have a material financial effect on Mr. Pettis' property. Since this materiality standard has been met, Regulation 18706 allows us to conclude that the effect of these decisions is reasonably foreseeable.

Because the decision to consider the assessment district will result in a reasonably foreseeable material financial impact on Mr. Pettis' home, absent any exception, he may not participate in any decision regarding the district.

7. Is the effect of the decision(s) regarding the assessment district on Mr. Pettis' home distinguishable from the effect on the public generally?

Regulation 18707.1 establishes an exception to the rule that prohibits public officials from participating in decisions in which they have a material financial interest. This regulation applies specifically to decisions to create assessment districts and states that the financial effect of such decisions on an official's economic interest is indistinguishable from the decisions' effect on the public generally if, among other things,

"The decision is to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions which are applied on a proportional basis on the official's economic interest and on a significant segment of the jurisdiction, as defined in Regulation 18707(b)(1)." (Regulation 18707.1(a).)

A "significant segment" of the public generally under Regulation 18707(b)(1) may occur in two ways for economic interests such as Mr. Pettis'. First, a significant segment of the public will result if the decision will affect ten percent or more of the population in the jurisdiction of the official's agency. (Regulation 18707(b)(1)(A)(i).) Alternatively, a significant segment will result if the decision will affect 5,000 individuals who are residents of the jurisdiction. (Regulation 18707(b)(1)(C).)

You state that the value of any assessment charged to any property owner, including Mr. Pettis, would be determined by a formula that would be based on the value of the benefit provided to each owner's property. Such a formula is clearly proportional as required by Regulation 18707.1(a). Consequently, we must now determine whether the decisions regarding the proposed assessment district will affect a significant segment of Mr. Pettis' jurisdiction such that the public generally exception would apply to allow Mr. Pettis' participation notwithstanding his material financial interest.

You state that the cove community (the area to be affected by the proposed assessment district) consists of 5,200 residents which represents approximately 14 percent of the City's 36,028 population. Under either subpart (b)(1)(A)(i) or subpart (b)(1)(C) of Regulation 18707, the persons to be impacted by the proposed assessment district will represent a significant segment of Mr. Pettis' jurisdiction. Accordingly, because this "significant segment" makes the effect of the decisions concerning the assessment district on Mr. Pettis indistinguishable from the effect on the public in general, Mr. Pettis need not disqualify himself from participation in these decisions.

Since we have concluded that Mr. Pettis may participate in the decisions concerning the assessment district, we do not need to analyze the remaining factor of the conflicts analysis, legally required participation.

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 cursive script that reads "Lisa L. Ditora". The signature is written in black ink and extends to the right with a long horizontal line.

By: Lisa L. Ditora
Staff Counsel, Legal Division

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