



## FAIR POLITICAL PRACTICES COMMISSION

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February 25, 2000

Gregory C. Ferrier  
27826 Beacon Street  
Castaic, California 91384

**Re: Your Request for Advice  
Our File No. A-00-030**

Dear Mr. Ferrier:

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

Do you have a conflict of interest in the school district decision to choose Sloan Canyon as a new school site?

### CONCLUSION

No, you do not have a conflict of interest in the decision because your old employer, which had an apparent financial stake in the decision, has been dissolved, and your new employer, according to you, has no connection to the decision.

### FACTS

You are a trustee for the Castaic Union School District. The school district is considering whether to build as many as four new elementary schools in the next 10 years. Several sites are under consideration. One site under consideration is the Sloan Canyon site.

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<sup>1</sup> Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

Last year, your colleague Jeff Preach proposed Sloan Canyon as a school site. Mr. Preach was a real estate broker for, and a two-percent owner of, the brokerage firm, Century 21 SCV. At the time, you were a sales associate for the same brokerage firm. Had the district selected Sloan Canyon, Century 21 SCV would have been paid a real estate commission.

Since that time, circumstances have changed. Century 21 SCV was dissolved as of July 1, 1999. The broker of record, Joan Byrd, is now a partner in a larger brokerage firm, Coldwell Banker Vista Realty. You are now a sales associate/independent contractor with that firm. In addition, Mr. Preach is a broker associate/independent contractor with Coldwell Banker Vista Realty, but he has no ownership interest in it.

Coldwell Banker Vista Realty has three offices in Valencia, Canyon County and Castaic, and serves the Greater Santa Clarita Valley. You believe that Coldwell Banker Vista Realty's gross annual revenue is at least \$1 million dollars, but you do not have any other financial information about the company. Coldwell Banker Vista Realty is not listed on the NASDAQ or the Pacific stock exchanges.

The original Sloan Canyon school site proposal has been modified and repackaged as Sloan Canyon LLC. The property is not listed with Coldwell Banker Vista Realty. Mr. Preach is acting as a consultant to Sloan Canyon LLC, but will not be paid a real estate commission. His activities with regard to Sloan Canyon LLC will not produce any income for Coldwell Banker Vista Realty. Neither Coldwell Banker Vista Realty nor any of its owners have any interest or affiliation with Sloan Canyon, its property owners or Sloan Canyon LLC. In addition, you have no economic interest in Sloan Canyon, its owners or Sloan Canyon LLC. Finally, neither you nor Coldwell Banker Vista Realty have any interest in any other competing sites under consideration.

## ANALYSIS

The Act prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. (Section 87100.) The Commission has developed an eight-step approach for determining whether an individual has a disqualifying financial interest in a decision. (Regulation 18700(b).)

### 1. Definition of "Public Official"

The conflict-of-interest prohibition applies only to public officials. (Section 87100.) As a trustee for the school district, you are a public official subject to the prohibition. (Section 82048.)

## 2. Conduct Covered

The prohibition covers specific conduct: making, participating in making, or attempting to use one's official position to influence a governmental decision. (Section 87100.) Regulations 18702-18702.4 define these terms. By deliberating and voting on a new school site, you will be engaging in conduct regulated by the conflict-of-interest prohibition.

## 3. Economic Interest

An official has a disqualifying 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,<sup>2</sup> or on the following enumerated economic interests:

1. Any business entity in which the official has a direct or indirect investment worth \$1,000 or more.
2. Any real property in which the official has a direct or indirect interest worth \$1,000 or more.
3. Any source of income of \$250 or more provided to the official within 12 months before the decision.
4. Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
5. Any donor of gifts worth \$300 or more provided to the official within 12 months before the decision. (Section 87103(a)-(e).)

You have described one economic interest. You are a sales associate working as an independent contractor for Coldwell Banker Vista Realty. As an independent contractor, you do not have an investment or ownership interest in the brokerage firm, and you do not serve as an officer or employee of the firm. (Section 87103(a), (d).) However, Coldwell Banker Vista Realty is a source of income to you. (Section 87103(c).) Regulation 18703.3(c)(3)(C) identifies the sources of commission income received by an sales agent from real estate sales:

- “(i) The broker and brokerage business entity under whose auspices the agent works;
- (ii) The person the agent represents in the transaction; and
- (iii) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.”

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<sup>2</sup> A decision will have a financial effect “on the official” if the decision affects his or her personal expenses, income, assets, or liabilities, or those of his or her immediate family. (Regulation 18703.5.) It does not appear from your facts that the decision to choose a new school site will have a personal financial effect on you.

Under this regulation, Coldwell Banker Vista Realty is a "source of income" for any commission income you receive for sales made while working as an independent contractor "under the auspices" of Coldwell Banker Vista Realty. Because Coldwell Banker Vista Realty is a source of income to you (assuming that your commission income amounted to \$250<sup>3</sup> or more over the preceding twelve months), you have an economic interest in that business.

Before you began working under the auspices of Coldwell Banker Vista Realty, you were a sales associate for Century 21 SCV. Century 21 SCV was dissolved as of July 1, 1999. Since this business is no longer in existence, you no longer have an economic interest in it.

Once a public official identifies his or her economic interests, the official must evaluate whether it is reasonably foreseeable that a decision will have a material financial effect on that economic interest. This determination takes three steps. First, the official must determine whether the 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 find the applicable materiality standard set forth in Commission regulations. (Regulation 18700(b)(5).) After finding the applicable materiality standard, the official must then decide whether it is reasonably foreseeable that the standard will be met. (Regulation 18700(b)(6).)

#### **4. Direct Versus Indirect Involvement**

A business entity that is a source of income is directly involved in a decision if the entity is a named party in, or the subject of, the decision. (Regulation 18704.1(a)(2).) An entity is the subject of a decision if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit or contract with the person. (Id.) If a business entity is not directly involved in the decision, it is indirectly involved for purposes of finding the relevant materiality standard. (Regulation 18704.1(b).)

Coldwell Banker Vista Realty is not a named party in, or the subject of, the decision to approve the new school site. Therefore, the brokerage firm is indirectly involved in the decision for purposes of applying the materiality standard.

#### **5. Applicable Materiality Standard**

Regulation 18705.1(b) sets forth the materiality standards for business entities that are indirectly involved in a governmental decision. (Regulation 18705.3(b)(1).) The standards vary depending upon the size of the business entity. The bigger the business entity, the greater the monetary impact must be for the effect to be material.

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<sup>3</sup> The full gross value of any commission income for a specific sale or transaction is attributed to each source listed in the regulation. (Regulation 18703.3(c)(4).)

You have not provided sufficient information regarding Coldwell Banker Vista Realty in order for us to determine the applicable materiality standard. For business entities that meet the qualifications to be listed on the NASDAQ Stock Exchange, the applicable materiality standard is Regulation 18705.1(b)(3). (Regulation 18705.1(b)(6).) For smaller business entities that are not listed on the Pacific Stock Exchange, the applicable materiality standard is Regulation 18705.1(b)(7).

## 6. Foreseeability

Once a public official finds the materiality standard applicable to his or her economic interest, the official must determine whether it is reasonably foreseeable that the materiality standard will be met as a result of the decision. An effect is considered reasonably foreseeable if at the time a governmental decision is made there is a substantial likelihood that it will occur. (Regulation 18706.) A material financial effect need not be a certainty as a result of the decision, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

For this decision, the essential question is: Is it substantially likely that the decision to select a new school site will affect Coldwell Banker Vista Realty by the appropriate amount specified in Regulation 18705.1(b)?

Sloan Canyon is not listed with Coldwell Banker Vista Realty. In addition, neither Coldwell Banker Vista Realty, nor any of its owners, have any interest or affiliation with Sloan Canyon, its property owners, or Sloan Canyon LLC. Finally, Coldwell Banker Vista Realty does not have an interest in any other potential school site under consideration. Under these facts, it does not appear reasonably foreseeable that the decision to select Sloan Canyon as a new school site will have a material financial effect on Coldwell Banker Vista Realty under any materiality standard. Since the decision will not have any financial effect on your source of income, you do not have a conflict of interest in the decision.

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

Sincerely,

Luisa Menchaca  
Assistant General Counsel



By: Julia Bilaver  
Staff Counsel, Legal Division