



FAIR POLITICAL PRACTICES COMMISSION

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March 8, 2000

Marguerite P. Battersby
City Attorney, City of Yucaipa
Brunick, Alvarez & Battersby
1839 Commercenter West
San Bernadino, California 92412

**Re: Your Request for Advice
Our File No. A-00-032**

Dear Ms. Battersby:

This letter is in response to your request for advice on behalf of Yucaipa Mayor Dick Riddell regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Does Mayor Riddell have a conflict of interest in a development project proposed by Wal-Mart Stores, Inc.?

CONCLUSION

Yes. Mayor Riddell has a conflict of interest in the decision since it is reasonably foreseeable that the decision will have a material financial effect on Wal-Mart, a business entity in which he has an investment interest of \$10,000 or more.

FACTS

Mayor Riddell owns 1200 shares of common stock in Wal-Mart Stores, Inc. ("Wal-Mart"). According to the mayor's statement of economic interests, the value of the stock is \$84,000. Wal-Mart has a development project pending before the City of Yucaipa. The city council will review the project in early March. Wal-Mart is a Fortune 500 company.

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

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 only applies to public officials. (Section 87100.) Mayor Riddell is 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. Regulations 18702-18702.4 define these terms. By deliberating and voting on the development project, the mayor 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,² 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).)

² A decision will have a financial effect "on the official," within the meaning of Section 87103, if the decision will affect his or her personal expenses, income, assets, or liabilities, or those of his or her immediate family. (Regulation 18703.5.) This is known as the "personal financial effect" rule. A financial effect based on an investment in a business entity does not trigger this rule. (*Id.*)

You have described one economic interest. Mayor Riddell has an investment interest in Wal-Mart worth \$1,000 or more. (Section 87103(a).)

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 in which an official has an economic interest 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).) Wal-Mart is a named party in the decision before the city council regarding the development project. Therefore, Wal-Mart is directly involved in the decision for purposes of applying the materiality standard.

5. Applicable Materiality Standard

Regulation 18705.1(a) sets forth the materiality standards for business entities that are directly involved in a governmental decision. Under the regulation, the effect of a decision on a Fortune 500 company is deemed to be material if: (1) the company is directly involved in the decision, and (2) *the official has an investment interest in the company worth \$10,000 or more.* (Regulation 18705.1(a), emphasis added.) This materiality standard applies here because Mayor Riddell has invested more than \$10,000 in Wal-Mart, which is directly involved in the decision. Under this materiality standard, any financial effect of the decision, including a one-penny effect, on Wal-Mart is material. (Regulation 18705.1(a).)

6. Foreseeability

Once a public official finds the applicable materiality standard, the official must decide whether it is reasonably foreseeable that the materiality standard will be met as a result of the decision. (Regulation 18700(b)(6).) 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.)

Applying the steps above, we can now frame the issue presented by your request: Is it substantially likely that the decision to construct a new Wal-Mart store will have *some* financial effect on Wal-Mart?³ We conclude that this decision will have *some* financial effect on Wal-Mart. Accordingly, the mayor has a conflict in the decision, unless the public generally exception applies.

7. Public Generally Exception

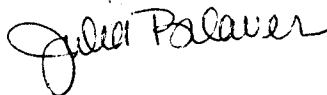
An official who otherwise has a conflict in a decision may still participate in the decision if the "public generally" exception applies. (Section 87103.) For this exception to apply, the decision must affect the official's economic interests in substantially the same manner as it would affect a significant segment of the public. (Regulation 18707.)

For decisions that affect a business entity, such as Wal-Mart, a "significant segment" of the public is 50 percent of all businesses in the jurisdiction or the district the official represents. (Regulation 18707(b)(1)(B).) Mayor Riddell may still participate in the decision if it will affect 50 percent of all the businesses in his district in "substantially the same manner," as it will affect Wal-Mart. As the applicant, Wal-Mart will be uniquely affected by this decision. Therefore, the public generally exception does not apply to these facts. Accordingly, Mayor Riddell has a conflict of interest in the decision to approve the construction of a new Wal-Mart Store.

If you have any 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

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³ In contrast, the relevant question is *not*: Is it substantially likely that the decision will have some effect on the mayor's stock? Under the conflict of interest statutes, the business entity, not the investment itself, is the economic interest that may give rise to a conflict. (Section 87103(a).)