



FAIR POLITICAL PRACTICES COMMISSION

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March 30, 2000

Charles J. Williams
City Attorney, City of Lafayette
1330 Arnold Drive, Suite 149
Martinez, California 94553

**Re: Your Request for Advice
Our File No. A-00-036**

Dear Mr. Williams:

This letter is in response to your request for advice on behalf of Lafayette Planning Commissioner Rick Humann about the Political Reform Act (the "Act").¹

QUESTION

Does Commissioner Humann have a conflict of interest in the decision to approve a subdivision application (the Curran Ranch project) if the property that is the subject of the decision is next to property owned by a business entity that is a source of income to him?

CONCLUSION

If it is substantially likely that the approval, rejection or modification of the decision to approve the subdivision of the Curran Ranch property will affect the fair market value of that adjacent property by \$10,000 or more, Commissioner Humann will have a conflict of interest in the decision.

FACTS

The Lafayette Planning Commission will be considering two separate applications filed by two different applicants for the subdivision of two separate properties. The first application is for the subdivision of 69 acres into 23 lots, known as the Curran Ranch project. The second

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

application is for the subdivision of 87 acres into 28 lots, known as the Lucas Ranch project. The two parcels are immediately adjacent to each other.

Commissioner Humann is a licensed land surveyor and a registered engineer. He provides services to Soldier Field Partners ("SFP"), a business partnership. SFP owns and will be developing the Lucas Ranch property. The commissioner's engineering business and SFP are not listed, or qualified to be listed, on any stock exchange, national market list, or any eligible securities list. Commissioner Humann understands that he may not participate in any manner regarding the Lucas Ranch project.

The subdivision application for the Lucas Ranch project is still being processed at the staff level. Consequently, the planning commission will be considering the Curran Ranch project before the Lucas Ranch project. The applicant for the Curran Ranch project has retained its own developer. Thus, Commissioner Humann and SFP do not have any financial connection to the Curran Ranch project.

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 conflict of interest in a decision. (Regulation 18700(b).)

1. Public Official

The conflict-of-interest prohibition only applies to public officials. (Section 87100.) As a member of the Lafayette Planning Commission, Commissioner Humann 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 a subdivision application, Commissioner Humann will be engaging in conduct regulated by the conflict-of-interest prohibition.

3. Economic Interests

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).)

You have described two economic interests. First, Commissioner Humann has an economic interest in his engineering business. (Section 87103(a).) In addition, Commissioner Humann has an economic interest in SFP. The term "income" includes the pro rata share of any income of a business entity in which the official owns a 10 percent interest or more. (Section 82030(a).) Presumably, the commissioner has received \$250 or more from the partnership within the last 12 months. (Section 87103(c).)

Once a public official identifies his or her economic interests, the official must evaluate whether it is reasonably foreseeable that the decision will have a material financial effect on one or more of those economic interests. 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).)

² A decision will have a financial effect "on the official," within the meaning of Section 87103, if the decision will affect the official's 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 on a business entity does not trigger the personal financial effect rule.

Neither Commissioner Humann's engineering business nor SFP is a named party in, or the subject of, the decision to approve the Curran Ranch project. Therefore, both businesses are indirectly involved in the Curran Ranch decision for purposes of finding the applicable materiality standard.

5. Applicable Materiality Standard

Regulation 18705.1(b) sets forth the materiality standards for business entities that are indirectly involved in a decision, including business entities that are sources of income. (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.

The commissioner's engineering business and SFP are not listed, or qualified to be listed, on any stock exchange, national market list, or any eligible securities list. For small businesses, such as these, the effect of a decision is material if it will increase or decrease the business entity's: (1) gross revenues by \$10,000 or more in a fiscal year, (2) incurred or avoided expenses by \$2,500 in a fiscal year; or (3) value of assets or liabilities by \$10,000 or more. (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.)

Applying the steps above, we can now frame the most important issue presented by your request: Is it substantially likely that the decision to approve the Curran Ranch project will affect either SFP's or the engineering business': (1) gross revenues by \$10,000 or more in a fiscal year, (2) incurred or avoided expenses by \$2,500 in a fiscal year; or (3) value of assets or liabilities by \$10,000 or more? (Regulation 18705.1(b)(7).)

To answer this question, the commissioner must determine whether it is substantially likely that the approval, modification, or rejection of the Curran Ranch proposal will affect the profit that he and/or SFP will make developing the Lucas Ranch property. In addition, he must also consider whether it is substantially likely that the decision will affect the fair market value of the Lucas Ranch property, an asset of SFP.

Given the proximity of the two properties, we conclude the it is substantially likely that the decision to approve the Curran Ranch project will have *some* effect on SFP. At the very least, the development of the Curran Ranch property will affect the fair market value of SFP's property. If it is substantially likely that the effect on the property's fair market value will be material (\$10,000 or more), then the commissioner will have a conflict of interest in the decision to approve the subdivision of the Curran Ranch property.

7. Public Generally Exception

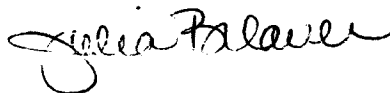
An official who otherwise has a conflict of interest in a decision may still participate in the decision if the "public generally" exception applies. (Section 87103.) For this exception to apply, the decision must affect the official's economic interests in substantially the same manner as it would affect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

For decisions that affect a business entity, 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).) If the commissioner has a conflict of interest in the decision, he may only 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 his business and/or SFP, whichever is causing the conflict.

If you have any 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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