



FAIR POLITICAL PRACTICES COMMISSION

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November 3, 2000

Patricia McCoy
Mayor Pro Tem
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California 91932

**Re: Your Request for Advice
Our File No. A-00-117**

Dear Ms. McCoy:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

May you participate in decisions concerning the Carnation Street End Project?

CONCLUSION

Based on the facts you have presented, you may participate in decisions regarding the Carnation Street End Project if you conclude it is not reasonably foreseeable that the project will affect the rental value of your home by \$1,000 or more in a year or affect the value of your home by \$10,000 or more.

FACTS

You are the Mayor Pro Tem for the City of Imperial Beach. Your residence is located at 132 Citrus Avenue in the City of Imperial Beach.

The Port District has proposed construction of certain street end improvements within the city which may include certain lighting, landscaping improvements and passive park

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

improvements. Your residence is located more than 300 feet from the boundaries of the proposed improvements, but within 2,500 feet. Although your residence is not located on the same street as the proposed improvements, a portion of the street receiving the improvements is within a 300 foot radius of your property and your property is within 300 feet of a private lot abutting the project.

ANALYSIS

Are you a public official?

The conflict of interest provisions of the Act apply only to “public officials.” A “public official” is defined to include “every member, officer, employee or consultant of a state or local government agency” (Section 82048.) As a member of the city council, you are a “public official” within the meaning of the Act.

Will you be participating in a governmental decision?

The Act’s conflict of interest provisions come into play only when a public official makes, participates in making, or in some way attempts 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.) Commission regulations describe in detail what constitutes making, participating in making, or influencing a governmental decision. (Regulations 18702.1, 18702.2, and 18702.3, respectively.) You clearly will be making, participating in making, or influencing a governmental decision if you vote and deliberate in decisions regarding the street improvements.

What are your economic interests?

The “economic interests” from which conflicts of interest may arise are described by Section 87103 and Regulations 18703-18703.5. There are six kinds of economic interests recognized under the Act. The pertinent economic interest in your facts is:

- 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).

The request for advice indicates you own a home on Citrus Avenue, near the project. One can safely assume the value of your interest in your home (real property) is \$1,000 or greater. Therefore, it is an economic interest for purposes of the Act.

Is your economic interest directly or indirectly involved in decisions related to the development?

The Commission's regulations provide that real property is *directly involved* in a governmental decision under certain specific circumstances. (Regulation 18704.2(a).) None of these circumstances are present with regard to your economic interest in the context of the present decision. Therefore, under the Commission's regulations, your residential interest is considered *indirectly involved* for purposes of choosing a materiality standard. (Regulation 18704.2(b).)

Deciding which materiality standards to use to decide if there will be a reasonably foreseeable material financial effect.

Knowing the degree to which the residential real property is involved in the decision, the fifth step is picking the appropriate standard for evaluating the "materiality"—that is, the importance—of the effect of the decision on the real property. (See Regulation 18700(b)(5).)

The materiality standards in Regulation 18705.2(b) apply since your property is indirectly involved in the decision. Under the regulation, the effect of a decision on real property is material if:

The real property is between 300 and 2,500 feet of the project, and it is reasonably foreseeable that the decision will affect: (1) the fair market value of the property by \$10,000 or more, or (2) the rental value of the property by \$1,000 or more per 12-month period. (Regulation 18705.2(b)(1)(C).)

Because the property you own is located beyond 300 feet, but within 2,500 feet of the improvements, the materiality standard in regulation 18705.2(b)(1)(C) is applicable. The effect of the decision will be considered material as to your property if it has a reasonably foreseeable financial effect of: (1) \$10,000 or more on the fair market value of your property; or (2) will affect the rental value of the property by \$1,000 or more per 12-month period. (Regulation 18705.2(b)(1)(C).)

Once the official finds the relevant materiality standard, he or she must determine whether it is reasonably foreseeable that the materiality standard will be met as a result of the decision.

Using the materiality standards to decide if it is reasonably foreseeable that the decision will have a material financial effect.

The next step in deciding whether you have a conflict of interest is using the materiality standards (from step 5, above) to decide if a *material* financial effect on one or more of your

economic interests is reasonably foreseeable as a result of the decision. (Regulation 18706.) As used here, "reasonably foreseeable" means "substantially likely." (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made is highly situation-specific. A financial effect need not be a certainty to be considered reasonably foreseeable; a substantial likelihood that it will occur suffices to meet the standard. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*Ibid.*)

In this case, you stated that you do not think it is likely that approval or disapproval of the improvements would have a financial effect (up or down) of \$10,000 or more on the value of your town home, nor would it affect the rental value of the property by \$1,000 or more in a year. The Commission does not act as a finder of fact when it renders advice; we are not in a position to determine the financial effect of the decision on your property.² We must leave the factual determination of materiality for you to make, considering the following factors, among others:

- The proximity of the property which is the subject of the decision, and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;
- Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;
- In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood. (Regulation 18705.2(b)(4).)

If you have considered these factors and you determine there will be no material financial effect on your real property interest as described above, you may participate in the decision.

Steps Seven and Eight: Exceptions

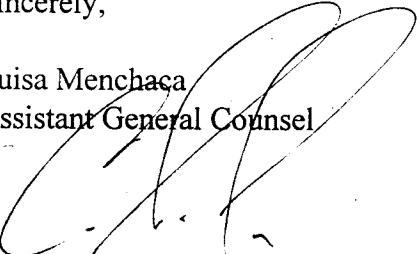
We have not gone on to analyze the latter two steps. Step seven is an exception that applies where the reasonably foreseeable and material financial effect on the official's economic interest is not distinguishable from the effect on the public generally, and step eight is an exception that applies when the official is legally required to participate in the decision. You have not provided any facts to suggest that these exceptions may apply.

² Thus, this advice is applicable and confers immunity (see Section 83114) only to the extent that the facts provided to us are correct and that all of the material facts have been disclosed. (*In re Oglesby* (1975) 1 FPPC Ops. 71, 77.)

As you may be aware, the Commission is currently considering amendments to the conflict-of-interest regulations cited in this letter. You may monitor the progress of the amendments on the Commission's website – www.fppc.ca.gov. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
Assistant General Counsel


By: C. Scott Tocher
Staff Counsel, Legal Division

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