



FAIR POLITICAL PRACTICES COMMISSION

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June 19, 2000

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**Re: Your Request for Advice
Our File No. A-00-122**

Dear Mr. Scott:

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

QUESTION

May Mr. Buescher participate in decisions about the reconstruction and widening of Terreno Drive, including the adoption of the district budget which might include the Terreno Drive improvements?

CONCLUSION

Because he owns property which fronts on Terreno Drive, Mr. Buescher must disqualify himself from decisions of the Santa Rosa Community Services District about the reconstruction and widening of Terreno Drive. As discussed below, however, he may participate in the vote on the overall district budget, assuming that prior board decisions about the widening of Terreno Drive from which Mr. Buescher was disqualified are not changed or affected by the final budget vote.

FACTS

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

FACTS

Bryan Buescher is a member of the board of directors for the Santa Rosa Community Services District. The district is organized under the provisions of California Government Code section 61000, et seq., and provides for the construction and maintenance of roads in the service area of the district, which is located in southern Riverside County near Temecula. The district also contracts with the Riverside County Sheriff's office for the provision of police protection.

In conjunction with maintenance of area roads, the district is planning to reconstruct and widen Terreno Drive during the next fiscal year. It is estimated that the costs of the road repairs and improvements will be in the range of \$150,000 to \$175,000. There are 27 parcels that front or gain access through Terreno Drive. Director Buescher owns one parcel that fronts and accesses the southerly corner of Terreno Drive.²

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*.

A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if 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 a standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision, which is applied here. (Regulation 18700(b)(1)-(8).)

1. Public official.

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) As a member of the Board of Directors for the Santa Rosa Community Services District, Mr. Bryan Buescher is a "public official," for purposes of the Act (see Sections 82048, 82041), and the conflict of interest rules apply to him.

² The Commission does not act as a finder of fact when it renders advice. 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.)

2. The Act's conflict-of-interest rules apply to this decision.

The Act's conflict-of-interest provisions apply only where a 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; Regulation 18700(b)(2).)

A public official "makes a governmental decision," when the official, acting within the authority of his or her office or position, does any of the following:

- votes on a matter,
- appoints a person,
- obligates or commits his or her agency to any course of action,
- enters into any contractual agreement on behalf of his or her agency,
- or determines not to do any of these things, unless such determination is made because of his or her financial interest. (Regulation 18702.1(a)(1)-(4).)

The governmental decisions involved in this case are decisions of the Santa Rosa Community Services District about repairs to and widening of Terreno Drive, including the adoption of the District budget which might include the Terreno Drive improvements.

3. Identifying economic interests.

The Act's conflict-of-interest provisions apply only to conflicts arising from *economic interests*. The economic interests from which conflicts of interest may arise are defined in Regulations 18703-18703.5. Identifying which, if any, of these economic interests are held by a public official is the third step in analyzing a potential conflict of interest under the Act. (See Regulation 18700(b)(3).) There are five 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*³ of \$1,000 or more (Section 87103(a); Regulation 18703.1(a)); or 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);

³ 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 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).

Mr. Buescher’s economic interest in this case is his real property interest in a parcel that fronts on Terreno Drive.

Once an official identifies an economic interest, he or she must determine whether it is “reasonably foreseeable” that the decision(s) in question will have a material financial effect on that interest. The official must decide whether the economic interest is directly or indirectly involved in the decision. (Regulation 18700(b)(4).) Having established the degree of involvement, the official can identify the materiality standard appropriate to the circumstances. (Regulation 18700(b)(5).) The official then knows what financial effect would be considered “material” under the Act. Finally, the official decides whether such a material financial effect is a “reasonably foreseeable” consequence of the decision(s) at issue. (Regulation 18700(b)(6).)

4. Determining whether the public official’s economic interest is directly or indirectly involved in the governmental decision.

Once it has been determined that a public official has an economic interest in certain real property, the next step in the analysis is determining the degree to which the real property is involved in the government decision in question. (Regulation 18700(b)(4).) This step is important because different criteria for evaluating the materiality of the financial effect on the real property apply depending upon whether the real property is directly or indirectly involved in the governmental decision.

The Commission’s regulations provide that real property is *directly involved* in a governmental decision under the following circumstances:

- “The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or

indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

- “The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property;
- “The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or
- “The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.” (Regulation 18704.2(a)(1)-(4).)

Under the Commission’s regulations, real property which is not considered directly involved under the rules stated above is considered *indirectly involved* for purposes of determining the applicable materiality standards. (Regulation 18704.2(b).) Applying these standards, Mr. Buescher’s property is indirectly involved in decisions about improvements to Terreno Drive.

5. Materiality standards that apply to Mr. Buescher’s property.

For indirectly involved real property interests, the effect of a decision is material if the public official’s property is located within a 300-foot radius of the boundaries of the property which is the subject of the decision, unless the decision will have no financial effect upon the official’s property. (Regulation 18705.2(b)(1)(A), copy enclosed.) The effect of the decision also will be material where the decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or substantially improved services. (Regulation 18705.2(b)(1)(B).) Although regulation 18705.2(b)(1)(B) is generally applied when the official’s property itself will be receiving new services, it has also been applied where the official’s property will receive new or substantially improved services from sidewalk and street improvements to the public areas in front of the official’s property. (*Empeño* Advice Letter, No. A-00-084; *Ennis* Advice Letter, No. A-96-313.)

You stated that Mr. Buescher’s property fronts and accesses the southerly corner of Terreno Drive. Because Mr. Buecher’s parcel is located “within 300 feet” of the property that is the subject of the decision, any financial effect on Mr. Buescher’s property resulting from the decisions about widening and improving Terreno Drive is deemed material. In addition, it may be that the Terreno Drive improvements will result in Mr. Buescher’s property receiving substantially improved services. If so, the effect of the decision is also deemed material under regulation 18705.2(b)(1)(B).

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

The sixth step in deciding whether an official has 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 the official's 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.) 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.*)

Because it is substantially likely that improvements to Terreno Drive will result in an increase or decrease, however slight, in the value of Mr. Buescher's property, and may well provide improved services to the property, it is reasonably foreseeable that the decision will have a material financial effect on his economic interest. Thus, Mr. Buescher must disqualify himself from decisions about the widening of or improvements to Terreno Drive.⁴

a. Segmentation.

However, we have previously advised that a public official who is disqualified from participating in certain aspects of a budget decision, may be able to participate in other aspects of budget discussions and decisions under certain limited circumstances. (See e.g., *McAndrews* Advice Letter, No. I-94-215.) Thus, if disqualified as to specific decisions concerning the Terreno Drive improvements, Director Buescher may vote on other aspects of the budget if the

⁴ The public generally exception does not apply in this case. The public generally exception provides that if the reasonably foreseeable material financial effect of a governmental decision on the public official's economic interest is *indistinguishable* "from its effect on the public generally," then the public official does not have a conflict. (Section 87103; Regulations 18700(b)(7), 18707(a).) This exception exists because a public official is less likely to be biased by a financial impact on his or her economic interests when a significant part of the community is substantially likely to feel essentially the same impact from the governmental decision.

Generally, the reasonably foreseeable material financial effect on a public official's economic interest is *indistinguishable* from the effect on the public generally if it is also reasonably foreseeable that the decision will affect a "significant segment" of the public "in substantially the same manner" that it will affect the public official's economic interest. (Regulation 18707(b)(1),(2).) Although you have stated that 27 other individuals own parcels fronting Terreno Drive, and thus their property will be affected in the same way as Mr. Buescher's, these other property owners do not comprise a "significant segment" of the public, which is defined as 10 percent or more of all property owners in the jurisdiction of the official's agency under regulation 18707(b)(1)(A)(ii).

decision will not have a reasonably foreseeable material financial effect on any of Mr. Buescher's economic interests and the following procedure is complied with:

- (i) The decision in which a public official has the disqualifying financial interest is segregated from the other budgetary decisions;
- (ii) the budgetary decisions concerning issues in which the public official has a disqualifying financial interest are considered first, and the final decision is reached as to those issues without the public official's participation; and,
- (iii) once final decisions have been made on those issues in which the public official has disqualifying financial interests, the public official may participate and vote regarding other items in the budget so long as those deliberations will not result in a reopening or in any way affect the decisions from which the public official was previously disqualified.

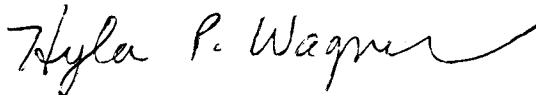
Thus, Mr. Buescher may be able to participate in decisions and discussions of the district's general budget provided the budgetary decisions about Terreno Drive in which he has a disqualifying financial interest are segregated and he follows the procedure described above such that he does not participate in those aspects of the budgetary decisions in which he has a disqualifying financial interest.

Finally, Mr. Buescher may also vote on the adoption of the final district budget, despite the fact that the final budget may contain funding for the Terreno Drive improvements, an item from which Mr. Buescher was disqualified, provided the decision cannot result in a reopening or in any way change the decision from which he was previously disqualified. (*McAndrews Advice Letter, supra; Cook Advice Letter, No. A-83-163.*)

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

Sincerely,

Luisa Menchaca
Assistant General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

Enclosure
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