



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

March 9, 2001

Diane M. Price
City Attorney, City of St. Helena
City Hall, 1480 Main Street
St. Helena, California 94574

**Re: Your Request for Advice
Our File No. A-01-030**

Dear Ms. Price:

This letter is in response to your request for advice on behalf of St. Helena City Councilmember Bill Savidge regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Please be advised that the Commission does not issue advice based on past conduct. (Regulation 18329(b)(8)(A).) Therefore, this letter does not evaluate any conduct that has already occurred.

QUESTION

Councilmember Savidge owns a commercial building that is located within 450 feet of a church. May Councilmember Savidge participate in the city's decision to approve a use permit application submitted by the church?

CONCLUSION

Councilmember Savidge is presumed to have a conflict of interest in the decision. Under the Commission's conflict of interest regulations, the council member's property is directly involved in the decision. As such, the presumed effect of the decision on his real property will be material. The council member may rebut this presumption by showing that the decision will have no financial effect whatsoever on his real property interest.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

FACTS

The city council is in the process of reviewing a use permit application submitted by Grace Episcopal Church ("church") to expand its facility. Some months ago, the city council reviewed the project and directed the applicant to make certain changes. The project is coming back to the city council for review on March 27, 2001.

Councilmember Savidge owns a commercial building located approximately 450 feet from the church site. The old conflict of interest rules were based on a 300-foot radius and Councilmember Savidge was able to participate in the proceeding. The new conflict of interest regulation, which went into effect on February 1, 2001, is now based on a 500-foot radius.

ANALYSIS

Conflict of Interest Prohibition

Section 87100 of the Act prohibits a 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. The Commission has developed an eight-step approach for determining whether an individual has a disqualifying financial interest in a given decision. (Reg. 18700(b).)

Steps One and Two - Preliminary Steps

According to your facts, the first two steps apply: (1) Councilmember Savidge is a "public official" as defined in Section 82048, and (2) he will be "making a governmental decision" as defined in Regulation 18702.1 by voting on whether to approve a use permit application. (Reg. 18700(b)(1) and (b)(2).)

Step Three - Identifying Economic Interests

The third step is to identify the economic interests of the official that the decision might affect. (Reg. 18700(b)(3).) Section 87103 enumerates six different types of economic interests that may give rise to a conflict of interest. Pertinent to your request, Section 87103 provides that a public official has a disqualifying financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on "any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103(b).)

Councilmember Savidge owns a commercial building in the City of St. Helena. His interest in the building is presumably worth \$2,000 or more. As such, he has an economic interest in the building for purposes of Section 87103. You have not identified any other economic interests that might give rise to a conflict of interest.

Step Four - Direct or Indirect Involvement

The next step is to determine whether the economic interest will be involved directly or indirectly in the decision. (Reg. 18700(b)(4).) An official's real property is directly involved in a decision if the property is the subject of the decision, or if any part of the property is located within 500 feet of property that is the subject of the decision. (Reg. 18704.2(a).)

Councilmember Savidge has an economic interest in a commercial building that is within 500 feet of property owned by a church that is the subject of an upcoming decision. (See Reg. 18704.2(a)(2).) Under Regulation 18704.2(a), his real property interest is directly involved in this decision.

Steps Five and Six

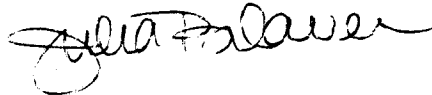
Steps five and six are finding the applicable materiality standard and determining whether it is reasonably foreseeable that the materiality standard will be met. (Reg. 18700(b)(5), (6).) For real property directly involved in a decision, Regulation 18705.2 provides that the financial effect of the decision on the real property is presumed to be material. (Reg. 18705.2(a)(1).) However, the official may rebut this presumption with proof that a financial effect on his or her real property interest is not a reasonably foreseeable result of the decision. The proof required may be an objective evaluation of the facts and circumstances surrounding the decision, as long as the official uses due diligence and good faith. For complex decisions, the official may seek an appraisal but is certainly not required to do so.

Accordingly, Councilmember Savidge may not participate in the decision regarding the use permit application submitted by the church because it is presumed that the decision will have a material financial effect on his commercial building. Of course our conclusion may change if the council member can establish that the decision will have *no financial effect whatsoever* on the fair market value of his real property interest.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Julia Bilaver
Staff Counsel, Legal Division

LM:JB:jg