



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

March 5, 2001

Lori J. Barker, Asst. City Attorney
Office of the City Attorney
Post Office Box 3420
Chico, CA 95927

**Re: Your Request for Advice
Our File No. A-01-031**

Dear Ms. Barker:

This letter is in response to your request for advice on behalf of Councilmember Dan Nguyen-Tan regarding the conflict of interest provisions of the Political Reform Act (the "Act"),¹ and your follow-up request for clarification dated March 5, 2001.

QUESTIONS

1. May Councilmember Nguyen-Tan, who has a conflict of interest as to the Community Development Block Grant ("CDBG") budget items regarding the provision of additional funds for the CDBG Revolving Loan Fund Administration and the Business Outreach Program Agreements, participate in the balance of the CDBG budget decisions by segmenting the issues on which he has a conflict?

2. If an amendment of the CDBG Revolving Loan Fund Agreement, as to which Councilmember Nguyen-Tan also has a conflict of interest, were also part of the CDBG budget considerations, could all three of the decisions be segmented to allow Councilmember Nguyen-Tan to participate in the balance of the budget decisions?

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

CONCLUSIONS

1. No. The decisions regarding the provision of additional funds for the two programs to which Councilmember Nguyen-Tan has a conflict of interest are too interrelated with the decisions on the balance of the CDBG budget to allow segmentation of those items to enable Councilmember Nguyen-Tan to participate in the remaining decisions.
2. No, for the same reasons stated in the conclusion to question number 1.

FACTS

CDBG funds are federal funds allocated to the City annually. The Department of Housing and Urban Development ("HUD") determines how much money is available to be allocated to local agencies each year. HUD determines the amount of money the City receives pursuant to a formula based primarily on the size of the City's population and the percentage of that population HUD considers to be low income. Purposes for which such funds can be used are limited by federal regulations.

After the City receives notice of its annual allocation of CDBG funds each year, that money is budgeted for various purposes consistent with federal regulations. The annual CDBG allocation is approximately \$900,000. Although it varies from year to year, the budget generally consists of 12-15 line items. Typically, the number of projects the City could fund with CDBG funds in any given year exceeds the funds available.

Tri-Counties Economic Development Corp.

Tri-Counties Economic Development Corp., ("TCEDC"), is a nonprofit corporation that has been a source of income to Councilman Nguyen-Tan in an amount exceeding \$500 in the past twelve months.

Currently, the City has the following three agreements with TCEDC that involve CDBG funding:

- a. TCEDC administers the CDBG Revolving Loan Fund Agreement, which establishes a revolving loan fund of CDBG money that is available for loans to private parties as part of an economic development program;
- b. The CDBG Revolving Loan Fund Administration Agreement, which provides for payment to TCEDC out of CDBG funds for the administrative costs of running the CDBG Revolving Loan Fund program; and
- c. The Business Outreach Program Agreement, which establishes a program funded by CDBG funds and administered by TCEDC.

It is expected that deliberations on the next Annual Plan, or budget, for CDBG funds will include consideration of additional funding for both the CDBG Revolving Loan Fund Administration and the Business Outreach Program Agreements. The Council expects to consider respective allocations of \$30,000 and \$25,000, which, if approved, would be paid to TCEDC pursuant to amendments to those agreements. Deliberations and discussions of these items will occur within twelve months of TCEDC's having been the source of income to Councilmember Nguyen-Tan of \$500 or more and he will, therefore, have a disqualifying conflict of interest as to those items.

It is also anticipated that an amendment to the CDBG Revolving Loan Fund Agreement may be considered at some time, although not necessarily during the consideration of the CDBG budget. Currently, the City holds \$93,000 pursuant to that agreement for use in the Revolving Loan Fund.

ANALYSIS

Section 87100 of the Act 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. Section 87103 specifies that a public official has a financial interest in a decision if it reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on, in pertinent part:

“(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.”

You acknowledge that TCEDC has been a source of income to Councilmember Nguyen-Tan in excess of \$500 within 12 months of the time the decisions regarding the CDBG budget will be made, and that he would have a conflict of interest regarding those decisions directly involving TCEDC.

Under certain circumstances, large and complex decisions may be divided into separate decisions so that a public official who has a disqualifying financial interest with respect to one component of the decision may participate in the other components. (*Epp* Advice Letter, No. A-97-100.) Your question relates to whether the decisions regarding the CDBG budget fall into this category, such that Councilmember Nguyen-Tan could participate in all of the decisions except those associated with TCEDC.

If it were possible to separate the TCEDC decisions from the balance of the CDBG budget, the following procedure would have to be followed:

1. The decisions concerning TCEDC would have to be segregated from the other decisions.
2. The decisions concerning TCEDC would have to be considered first and a decision reached by the City Council without Councilmember Nguyen-Tan participating in any way.
3. Once decisions were made on the TCEDC matters, Councilmember Nguyen-Tan could participate in deliberations regarding the other decisions, so long as those deliberations did not result in a reopening or in any way affect the decisions directly involving TCEDC, and the decisions did not have a foreseeable and material financial effect on TCEDC. (*Id.*)

However, certain decisions are too interrelated to be considered separately and, in such cases, a public official's conflict on one decision will disqualify him or her from participating in the other decisions. For example, where there are alternate proposals for the expenditure of a portion of the budget and a public official has a conflict of interest as to one of the alternatives, the public official may not participate in the consideration of the other alternatives because a decision for or against one alternative necessarily affects decisions on remaining alternatives. (*Epp* Advice Letter, *supra*, No. A-97-100; *Christensen* Advice Letter, No. A-97-536.) Thus, a public official would have to disqualify himself or herself if the result of one decision would effectively determine or nullify the result of another. Similarly, a decision to allocate funds to another entity competing with TCEDC for the same funds would be interrelated to a decision to fund TCEDC, and Councilmember Nguyen-Tan would have a conflict of interest in such a situation. (*Billing* Advice Letter, No. A-00-203.)

The precise situation presented in this request for advice was addressed in our previous advice letter to you concerning Councilmember Coleen Jarvis' conflict of interest with respect to decisions related to the annual budget for funding community organizations in 1999. (*Barker* Advice Letter, No. A-99-211.) In that letter, after concluding that a conflict of interest did exist, we stated:

In your request, you stated that after the city determines the total amount of funding to be allocated to community service organizations, it then decides which organizations it will fund, and how much each will receive. Consequently, a decision regarding one organization will affect the amount of funds available to the others. These decisions are therefore too interlinked to be decided separately. As such, Councilmember Jarvis has a conflict of interest with regard to each application. (*Id.*)

From your current letter, it appears that the process for allocating CDBG funds is similar to the process employed for the community organizations funding, although the projects involved are all City projects. You state that the annual allocation of CDBG funds is budgeted for various purposes, and that there are usually more projects seeking CDBG funds than the City is able to accommodate. Therefore, any allocation to TCEDC will affect the amount of funds available for other programs, and Councilmember Nguyen-Tan has a conflict of interest with regard to each project seeking funding.

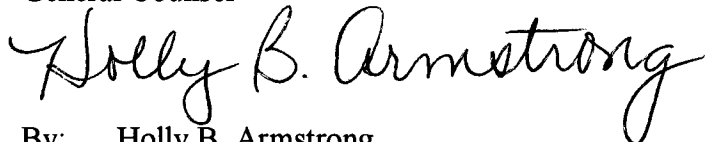
Further, it would be impossible to segregate the TCEDC decisions for the Council to decide first, without Councilmember Nguyen-Tan's participation, without negatively impacting the remaining projects being considered for funding. Any funds allocated to TCEDC would reduce the funds available to other programs, and, under the segmentation procedure, the amount allocated to TCEDC could not be modified to accommodate a more worthy program that was considered later in the deliberation process.

Councilmember Nguyen-Tan has a conflict of interest with respect to the entire CDBG budget and may not participate in any deliberations or decisions related to that budget. This conclusion applies to all three TCEDC programs.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Holly B. Armstrong
Staff Counsel, Legal Division

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Corrected 3/5/01