



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807  
(916) 322-5660 • Fax (916) 322-0886

March 18, 2002

Randall A. Hays  
City of Lodi  
City Attorney's Office  
City Hall  
Post Office Box 3006  
Lodi, CA 95241-1910

**Re: Your Request for Informal Assistance  
Our File No. I-01-252**

Dear Mr. Hays:

This letter is in response to your request for informal assistance<sup>1</sup> on behalf of Lodi City Councilmember Susan Hitchcock regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>2</sup> Please note that our assistance is limited to provisions of the Act and does not address areas of the law outside the Act, such as Health and Safety Code § 33130(a), which is referenced in your letter.

### QUESTION

May Councilmember Hitchcock vote on redevelopment issues if her husband sells his real property holdings within the redevelopment project area and converts his deeds of trust, secured by real property in the redevelopment project area, into unsecured notes?

### CONCLUSION

No. The parties who purchase the real property will become sources of income to Ms. Hitchcock, and she will have an economic interest in those buyers for 12 months following the transactions. Likewise, the obligees on the deeds of trust will remain sources of income to Ms. Hitchcock after the deeds of trust are converted to unsecured

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<sup>1</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code section 83114; Regulation 18329(c)(3), copy enclosed.)

<sup>2</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

notes, and because the notes were secured by real property within the redevelopment project prior to their conversion to unsecured, Ms. Hitchcock has a continuing economic interest in these sources of income connected to the redevelopment project for twelve months after the transactions converting the notes. Therefore, there is a possibility that Ms. Hitchcock's economic interests may be indirectly involved in redevelopment-related decisions, and that she may continue to have some conflicts of interest for a 12-month period following the completion of all of the transactions divesting her husband of his interests in real property within the redevelopment project area. Each decision will have to be analyzed on a case-by-case basis to make this determination.

### **FACTS**

The Lodi City Council has designated itself as the board of the Lodi Redevelopment Agency. The husband of one of your council members, Susan Hitchcock, owns real estate within the redevelopment agency project area. Additionally, he holds deeds of trust secured by other properties within the project area. The income from these investments is used to fund family expenses.

You recognize that your council member appears to have an economic interest in real property that is the "subject of the governmental decision." To eliminate Ms. Hitchcock's conflict of interest, her husband proposes to sell outright the property that he owns within the project area. He would maintain no further interests in the disposed of real property. Secondly, he would convert his deeds of trust, which are secured by property within the project area, to unsecured notes. This action would result in his having no interest in any real property within the project area.

### **ANALYSIS**

Because your question requires an analysis of whether her husband's divesting himself of his real property interests will cure Ms. Hitchcock's conflict of interest, it is first necessary to analyze and identify all of her economic interests, and then determine whether your proposed solution would resolve the conflict as to each interest.

Your letter demonstrates that you have already completed the first two steps of the typical conflict of interest analysis and have correctly concluded that the Ms. Hitchcock is a public official and that by participating in decisions relative to redevelopment, she will be making, participating in making, or influencing a governmental decision.

Step three is identifying Ms. Hitchcock's 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. There are six kinds of economic interests:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect<sup>3</sup> investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a));
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b); Regulation 18703.2);
- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- A public official has an economic interest in a business entity 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 any source of gifts to him or her if the gifts aggregate to \$320 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 finances (expenses, income, assets, or liabilities), as well as those of his or her immediate family. (Section 87103; Regulation 18703.5).

Your facts indicate that Ms. Hitchcock has an economic interest in real property, which is presumably equal to or in excess of \$2,000. Further, the facts indicate that Ms. Hitchcock has an economic interest in the real property securing the deeds of trust held by her husband, assuming that her interest in the real property is \$2,000 or more. Your facts also indicate that income from the deeds of trust is used to fund family expenses. Assuming that the income from the deeds of trust has aggregated to \$500 or more a year, Ms. Hitchcock also has an economic interest in the obligees on the deeds of trust as a source of income.

As you point out in your letter, under the current facts, Ms. Hitchcock's real property interests are directly involved in the governmental decision pursuant to Regulation 18704.2. "The financial effect of a governmental decision on directly involved real property is presumed to be material." (Regulation 18705.2(a)(1).)

Under your proposed cure, Ms. Hitchcock's husband would sell the real property that he owns and convert the deeds of trusts he holds into unsecured notes, thus divesting himself of all real property interests within the redevelopment project area. This would effectively eliminate Ms. Hitchcock's interests in real property within the redevelopment project area and thus, she would no longer have a conflict of interest directly attributable to these holdings.

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<sup>3</sup> An indirect investment or interest in real property means, among other things, any investment or interest owned by the official's immediate family. (Section 87103.)

However, when Ms. Hitchcock's husband sells his property, the buyers will become sources of income to him and to Ms. Hitchcock. (Section 87103(c); Regulation 18703.3.) Thus, Ms. Hitchcock has an economic interest in those buyers for twelve months following the transactions.

The obligees on the deeds of trust, having always been the payees on the notes, would remain sources of income to Ms. Hitchcock. Because the notes were secured by real property within the redevelopment project prior to their conversion to unsecured notes, Ms. Hitchcock has a continuing economic interest in these sources of income connected to the redevelopment project for twelve months after the transactions converting the notes. (Section 87103(c); Regulation 18703.3.)

The fourth step in analyzing whether Ms. Hitchcock will have a conflict of interest under the scenario you propose is to determine whether her economic interests will be directly or indirectly involved in redevelopment decisions.

In this case, the two relevant economic interests are Ms. Hitchcock's sources of income from the sale of her husband's property within the redevelopment project area and from the conversion of the previously secured notes to unsecured notes. A source of income is directly involved in a decision when that person:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit or other entitlement to, or contract with, the subject person.” (Regulation 18704.1(a).)

Under community housing and redevelopment law, redevelopment agencies are obligated to involve those who own property within a redevelopment project area in the redevelopment process. Health & Safety Code section 33339 provides:

“Every redevelopment plan shall provide for participation in the redevelopment of property in the project area by the owners of all or part of such property if the owners agree to participate in the redevelopment in conformity with the redevelopment plan adopted by the legislative body for the area.”

Because each of Ms. Hitchcock's sources of income will own property within the redevelopment project area, it is possible that one or more of her economic interests may

be directly involved in a redevelopment-related decision. In the event Ms. Hitchcock's sources of income do not fall within either of the above two categories, under the Commission's regulations, sources of income which are not directly involved under the rules stated above are considered indirectly involved for purposes of choosing a materiality standard (see below). (Regulation 18704.1(b).)

The next step is deciding which materiality standard to apply to determine whether there will be a reasonably foreseeable material financial effect on Ms. Hitchcock's economic interests.

### *If Directly Involved*

If Ms. Hitchcock's economic interests are directly involved in the redevelopment-related decision, the following materiality standard will apply:

“(a) Directly involved sources of income. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.”  
(Regulation 18705.3(a).)

### *If Indirectly Involved*

When the source of income to a public official is an individual and that source is indirectly involved in the governmental decision in question, the materiality standard in Regulation 18705.3(b)(3) applies. It provides that the financial effect of a decision is material if it is reasonably foreseeable that either of the following will be true as a result of the decision:

“(A) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

“(B) The decision will affect the individual's real property interest in a manner that is considered material under Title 2, California Code of Regulations, sections 18705.2(b).”  
(Regulation 18705.3(b)(3).)

Regulation 18705.2(b) states:

“(b) Indirectly involved real property interests.

“(1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be

rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

“(A) The development potential or income producing potential of the real property in which the official has an economic interest;

“(B) The use of the real property in which the official has an economic interest;

“(C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

#### ***Determination of Material Financial Effect***

The next step in the analysis is using the materiality standards to decide if it is reasonably foreseeable that the decision will have a material financial effect on your economic interest.

This sixth, and usually most important step, in deciding whether Ms. Hitchcock has a conflict of interest is using the appropriate materiality standard set forth above to decide if a material financial effect on one or more of her 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. (*Id.*)

As to any directly involved source(s) of income, the important question is whether it is substantially likely that any redevelopment decision will result in any reasonably foreseeable financial effect on the source(s) of income within the 12 month period following the sale of the property or the transfer of the notes from secured to unsecured notes.

As to any indirectly involved sources of income, questions such as whether it is substantially likely that any of the following will be true as a result of decisions related to redevelopment:

- His or her income, investments or other tangible or intangible assets or liabilities, excluding real property interests, will increase or decrease by \$1,000 or more; or
- The development potential or income producing potential of his or her real property will materially increase or decrease; or
- The use of his or her real property will materially change; or
- The character of the neighborhood, including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood, will materially change.

We are unable to answer these factual questions, which will have to be examined on a case-by-case basis as each redevelopment decision presents itself.

### *The Public Generally Exception*

Even if you conclude that it is reasonably foreseeable that certain redevelopment decisions will have a material financial effect on a person who is a source of income to Ms. Hitchcock, she will not have a conflict of interest if the “public generally” exception applies. If the reasonably foreseeable material financial effect on that individual is indistinguishable “from its effect on the public generally,” then Ms. Hitchcock 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.

You have not provided facts demonstrating that this exception applies. We have enclosed copies of regulations 18707 and 18707.1 for your information and for your future reference.

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

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink that reads "Holly B. Armstrong". The signature is written in a cursive style with a large, sweeping "H" and "A".

By: Holly B. Armstrong  
Staff Counsel, Legal Division

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Enclosures