



FAIR POLITICAL PRACTICES COMMISSION

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March 11, 2003

Bradley W. Sullivan
City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

**Re: Your Request for Advice
Our File No. A-03-038**

Dear Mr. Sullivan:

This letter is in response to your request for advice on behalf of City Councilmember Donald "Pat" Crosby regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Does Councilmember Crosby have an "interest in real property" based on his month-to-month tenancy?
2. Does Councilmember Crosby have a conflict of interest in a decision regarding a parcel of property adjacent to the property he rents?

CONCLUSIONS

1. No. Pursuant to regulation 18233, he does not have an economic interest in his month-to-month tenancy.
2. You have not provided enough information regarding a specific decision for us to determine whether Councilmember Crosby has a conflict of interest. You may wish to write again once you have identified a particular decision before the city council regarding the parcel adjacent to the property he rents.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

Councilmember Donald "Pat" Crosby has his business and principal residence located on Main Street in downtown Sutter Creek. The building is an historic, Gold Rush era two-story with the traditional commercial portion on the ground floor, and a residence on the second floor.

Councilmember Crosby has rented the building for thirty years on a month-to-month basis. Recently, a decision regarding a parcel of real property adjacent to the building came before the council. Councilmember Crosby did not participate in this decision.

ANALYSIS

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that "[p]ublic officials, whether elected or appointed, [should] 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).) In furtherance of this goal, 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.

Determining whether a conflict of interest exists under section 87100 requires analysis of the following questions as outlined below.²

Steps One and Two: Is Donald Crosby considered a "public official" and is he making, participating in making, or influencing a governmental decision?

As a member of the Sutter Creek City Council, Donald Crosby is a "member, officer, employee or consultant of a state or local government agency" and, therefore, is a public official subject to the conflict-of-interest provisions of the Act. (Section 82048; regulation 18701(a).)

A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (See regulation 18702.1.)

Councilmember Crosby will "make a governmental decision" if he votes on a decision regarding a parcel of property which has come before the city council. Additionally, if he engages in any of the actions described in enclosed regulations 18702.2 and 18702.3 with regard to such decisions, he will "participate in making" or "influence" that decision.

² These questions are based on the Act's conflict-of-interest analysis provided at regulation 18700(b).

Step Three: What are Councilmember Crosby's economic interests — the possible sources of a conflict of interest?

Section 87103 provides that a public official has a "financial interest" in a governmental decision "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on any of the official's economic interests, described as follows:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment³ of \$2,000 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 \$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 any source of gifts to him or her if the gifts aggregate to \$340 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, including those of his or her immediate family -- this is the "personal financial effects" rule (section 87103; regulation 18703.5).

An "interest in real property" includes:

"... any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the

³ An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official's immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) "Immediate family" is defined at Section 82029 as an official's spouse and dependent children.

individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.” (Section 82033.)

However, regulation 18233 provides that the term “interest in real property” does not include the interest of a tenant in a periodic tenancy of one month or less. Therefore, Councilmember Crosby does not have an interest in real property based on his month-to-month tenancy. On the other hand, he does have an interest in his business provided he has a direct or indirect investment of \$2,000 or more in this business entity. In addition, as you mentioned, he has an economic interest in his personal finances.

Since you have not provided information regarding any other economic interest of Councilmember Crosby’s, for purposes of this letter, we assume that he has no other economic interests relevant to the decision you have identified.

Step Four: Are Councilmember Crosby’s economic interests directly or indirectly involved in the governmental decision?

The “500-foot” rule of regulation 18704.2 would not apply to Councilmember Crosby’s situation because he does not have an interest in the real property as noted above. (Regulation 18704.2 only applies to real property.) Instead, regulation 18704.1 specifies when a business entity is directly or indirectly involved in a governmental decision as follows:

“(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent:

(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.

(b) If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(b), section 18705.3(a), or section 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(c),

section 18705.3(b), or section 18705.4(b), respectively.”
(Regulation 18704.1.)

You have not provided enough information regarding a specific decision for us to determine whether Councilmember Crosby's business is directly or indirectly involved in the decision under this regulation. We have included regulation 18705.1 which provides the materiality standards for directly and indirectly involved business entities (subdivisions (b) and (c), respectively) for your reference.

With regard to personal finances, “[a] public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family.” (Regulation 18704.5.) A reasonably foreseeable financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period.⁴ (See regulation 18705.5.)

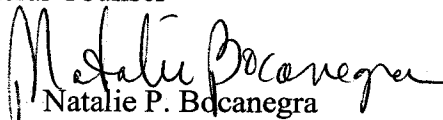
Since we do not have enough facts regarding a particular decision in order to determine whether the council member has a conflict of interest because an applicable materiality standard will be met, we do not proceed with the final steps of the analysis and conclude discussion here. You may wish to write again once you have identified a particular decision before the city council.

Please note that regulation 18707.3, a “public generally” exception applicable to small jurisdictions, was repealed by the Commission at its January 2003 meeting and is no longer in effect. Therefore, Councilmember Crosby should examine whether the “public generally” rule of regulation 18707.1 applies to a particular decision before him if he determines that he has a conflict of interest.⁵

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

Sincerely,

Luisa Menchaca
General Counsel

By: 
Natalie P. Bocanegra
Counsel, Legal Division

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⁴ “When determining whether a governmental decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered.” (*Ibid.*)

⁵ Regulations 18707.2 – 18707.9 are special rules that may apply depending on the decision or the economic interest being analyzed.