



## FAIR POLITICAL PRACTICES COMMISSION

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May 6, 2003

Karin D. Troedsson  
Town of Yountville  
6550 Yount Street  
Yountville, CA 94559

**Re: Your Request for Advice**  
**Our File No. A-03-072**

Dear Ms. Troedsson:

This letter is in response to your request for advice on behalf of Councilmember Bill Dutton regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. What are Mr. Dutton's economic interests?
2. How does the 500 foot rule apply to Mr. Dutton's real property interest?

### CONCLUSIONS

1. The council member has an "interest in real property" in the lease of the space for his mobile home. The council member does not have an interest in any other portion of the mobile home park. Finally, the mobile home itself is not a "real property" interest, although it is an asset.

2. Since the council member's only "interest in real property" is in the space he leases for his mobile home, you should measure the 500 feet for purpose of regulation 18704.2 from the perimeter of his leased space.

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

## FACTS

Councilmember Bill Dutton lives in a mobile home in the Rancho de Napa adult mobile home park. He owns the mobile home and has a multi-year lease on the property beneath the home. The mobile home park has a clubhouse that includes a meeting room, kitchen and swimming pool. The residents of the mobile home park do not own the clubhouse, but can use the clubhouse at any time free of charge. The clubhouse area is the only common area in the mobile home park.

On April 23, 2003, you provided additional information and a copy of the council member's lease. The lease provides in pertinent part:

- The term of the lease is from October 1, 1997 to September 30, 2007.
- The monthly rent due for the council member's space is currently is \$356.
- While the agreement contains a provision passing through certain capital expenditures to the homeowners on a pro rata basis pursuant to paragraph 2c of the lease, you stated no such pass-through has been implemented since the councilmember has resided at the location.
- The facilities provided by management for homeowners are listed in the rental agreement (such as the clubhouse and pool). The agreement states: "These facilities are for the nonexclusive use of Management, Homeowners and their guest [sic] in accordance with Park Rules and Regulations."

## ANALYSIS

Section 87100 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 adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest (regulation 18700, subdivisions (b)(1) - (8)), which is discussed below.

### **Steps One and Two: Is Councilmember Dutton considered a "public official" and is he making, participating in making, or influencing a governmental decision?**

As a member of the Yountville Town Council, Councilmember Dutton 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.) 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.

### **Step Three: What are the council member’s economic interests?**

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. The only economic interests implicated by your facts are interests in real property and personal finances.

*Real Property:* 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.) An interest in real property is defined in section 82033 as:

“[A]ny 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 individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.”

Thus, under the Act, an “interest in real property” includes a leasehold interest in real property within the official’s jurisdiction. (Section 82033.) However, the terms “interest in real property” and “leasehold interest” as used in the Act do “not include the interest of a tenant in a periodic tenancy of one month or less.” (Regulation 18233.)

- *The Lease:* Under your facts, the council member holds the property on which his mobile home is situated by means of a long-term lease (10-year term). The monthly rent is \$356, which equates to \$4,272 in a 12 month period. This constitutes an interest in that real property.<sup>2</sup>
- *The Mobile home Park:* We note that the council member does not have an interest in the other spaces in the mobile home park. Rather, each homeowner leases his or her own space. Thus, the council member has no economic interest in these other spaces.

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<sup>2</sup> Generally, regulation 18729(b) provides that the value of a leasehold interest is the amount of rent owed during a 12-month period.

- *The Clubhouse and other Common Facilities:* As noted above, the rental agreement states: "These facilities are for the nonexclusive use of Management, Homeowners and their guest [sic] in accordance with Park Rules and Regulations." Generally, *nonexclusive* access to property in common is considered a license, rather than a possessory interest or lease,<sup>3</sup> and therefore would not be an "interest in real property" under the Act.<sup>4</sup>

*Personal Finances:* 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). A mobile home is a personal asset which may be affected by some governmental decisions. (*Jorgensen* Advice Letter, No. A-90-017.)

Thus, the council member has an economic interest in the property he leases and in his mobile home. You have not described any other economic interests, thus we limit our analysis to the two interests identified herein.

**Step Four: Will the council member's economic interests be directly or indirectly involved in the decision?**

Since your request does not identify a specific decision, the remainder of this letter is informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3).)

*The Lease:* Real property in which a public official has an economic interest is directly involved in a governmental decision if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property that is the subject of the governmental decision, or it otherwise meets the definition of "directly involved" interests in regulation 18704.2(a). Measurement should be made from the legal boundary of the leased property as set forth in the lease (i.e. the property line of the council member's space).

If the leased property is not directly involved in the decision as contemplated by regulation 18704.2, it is indirectly involved in the decision.

*The Mobile home:* Furthermore, with respect to personal financial effects, regulation 18704.5 provides that "[a] public official or his or her immediate family are deemed to be directly involved in a governmental decision which has *any financial effect*

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<sup>3</sup> A "lease" is the conveyance of an exclusive possessory interest. (Black's Law Dictionary (1979) p. 800.) "[E]xclusive use and possession was sufficient to create a possessory interest.... This is true for the test is ... whether he has exclusive use and possession of the property against the world, including the owner." (*McCaslin v. DeCamp* (1967) 248 Cal.App.2d 13, 18.) A "license," on the other hand, is "a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property." (Black's Law Dictionary (1979) p. 829.)

<sup>4</sup> This is distinguishable from condominiums and planned unit developments where the owner of the unit includes an express ownership interest in common areas as well.

on his or her personal finances or those of his or her immediate family.” (Emphasis added.)

**Steps Five and Six: What is the applicable materiality standard and is it reasonably foreseeable that the financial effect of the governmental decision upon the council member’s economic interest will meet this materiality standard?**

*The Lease:* With regard to real property which is directly involved in a decision and in which an official holds a leasehold interest, the financial effect of a governmental decision on the property is presumed to be material. (Regulation 18705.2(a)(2).)

“This presumption may be rebutted by proof that it is not reasonably foreseeable<sup>5</sup> that the governmental decision will have any effect on any of the following:

“(A) The termination date of the lease;

“(B) The amount of rent paid by the lessee for the leased real property, either positively or negatively;

“(C) The value of the lessee’s right to sublease the real property, either positively or negatively;

“(D) The legally allowable use or the current use of the real property by the lessee; or

“(E) The use or enjoyment of the leased real property by the lessee.” (Regulation 18705.2(a)(2).)

A financial effect on a leasehold interest that is indirectly involved in a governmental decision is “presumed not to be material.” (Regulation 18705.2(b)(2).)

“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 governmental decision will:

“(A) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property;

“(B) Change the lessee’s actual use of the real property;

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<sup>5</sup> An effect upon economic interests is considered “reasonably foreseeable” if there is a substantial likelihood that it will occur. (Regulation 18706(a).) A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

“(C) Substantially enhance or significantly decrease the lessee’s use or enjoyment of the leased real property;

“(D) Increase or decrease the amount of rent for the leased real property by 5+percent during any 12-month period following the decision; or

“(E) Result in a change in the termination date of the lease.”  
(Regulation 18705.2(b)(2).)

*The Mobile home:* With respect to the personal financial effects on the council member’s assets (such as the mobile home), regulation 18705.5(a) provides that “[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.”

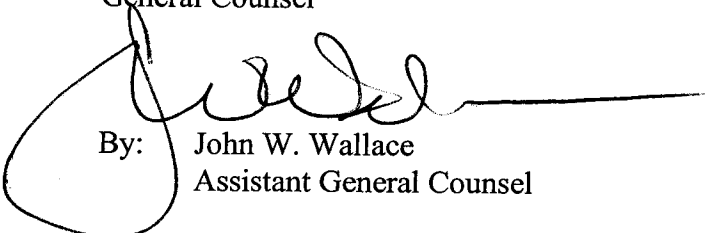
**Steps Seven and Eight: “Public Generally” and “Legally Required Participation” Exceptions**

You have not described a specific decision, thus we have no facts to which we can apply the exceptions in the Act. However, we have enclosed a copy of “Can I Vote” as further information for the council member. The facts you have presented do not suggest that the final steps of the conflict-of-interest analysis need be discussed, exceptions to the conflict-of-interest rules, are applicable to the situation you pose.

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

Sincerely,

Luisa Menchaca  
General Counsel

  
By: John W. Wallace  
Assistant General Counsel

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