



FAIR POLITICAL PRACTICES COMMISSION

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June 4, 2003

Darren Bogié
County of San Benito
Office of the County Counsel
481 Fourth Street, 2nd Floor
Hollister, CA 95023

**Re: Your Request for Advice
Our File No. A-03-105**

Dear Mr. Bogié:

This letter is in response to your request for advice on behalf of San Benito Planning Commissioner Anthony Freitas, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter should not be construed as advice on any conduct that may have already taken place. The Fair Political Practices Commission ("Commission") does not act as a finder of fact when it renders advice; this advice is applicable and confers immunity only to the extent that the facts provided to us are correct, and that all of the material facts have been disclosed. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Govt. Code section 83114.)

QUESTION

Does Planning Commissioner Freitas have a conflict of interest prohibiting his involvement in decisions of the Planning Commission for the County of San Benito, concerning a development proposal submitted by his sons' employer?

CONCLUSION

Based on the facts you provide, Mr. Freitas does not have a conflict of interest disqualifying him from making, participating in making, or influencing governmental decisions concerning the development proposal submitted by his sons' employer. Although a public official cannot participate in a governmental decision that has a personal financial effect on the official or a member of his or her immediate family, the Act does not prohibit you from participating in a governmental decision merely because the decision will financially affect your adult children.

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

FACTS

An applicant has submitted for planning commission approval a proposal to create a residential subdivision, second golf course, and hotel, around a golf course which the applicant currently owns within San Benito County (the "project"). Mr. Freitas is a member of the San Benito County Planning Commission. He has two adult sons who are employed by the applicant. The older of the two is in his late twenties and works as the grounds director for the golf course. He does not live in Mr. Freitas's household. The younger son is over 18 years old and works part-time as a salesperson in the pro shop of the golf course during the summers. The younger son is a student and resides in Mr. Freitas's household.² You state that neither son will receive any direct financial gain or compensation from the approval of the proposed project. You do not indicate whether either son will indirectly benefit financially from the approval of the proposed project.

ANALYSIS

Section 87100 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. 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. The general rule, however, is that a conflict of interest may occur whenever a public official makes a governmental decision which has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

1. & 2. Is Mr. Freitas a public official who will make, participate in making, or influence a governmental decision?

The conflict-of-interest prohibition only applies to public officials. As a planning commissioner for the County of San Benito, Mr. Freitas is a public official. (Section 82048; regulation 18701(a).) As a planning commissioner, unless disqualified under the conflict-of-interest provisions of the Act, Mr. Freitas will make, participate in making, and influence governmental decisions, including decisions before the Planning Commission concerning the pending residential development.

3. What are Mr. Freitas's economic interests?

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. These economic interests are described at regulations 18703.1 through 18703.5, inclusive. The specific economic interests identified by the facts you supply is Mr. Freitas's interest in his personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is known as the "personal financial effects" rule (section 87103, regulation 18703.5).

² Information regarding Mr. Freitas's two sons was provided in your initial request for written advice and in subsequent telephone calls with the Commission's staff, dated May 20, 2003.

An official's "immediate family" means the official's spouse and dependent children. (Section 82029.) A child is considered "dependent" for purposes of the Act if the child is under 18 years old, *and* can be claimed as a dependent for federal income tax purposes. (*Ovrom* Advice Letter, No. A-02-254; *Nebb* Advice Letter, No. I-00-017; *Doane* Advice Letter, No. A-97-211.) Mr. Freitas's older son is not a member of his household *and* is not under 18 years of age. Mr. Freitas's younger son, although a member of his household, is a full-time college student *but is not*, however, under 18 years of age. Therefore, for purposes of the conflict-of-interest provisions of the Act, neither of these two individuals is considered to be a member of Mr. Freitas's immediate family. (*Grace* Advice Letter, No. A-96-372.)

Even though neither son is considered to be a member of Mr. Freitas's immediate family, potentially they could be sources of income to him (section 87103(c)) or have an effect upon Mr. Freitas's personal finances (regulation 18703.5). It does not appear from the facts you supply that Mr. Freitas's older son is a "source of income" to him. On the other hand, it is possible that Mr. Freitas's younger son may contribute financially through payment of rent, or other payments to offset household expenses associated with his residing in Mr. Freitas's household. There may also be a financial relationship between the two based on financial assistance provided in connection with the younger son's educational expenses. For instance, there might be an outstanding debt between the two owed in connection with tuition or other educational expenses.

Although you have not provided sufficient facts to offer advice in this regard, you should be aware that if the younger son contributes \$500 or more annually to Mr. Freitas or there is an outstanding debt between Mr. Freitas and his younger son aggregating \$500 or more, that son would be an individual who is a source of income to Mr. Freitas and would number among his economic interests. (Regulation 18703.3(a).) In such case, if the decision on the Project affects the younger son's finances in a manner that is considered material under our regulations, Mr. Freitas would have a conflict of interest potentially disqualifying him from participating in the decision on the Project.

Moreover, if the decision on the Project results in a benefit to the younger son's finances, whether in an amount considered material or not, and that benefit results in Mr. Freitas's personal finances increasing or decreasing in the amount of \$250 or more in any 12-month period, that is an effect deemed material under the Commission's regulations. (Regulation 18705.5.)³ In such case, Mr. Freitas would have a conflict of interest potentially disqualifying him from participating in the City Council's decision on the Project.

Finally, neither of Mr. Freitas's sons can be considered as a "source of a gift" for purposes of the Act. (Section 87103(e).) The definition of "gift" excludes gifts from an individual's child. (Section 82028(b)(3).)

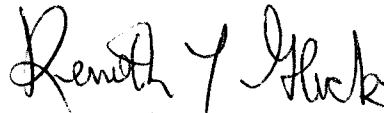
³ For example, assume there exists an agreement between father and son under which the son agrees to pay rent. If approval of the Project were to benefit the overall economic health of the project sponsor to the point that the son's wages increased, and as a result the son agreed to increase the amount of rent paid by \$25 per month, this would be a material financial effect upon Mr. Freitas's personal finances.

Provided Mr. Freitas economic interest in his personal finances, or in his son as a source of income, will not be materially financially affected by decisions concerning this project, he does not have a conflict of interest prohibiting his involvement in these decisions. The familial relationship between Mr. Freitas and his sons does not, by itself, create a conflict of interest for him.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Kenneth L. Glick
Counsel, Legal Division

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