



FAIR POLITICAL PRACTICES COMMISSION

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June 11, 2003

Rick Cook, Councilmember
City of Santa Paula
970 East Ventura Street
Santa Paula, CA 93060

**Re: Your Request for Advice
Our File No. A-03-114**

Dear Mr. Cook:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Is there a conflict of interest in your voting on a development while he is a member of the Santa Paula City Council?

CONCLUSION

You are presumed to have a conflict of interest in voting on the development because your residence is adjacent to the development and traffic flow is within 500 feet of your real property.

FACTS

Your city is in the process of meeting with a developer who has plans on developing 2,000 acres of land that is adjacent to your residence. Moreover, the projected development's boundary line is also within 500 feet of your property. The majority of the traffic flow leading into and out of this development will also be within 500 feet of your home, and will financially affect its value. You project that your property value will change by tens of thousands of dollars, regardless of whether or not the developer builds within 500 feet of your residence.

For these reasons, you have recused yourself from any upcoming votes on this project; however, the developer claims that because the project is so large, you should not have a conflict of interest.

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

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "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).) Specifically, 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*.

A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; regulation 18700(a).) The Commission has adopted a standard, eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).) All of the first six steps must be met for a conflict of interest to exist.

Step 1 - Public official.

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; regulation 18700(b)(1).) "Public official" is defined as "every member, officer, employee or consultant of a state or local government agency . . ." (§ 82048.) As a member of the City Council of Santa Paula, you are a "public official" for purposes of the Act (see sections 82041, 82048), and the conflict-of-interest rules apply to you.

Step 2 - Making, participating in making, or using an official position to influence governmental decisions.

The Act's conflict-of-interest provisions apply only where a public official make[s], participate[s] in making or in any way attempt[s] to use his or her official position to influence a governmental decision in which he or she knows or has reason to know the official has a financial interest. (Section 87100; regulation 18700(b)(2).) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision, which also provide certain exceptions. (Regulations 18702-18702.4.)

"A public official 'makes a governmental decision' . . . when the official, acting within the authority of his or her office or position:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency. . . ." (Regulation 18702.1(a).)

Based on your facts, you would be acting within the authority of your office or position as a member of the Santa Paula City Council in voting on the development, and therefore would be “making a governmental decision” as defined in the Act.²

However, a public official is not attempting to use his or her official position to make a governmental decision of an agency covered by that subsection, if the official appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official’s “personal interests” include an interest in real property which is wholly owned by the official. (Regulation 18702.4 subd. (b)(1)(A)) However, if this exception applies, you must be careful to avoid giving the impression that you are speaking in the interest of any person or group other than yourself and your immediate family, or that you are acting in any official capacity. (*Harper* Advice Letter, No. A-97-325.)

Therefore, if you are disqualified from participating in the development decision you would be allowed to appear on your own behalf as an individual and not as a public official before the Santa Paula City Council to represent your personal interests.

Step 3 - Identifying the 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 Section 87103 and regulations 18703-18703.5. Identifying which, if any, of these economic interests are held by a public official is the third step in analyzing a potential conflict of interest under the Act. (Reg. 18700, subd. (b)(3).) There are five kinds of such economic interests, but the one you have asked about concerns 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 (§ 87103(b); reg. 18703.2);

² If a public official is enumerated in section 87200 (87200 filer) and he or she has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, verbally identify each type of economic interest involved in the decision as well as details of the economic interest as discussed in regulation 18702.5(b)(1)(B) on the record of the meeting; (2) recuse himself or herself, and (3) leave the room for the duration of the discussion and/or vote on the item. For closed sessions, consent calendars, absences and speaking as a member of the public regarding personal interests, special rules found in regulation 18702.5 (see enclosed), subdivisions (c) and (d) apply. (Section 87105.) Since a city council member is enumerated in section 87200, these requirements apply to you.

Your facts indicate that you have an economic interest in your residence of \$2,000 or more. (§ 87103(b); reg. 18703.2.) You have indicated you own real property within 500 feet of the development that will be considered by the Santa Paula City Council.

Step 4 - Determining whether the public official's economic interest is directly or indirectly involved in the governmental decision.

Once an official identifies an economic interest, he or she must determine whether it is "reasonably foreseeable" that the decision(s) in question will have a "material financial effect" on that interest. First, the official must decide whether the economic interest is directly or indirectly involved in the decision. (Reg. 18700, subd. (b)(4).) Having established the degree of involvement, the official can then identify the materiality standard appropriate to the circumstances. (Reg. 18700, subd. (b)(5).) The official then knows what financial effect would be considered "material" under the Act. Finally, the official must decide whether such a material financial effect is a "reasonably foreseeable" consequence of the decision(s) at issue. (Reg. 18700, subd. (b)(6).)

Real property in which a public official has an economic interest is directly involved in a governmental decision if: "[t]he real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. (Reg. 18704.2 subd. (a)(1).)

The facts indicate the property you own is directly impacted by the change in the development proposal(s) because the real property in which you have an interest is located within 500 feet of the boundaries of the development's property line. Therefore, under this regulation, your economic interest is directly involved.

Steps 5 & 6 - What is the applicable materiality standard and is it reasonably foreseeable that the financial effect of the governmental decision upon your economic interest will meet this materiality standard?

Knowing the degree to which the economic interest is involved in the city council's decision, the next step is picking the appropriate standard for evaluating the materiality, that is, the importance of the effect of the decision on the economic interest. (Reg. 18700(b)(5).) The sixth, and usually most important step, in deciding whether you have a conflict of interest is using the materiality standards (from step 5) to decide if a *material* financial effect on one or more of your economic interests is reasonably foreseeable as a result of the decision. (Reg. 18706.) As used here, "reasonably foreseeable" means "substantially likely." (Reg. 18706; *In re Thorner* (1975) 1 FPCC Ops. 198.) 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. (*Ibid.*)

For directly involved real property, the financial effect of a governmental decision regarding a real property interest is presumed to be material. (Reg. 18705.2, subd. (a)(1).)

You have stated in your request for advice that the development within the 500-foot boundary of your real property will either decrease or increase its value. Because your property is directly involved with the governmental decision, the financial effect is presumed to be material and reasonably foreseeable. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property. (*Id.*) You provide no facts to rebut the above presumption.³

Steps 7 & 8- The “Public Generally” and “Legally Required Participation” Exceptions

Step seven is an exception that applies where the reasonably foreseeable and material financial effect on the official’s economic interest is not distinguishable from the effect on the public generally.

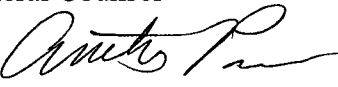
In order to fit within this exception, the public official must demonstrate that the governmental decision affects the public official’s economic interests in a manner which is indistinguishable from the manner in which the decision will affect a significant segment of the public generally. (Regulation 18707, subd. (a).)

The governmental decision will affect a “significant segment” of the public generally if, with respect to real property, the decision also affects either ten percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency, or the district the official represents; or 5,000 property owners or homeowners in the jurisdiction of the official’s agency. You have provided no facts to indicate either the ten-percent or 5,000-person threshold is met. In addition, you would have to demonstrate that the significant segment will be affected in “substantially the same manner” as you. You have provided no facts supporting the application of the “public generally” exception.

Step eight is an exception that applies when the official is legally required to participate in the decision. You have not supplied any facts to suggest that this exception applies to your facts. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: 
Anthony Pane
Intern, Legal Division

Enclosure

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³ We note that even if the developer never builds a house within 500 feet of your property, you state that the majority of the traffic flow in and out of the development will be within 500 feet of your residence. Therefore, this presumption of materiality applies even if no house is built within 500 feet of your property.