



## FAIR POLITICAL PRACTICES COMMISSION

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January 31, 2007

Jane Mobaldi  
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City of Carlsbad  
1200 Carlsbad Village Drive  
Carlsbad, California 92008-1949

**RE: Your Request for Advice  
Our File No. A-07-002**

Dear Ms. Mobaldi:

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

### QUESTION

May a planning commissioner participate in any governmental decision initiated by customers of her small business who have provided her income that aggregates to \$500 or more within the 12 months prior to decision?

### CONCLUSION

No. The planning commissioner has a potential conflict of interest and may not participate in any governmental decisions before the planning commission involving customers of her small business who have provided income to her that aggregates to \$500 or more within the 12 months prior to the decision.

### FACTS

Farrah Douglas is a member of the City of Carlsbad Planning Commission (the "Planning Commission"). Commissioner Douglas was appointed to the Planning Commission in December 2006 and participated in her first Planning Commission hearing on January 3, 2007. Commissioner Douglas and her husband are the sole owners, operators, and directors of a printing business, CDS Printing, incorporated as

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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.

Douglas Digital Enterprises, in which Commissioner Douglas has a 50 percent interest. CDS Printing does promotional printing for three clients who may have projects coming before the Planning Commission for approval during Ms. Douglas's term. It is very likely that those client entities will have provided income to CDS Printing in an aggregate amount of \$1,000 or more (\$500 would be Commissioner Douglas's one-half interest) within 12 months prior to the time any decision is to be made.

CDS Printing has done work on an "as-required" basis for at least the past five years for La Costa Glen, a full-service retirement community; Plaza Camino Real, a regional shopping mall located in the City of Carlsbad; and Grand Pacific Resorts, a timeshare and hotel development in Carlsbad. CDS Printing will likely continue to receive income from these three clients regardless of whether or not they go forward with applications for discretionary land use approvals before the Planning Commission. Any approval of applications from these clients could potentially generate additional needs for printing services to promote their new projects. The following applications are contemplated:

(1) La Costa Glen has a pending application for approval of an approximately 20,000 square foot office building that will require numerous discretionary land use approvals by the Planning Commission.

(2) Plaza Camino Real has recently had meetings and discussions with the City of Carlsbad planning staff concerning redevelopment of the existing regional shopping mall to update it in keeping with current "lifestyle centers." There is no preliminary or formal application for the redevelopment pending at this time.

(3) Grand Pacific Resorts owns a restaurant pad adjacent to the existing hotel and timeshare units that is targeted for future development by an as yet unknown entity. Most likely, the restaurant owner will be applying with Grand Pacific Resort's consent as the landowner. No permit applications are pending at this time.

La Costa Glen has averaged approximately \$12,000 per year in gross income to CDS Printing in the past few years. Plaza Camino Real has contributed an average gross income of approximately \$3,000 per year. Grand Pacific Resorts has contributed gross income to CDS Printing from \$78,000 to \$175,000 per year.

### 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).) 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 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).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

**Steps 1 & 2: Is Commissioner Douglas a “public official” making, participating in making, or influencing governmental decisions?**

As a member of the Carlsbad Planning Commission, Commissioner Douglas is a public official under the Act. (Section 82048.)<sup>2</sup> Consequently, she may not make, participate in making, or otherwise use her official position to influence any decisions that will have a reasonably foreseeable material financial effect on any of her economic interests. Commissioner Douglas will be called upon to consider whether the Planning Commission should approve or disapprove the adoption of certain proposals related to land use. Therefore, she will be making, participating in making or otherwise using her official position to influence governmental decisions.

**Step 3: Does Commissioner Douglas have a potentially disqualifying economic interest?**

A public official has a financial interest in a decision within the meaning of section 87103 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 one of five enumerated economic interests, including:

- (1) An economic interest in a *business entity* in which he or she has a direct or indirect investment 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));
- (2) 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);

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<sup>2</sup> Section 87105 provides that when a public official who holds an office specified in section 87200 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, orally 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), 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 regulations 18702.5(c) and 18702.5(d) apply. This section is applicable to Commissioner Douglas since members of planning commissions are specified in Section 87200.

- (3) 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);
- (4) An economic interest in any *source of gifts* to him or her if the gifts aggregate to \$390 or more within 12 months prior to the decision (Section 87103(e); regulation 18703.4);
- (5) 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).

**Sources of Income:** Commissioner Douglas has a potentially disqualifying economic interest in her business as a source of income. Additionally, because she owns at least ten percent of the business she has an economic interest in each of the customers of her printing business from whom she has received income or promised income that aggregates to \$1,000 or more within 12 months prior to the decision being made. (Section 82030(a).) Therefore, based upon the facts you provided, Commissioner Douglas has an economic interest in La Costa Glen, Plaza Camino Real, and Grand Pacific Resorts, as each of these entities have contributed or will have provided at least \$500 in income to Commissioner Douglas within 12 months prior to the decision being made.<sup>3</sup>

**Business Entities:** A "business entity" is defined as "any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association." (Section 82005.) Commissioner Douglas has a potentially disqualifying economic interest in her printing business, CDS Printing assuming she has an investment of \$2,000 or more and because she and her husband are the sole owners, operators, and directors. (Section 87103(c) and (d), regulation 18703.1(a) and (b).)

You have not provided any facts indicating any other economic interests. Accordingly, our analysis is limited to the above identified economic interests.

#### **Step 4: Are the Potentially Disqualifying Economic Interests Directly or Indirectly Involved in the Governmental Decisions?**

Regulation 18704.1 states that a person, including business entities and sources of income, is directly involved in a governmental decision if 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

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<sup>3</sup> Commissioner Douglas owns a 50% pro rata share of \$1,000 which equals \$500.

person is the subject of the 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.”

If a source of income or business entity is not directly involved in the governmental decision, it is deemed to be indirectly involved.

Under the facts presented, because La Costa Glen, Plaza Camino Real, and Grand Pacific Resorts would be initiating the proceedings before the Planning Commission and because they would be the named parties and/or the subjects of proceedings before the Planning Commission, they are directly involved.

Commissioner Douglas’s business would be an indirectly involved economic interest as you have given no indication that her business would be initiating proceedings before the Commission nor would her business be the named party and/or subject of any proceedings before the Commission.

#### **Step 5: Applicable Materiality Standard**

A conflict of interest may arise only when the reasonably foreseeable impact of a governmental decision on a public official’s economic interests is material. (Regulation 18700(a).) Different standards apply to determine whether a reasonably foreseeable financial effect on an economic interest will be material, depending on the nature of the economic interest and whether that interest is directly or indirectly involved in the agency’s decision.

**Sources of Income:** Regulation 18705.3 provides the materiality standard for an economic interest in persons who are sources of income. For a source of income that is directly involved in a governmental decision, any reasonably foreseeable financial effect is deemed material. (Regulation 18705.3(a).)

**Business Entities:** Regulation 18705.1 provides the materiality standard for an economic interest in a business entity. For a relatively small business<sup>4</sup> that is indirectly involved in a governmental decision such as Commissioner Douglass’s business, the standard is provided under regulation 18705.1(c)(4):

“(4) . . . the financial effect of a governmental decision on a business entity is material if it is reasonably foreseeable that:

“(A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year in the amount of \$20,000 or more; or

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<sup>4</sup> You have not given any facts indicating the size of the business. For purposes of illustration, we assume the business would fall under the criteria set forth in regulation 18705.1(c)(4).

- “(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or
- “(C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.”

### **Step 6: Foreseeability**

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. As used here, “reasonably foreseeable” means “substantially likely.” (Regulation 18706; *In re Thorner* (1975) 1 FPPC 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.*) Please note that the Commission does not act as a finder of fact when providing advice (*In re Oglesby, supra*), therefore, the foreseeability of a particular financial effect is a determination that must be left, in most instances, to the informed judgment of the public official.

Because the governmental decisions you have inquired upon directly involve La Costa Glen, Plaza Camino Real, and Grand Pacific Resorts, it is substantially likely that there will be some sort of financial effect upon these entities as a result of the decisions. Under these circumstances, it is reasonably foreseeable that the governmental decisions you have described would have a material financial effect on Councilmember Douglas's economic interest. Because of this, Commissioner Douglas is prohibited from participating in the decisions due to a conflict of interest.

Because Commissioner Douglas is prohibited from participating in decisions involving La Costa Glen, Plaza Camino Real, and Grand Pacific Resorts and you have not provided enough facts regarding any potential financial effect on her business, we need not analyze the reasonable foreseeability of a material financial effect on her business. However, Commissioner Douglas will need to keep in mind the possibility that there may be a reasonably foreseeable financial effect upon her business even when the decisions she is called upon to participate in do not directly involve customers of her business if it is reasonably foreseeable that the decisions will have a material financial effect on her business.

**Steps 7 & 8: Public Generally and Legally Required Participation**

An official who otherwise has a conflict of interest in a decision may still participate under the “public generally” exception. This exception applies when the financial effect of a decision on a public official’s economic interests is substantially the same as the effect on a significant segment of the public.<sup>5</sup>

The “legally required participation” rule applies when the official’s participation in a governmental decision is legally required. (Section 87101; regulation 18708.) You have not presented any facts indicating that these exceptions are applicable to your situation; therefore we do not address them here.

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

Sincerely,

Luisa Menchaca  
General Counsel



By: Sukhi Brar  
Counsel, Legal Division

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<sup>5</sup> There is an exception in the Act applicable to retail sales. You have not provided any facts suggesting the possible application of this exception. However, we have enclosed a copy of the relevant statute and regulation for your information. (Section 87103.5, regulation 18707.5.) If you believe this exception may apply you should seek further assistance.