



FAIR POLITICAL PRACTICES COMMISSION

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January 6, 2009

Daniel J. McHugh, Esq.
City Attorney
City of Redlands
P.O. Box 3005
Redlands, CA 92373-1505

Re: Your Request for Informal Assistance
Our File No. I-08-203

Dear Mr. McHugh:

This letter responds to your request for advice on behalf of City of Redlands Councilmember Jerry Bean regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your question seeks general guidance and is not limited to a specific governmental decision, we are treating your request as one for informal assistance.² Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Also, please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

QUESTION

May Councilmember Bean take part in city council decisions under the Act's "legally required participation" exception, despite an otherwise disqualifying conflict of

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

interest, if the councilmember's vote is necessary to break a tie in the votes of the remaining four council members?

CONCLUSION

No; Councilmember Bean cannot invoke the "legally required participation" exception to cast a tie-breaking vote when he is otherwise disqualified from voting on a governmental decision. Section 87101 of the Act explicitly states that the fact that an official's vote is needed to break a tie does not make his or her participation legally required for purposes of invoking the exception.

FACTS

Councilmember Bean owns a newspaper publishing business and has received income for advertisements from Walgreens during the past 12 months. Currently, an applicant is seeking a variance and a conditional use permit for a proposed Walgreens pharmacy and associated retail shops (the "Project") within the Town Center Historic District of the City's Downtown Specific Plan No. 45. More specifically, the applicant is seeking a variance from the parking requirements of Specific Plan No. 45 and a conditional use permit to allow a drive-through pharmacy as part of the Walgreens building.

The applicant's requests have been previously denied by the Redlands Planning Commission. The applicant has appealed the planning commission's decision to the Redlands City Council. The city council is comprised of five members elected at large. Councilmember Bean has determined that Walgreens is a source of income to him and that he is disqualified from making, participating in making, or using his official position to influence the making of any decision with respect to the Project. Because of Councilmember Bean's disqualifying conflict of interest, only four council members are participating in the appeal proceedings. These council members recently split their votes 2-2 on the variance and conditional use permit requests.

ANALYSIS

For the purpose of this analysis, you have not asked for our assistance in determining whether Councilmember Bean is prohibited from making, participating in making, or influencing a particular governmental decision. As the facts have been submitted, Councilmember Bean has already made the determination that he is disqualified from taking part in decisions by the city council pertaining to the Project. At this time, you ask only whether Councilmember Bean would be permitted to take part in the city council's decisions under the "legally required participation" exception in light of

the fact that Councilmember Bean's vote is necessary to break a tie in the votes of the remaining four council members.³

The "legally required participation" exception is rooted in Section 87101 of the Act, which reads as follows:

"Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section."

In addition, Regulation 18708, which interprets Section 87101, states in pertinent part:

"(c) This regulation shall be construed narrowly, and shall:


"(1) Not be construed to permit an official, who is otherwise disqualified under Government Code section 87100, to vote to break a tie."

In light of both the statutory and regulatory language, the "legally required participation" exception cannot be invoked by Councilmember Bean to allow him to cast a tie-breaking vote in decisions pertaining to the Project and, more specifically, the decisions regarding the applicant's variance and conditional use permit entitlement requests.

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

Sincerely,

Scott Hallabrin
General Counsel


By: Brian G. Lau
Counsel, Legal Division

BGL:jgl

³ For this purpose of this analysis, we will assume that Councilmember Bean has a disqualifying conflict of interest in the governmental decision. If Councilmember Bean needs additional assistance in determining whether he indeed has a disqualifying conflict of interest, it is advisable that he seeks further advice providing all relevant facts.