



FAIR POLITICAL PRACTICES COMMISSION

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December 18, 2012

Roxanne Diaz
City Attorney
Richards Watson Gershon
355 South Grand Ave., 40th Floor
Los Angeles, CA 90071-3101

Re: Your Request for Informal Assistance
Our File No. I-12-169

Dear Ms. Diaz:

This letter responds to your request for advice on the behalf of Mayor Pro Tem Elaine Holmes regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ 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.) Our advice is limited to the provisions of the Act, and we do not analyze areas of law outside the Act such as common law conflict of interest or the Brown Act. Additionally, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, 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.

Because your question is general in nature, we are treating this as a request for informal assistance.²

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).)

QUESTIONS

1. If Mayor Pro Tem Holmes sells her Rancho Santana Property through the use of a real estate broker, will she have an economic interest in that property that could disqualify her from participating in the proposed Goldenvoice Application?
2. If Mayor Pro Tem Holmes sells the property will the purchaser be a source of income to her that could disqualify her from participating in the proposed Goldenvoice application if the purchaser is not affiliated with the Goldenvoice application?
3. Under Question 2, how long will Mayor Pro Tem Holmes retain a source of income economic interest in the purchaser of the Rancho Santana Property?

CONCLUSIONS

1. No. If Mayor Pro Tem Holmes sells the Rancho Santana Property she will no longer have an interest in the property valued at \$2,000 or more. Therefore, she will not have an economic interest in the property. This would be the case whether she used a broker or not.
2. Yes. The purchaser of the Rancho Santana Property will be a source of income that could disqualify Mayor Pro Tem Holmes from participating in the proposed Goldenvoice Application if it is reasonably foreseeable that the governmental decision will have a material financial effect on that source of income.
3. Mayor Pro Tem Holmes will have a source of income economic interest in the purchaser of the home until twelve months have passed where she has not received a payment for the purchase aggregating to \$500 or more in that period.

FACTS

Pursuant to a special event permit and agreement, Goldenvoice, LLC (“Goldenvoice”) holds two annual music festivals in the City of Indio (the “City”), the Coachella Valley Music and Arts Festival and the Stagecoach: California’s Country Music Festival. Goldenvoice has a permit to hold the Festivals on two unspecified weekends in 2013. The Festivals have been held on property commonly known as the Empire Polo Club grounds and nearby property located in the City. Currently, the proposed permit limits Coachella Festival attendees to 95,000 persons per day and Stagecoach Festival attendees to 65,000 persons per day. The City allows up to 10,200 vehicles to park on authorized “car camping” locations for the Coachella Festival and up to 2,500 recreational vehicles and 750 vehicles for the Stagecoach Festival.

On August 22, 2012, Goldenvoice filed applications with the City to allow additional music festivals to be held for up to five weekends each year through 2030. The application (“Goldenvoice Application”) will consist of a zone text amendment to the Indio Municipal Code, possibly a festival event permit/agreement and/or a development agreement, and a related

Environmental Impact Report in addition to any other related actions that may be necessary. The City anticipates that the Goldenvoice Application will be heard by the City Council in approximately March or April of 2013.

Mayor Pro Tem Holmes has an ownership interest in property located at 81566 Rancho Santana Drive in La Quinta ("Rancho Santana Property"). This property is not part of the Empire Polo Club grounds on which the Festivals are held, but is located within 500 feet of property that will be the subject of the Goldenvoice Applications. City Staff considers property rented or leased to provide parking for a Festival to be part of the overall Festival "venue." Goldenvoice has previously rented or leased property for Festival Parking within 500 Feet of the Rancho Santana Property. Mayor Pro Tem Holmes currently leases out the Rancho Santana Property. While the Rancho Santana Property is not formally for sale (that is, the property is not listed with a real estate broker), Mayor Pro Tem Holmes will retain her real estate broker to sell it if anyone shows interest in purchasing the property.

ANALYSIS

Question 1

Section 87103 and Regulation 18703.2 define an economic interest to include real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2(a). If Mayor Pro Tem Holmes sells the property, she will no longer have a "direct or indirect interest in the property." Without an ownership interest in the real property, it will no longer qualify as an economic interest to her. This would be the case whether she used a broker or not.

Question 2

Section 82030 defines income as:

"(a) 'Income' means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title."

Accordingly, any payment Mayor Pro Tem Holmes receives from the sale of her property is income to her. For purposes of disqualification under Sections 87100 and 87103, Mayor Pro Tem Holmes has an economic interest in the source of that income if she receives \$500 or more from the source in the sale of the property. (See Regulation 18703.3.)

To determine if she has a conflict of interest related to that economic interest in participating in a governmental decision, assuming that interest is not directly involved in the decision, a conflict would only result if the decision will have a reasonably foreseeable material financial effect on that source of income. The determination as to whether the reasonably foreseeable financial effect is material is dependant on the source. The materiality standards for indirectly involved sources of income are set forth in Regulation 18705.3(b). Should you need further assistance in making this determination once a governmental decision and an economic interest are identified, please feel free to submit another request for advice providing all the relevant facts specific to the governmental decision at issue.

Question 3

Regulation 18703.3 provides that a public official has an economic interest in any person from whom he or she has received income aggregating \$500 or more within 12 months prior to the governmental decision. Accordingly, Mayor Pro Tem Holmes will retain a source of income economic interest in the purchaser of her property until 12 months have passed where she has not received payments of at least \$500 from the purchaser.

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Keisha O. White
Legal Intern, Legal Division

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