



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 3, 2016

Deborah L. Schwartz
315 Meigs Road, Suite A355
Santa Barbara, CA 93109

Re: Your Request for Advice
Our File No. A-16-142

Dear Ms. Schwartz:

This letter responds to your request for advice regarding your duties as a Santa Barbara Planning Commissioner under the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTIONS

1. Will you have a conflict of interest in a decision on a project proposed by John Donaldson if you previously worked (as a subcontractor) on a different project of Mr. Donaldson's?
2. Will you have a conflict of interest in a decision on a project on which Hochhauser Blatter Architects ("Hochhauser") works if you previously worked as a subcontractor for Hochhauser?

CONCLUSIONS

1. Since you contracted with Hochhauser and Hochhauser controlled your employment relationship, Hochhauser is a source of income to you, not Mr. Donaldson. Thus, you will not have a conflict of interest in applications filed by Mr. Donaldson.
2. However, if Hochhauser works on a project coming before you (including one proposed by Mr. Donaldson), Hochhauser is explicitly involved and you will have a conflict of interest in the decision.

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.

FACTS

You are an appointed Planning Commissioner with the City of Santa Barbara in your final term which ends December 31, 2017.

Recently you were hired by a private property owner as an independent contract consultant on a land use development project (Project 1.) You are being paid by Hochhauser Blatter Architects (“Hochhauser”) as a subcontractor to the client/developer John Donaldson. Project 1 is a rental housing development project located at the corner of Santa Barbara and De la Guerra Streets. Approval or denial of this project falls within the jurisdiction of the City’s Historic Landmarks Commission or, if appealed, the City Council and not the Planning Commission on which you serve.

Mr. Donaldson is working on a separate development project in the City of Santa Barbara that eventually would be heard by the Planning Commission. The upcoming project (hereafter “Project 2”) is a rental housing development project located at the corner of Canon Perdido and De la Vina Streets. The projected date for that hearing is unknown at this time.

In a correspondence dated July 22, and July 28, 2016, you provided the following additional information:

1. You have been hired and paid by only Mr. Hochhauser. Since you were not party to the contract discussions between Mr. Hochhauser and Mr. Donaldson, you assume that Mr. Donaldson has been supportive of your hiring. You stated that it has solely been Mr. Hochhauser who has controlled your contractual relationship and who could terminate your contract.
2. Regarding Project 2, you stated currently Mr. Hochhauser is the designated architect. You also clarified that you have not been hired to work on this project.
3. You believe that Mr. Donaldson will continue to retain Hochhauser on the project to appear before the Planning Commission and that Mr. Hochhauser will appear on behalf of Mr. Donaldson and would be named in the materials presented in the Planning Commission.
4. You believe that in relation to Hochhauser’s other projects, both of Mr. Donaldson’s Santa Barbara projects are far smaller in scope and financial benefit.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a “financial interest” in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests. Section 87103 also sets forth the interests from which a conflict of interest may arise under the Act.

- Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a).)

- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- Your personal finances, including those of your immediate family. (Section 87103.)

You have an interest in your consulting business as owner of the business. (Section 87103(a).) Moreover, you have an interest in your business as the proprietor of the firm (Section 87103(d)) and as a source of income because you have received in excess of \$500 from the firm. (Section 87103(c).)

In addition, under Section 82030(a), if a public official owns a 10-percent or greater interest in a business, a source of income to that business is also a source of income to the official. As an initial question, then, we must determine who is the source of your consulting income, Hochhauser or Mr. Donaldson. Generally, the Commission advises that a prime contractor is the sole source of income to subcontractors, even though subcontractors are normally paid from funds collected from the contractor's client. (See *Sauer* Advice Letter, No. A-95-373.) Based on your supplemental facts, you have been hired and paid by only Mr. Hochhauser and Mr. Hochhauser solely controls your contractual relationship. Therefore, the source of your income is Hochhauser and not Mr. Donaldson. Thus, with respect to the decision at hand, you have interests in your business and Hochhauser, and your personal finances.

Foreseeability

Under the Act, an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision, and an interest is "explicitly involved" if the interest is a named party in, or subject of, the decision. (Regulation 18701(a).) As pertinent to your facts, a financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest.

As an initial matter, neither your business nor your personal finances will be foreseeably affected by the decision since you have no connection to Project 2. Thus, we do not further analyze these financial interests.

Materiality

Regulation 18702.3 sets forth the standard for materiality applicable to the effect of a decision on an official's interest in a source of income. Regulation 18702.3(a)(4) provides that if the source of income is a business entity, materiality is determined pursuant to the standard for materiality for the effect of a decision on an official's interest in a business entity contained in Regulation 18702.1. Regulation 18702.1(a) provides:

“The reasonably foreseeable financial effect of a governmental decision on a business entity in which an official has a financial interest identified in Section 87103(a) or (d) is material whenever the business entity:

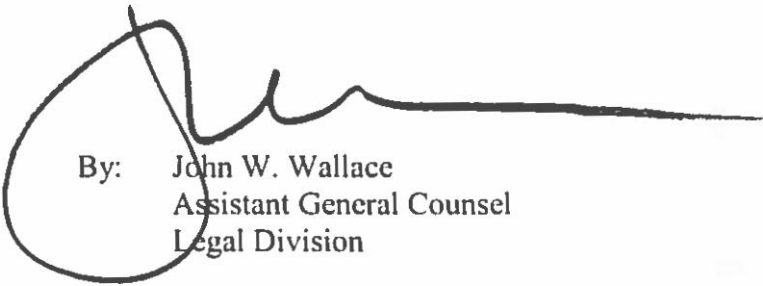
“(1) Initiates the proceeding in which the governmental decision will be made by filing an application, claim, appeal, or request for other government action concerning the business entity.”

Hochhauser is a source of income to you. Since Hochhauser is working on Project 2, will appear on behalf of Mr. Donaldson at the Planning Commission hearing, and would be named in the materials presented to the Planning Commission, Hochhauser is explicitly involved in the decision and disqualification is required. (*Noble* Advice Letter, No. 1-09-005; *Houston* Advice Letter, No. 1-13-031.)

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

Sincerely,

Hyla P. Wagner
General Counsel



By: John W. Wallace
Assistant General Counsel
Legal Division

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