



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

October 4, 2016

Keith F. Collins  
Jones & Mayer  
3777 N. Harbor Blvd  
Fullerton, CA 92835

Re: Your Request for Advice  
**Our File No. A-16-197**

Dear Mr. Collins:

This letter responds to your request for advice on behalf of Whittier City Councilmember Bob Henderson regarding his duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

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.

### QUESTION

May Councilmember Henderson make, participate in making, or influence a decision regarding the historic landmark designations of one or more properties within 500 feet of property he owns on which he operates his insurance business?

### CONCLUSION

Because the decisions will not affect the value of the councilmember's business and will not affect the value of his property, the councilmember may make, participate in making, or influence the decisions regarding the historic landmark designations.

### FACTS

Your office serves as legal counsel to the City of Whittier. Under a local ordinance, the city council can designate buildings located on certain properties in the City as historic landmarks, which would require those properties to be maintained in a manner that preserves their historical appearance.

---

<sup>1</sup> 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.

Councilmember Henderson owns an office building at 6548 Bright Ave, Whittier where he operates an insurance agency. This property is within 500 feet of the following properties:

- 13106 Bailey, a Baptist church
- 13222 Bailey, a Methodist church
- 13205 Philadelphia, a Friends Christian church

The buildings located on each of these three properties could potentially be designated as a historical landmark by the city council, and all four properties are located within the City's Uptown Specific Plan - an area that contains commercial, retail, and residential uses.

Your office does not believe that it is reasonably foreseeable that a council vote to designate the buildings on these three properties as historical landmarks would have a material financial effect on the Councilmember's business and/or property interest. The City hired an experienced consultant to assist with putting together the list of properties for potential historical landmark designation. The consultant informed your office that in all her years in this field she has never seen any data that indicates designating a building on a property as a historical landmark has any effect, positively or negatively, on surrounding property or business values. For this reason, your office feels that it is not reasonably foreseeable or material that the council's decision to designate certain buildings as historical landmarks will have a financial effect on the councilmember's interests.

### 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. Interests from which a conflict of interest may arise are defined in Section 87103 and include the following:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official including promised income, which aggregates to \$ 500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in a source of gifts to the official if the gifts aggregate to \$460 or more within 12 months prior to the decision. (Section 87103(e).)
- An interest in the official's personal finances, including those of the official's immediate family. This is known as the "personal financial effects" rule.<sup>2</sup> (Section 87103.)

---

<sup>2</sup> However, Regulation 18702.5 which provides that materiality standard for a disqualifying financial effect on an official's personal finances provides that if the governmental decision also affects a business entity or real property

The specific financial interests relevant to Councilmember Henderson are:

1. **Business Entity:** Councilmember Henderson's Insurance Business (Section 87103(a) and (d).)
2. **Real Property:** the office building at 6548 Bright Avenue in which he operates the insurance business. (Section 87103(b).)
3. **Sources of Income:** Both his insurance business and any clients of his business. (Section 87103(c).) We have not analyzed potential conflicts of interest related to clients who are sources of income because you have not provided facts pertaining to any clients.

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. Our focus is on Councilmember Henderson's interests in his business entity, business entity as a source of income, and real property.

#### *Foreseeability and Materiality*

*Business Interests:*<sup>3</sup> The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. (Regulation 18701.) Where the interest is explicitly involved, a financial effect is presumed reasonably foreseeable. Where the financial interest is not explicitly involved in a decision, such as here, the foreseeability standard is whether the financial effect can be recognized as a "realistic possibility and more than hypothetical or theoretical." (Regulation 18701(b).)

Regulation 18702.1(b) sets forth the applicable materiality standard for a business interest under a general regulation. Regulation 18702.1(b) states as follows, in pertinent part:

"For a governmental decision not identified in subdivision (a), the financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in . . . the value of a privately-held business entity."

Nothing in your facts suggest that the decisions to designate properties near the councilmember's office as historical properties will contribute to a change in the value of his privately-held business.

---

in which the official has a financial interest, the personal finances standard does not apply and materiality is determined under Regulation 18702.1 (business interest) or 18702.2 (real property). (Regulation 18702.5(c).) Thus, we do not further analyze possible effects on personal finances.

<sup>3</sup> 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.

*Real Property:* A financial effect on real property is material if it meets any of the standards in Regulation 18702.2(a)(1) through (12). The standards relevant to the decision in question are:

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

\* \* \*

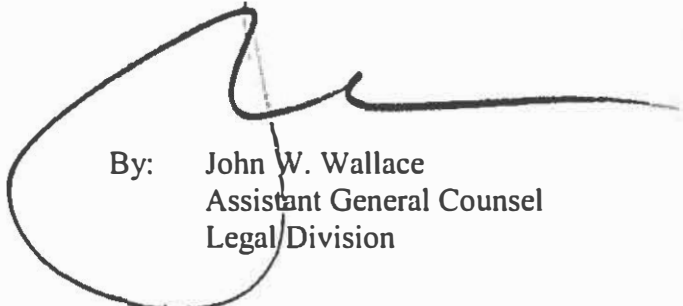
“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”<sup>4</sup>

Again, your facts do not suggest any changes to the neighborhood identified in subdivision (a)(10). Nor would it appear that the decisions will affect the value of the councilmember’s office building. Consequently, based on your facts, the councilmember would not have a conflict of interest in the decision.

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

JWW:jgl

---

<sup>4</sup> Were the property in question is residential, we would also consider subdivision (a)(11) which recognizes that a material financial effect would result if the property was located within 500 feet of the official’s real property. However, that provision provides that where the property is commercial property containing a business entity, the materiality standards are analyzed under Regulation 18702.1.