



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 24, 2017

Ann Schneider, Councilwoman
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030

Re: Your Request for Advice
Our File No. A-17-280

Dear Councilwoman Schneider:

This letter responds to your request for advice regarding your duties as a Councilwoman for the City of Millbrae under the conflict of interest provisions of the Political Reform Act (“the Act”).¹ Please note that we only provide 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. We are not a finder of fact when rendering assistance (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any assistance we provide assumes your facts are complete and accurate.

QUESTIONS

May you take part in decisions involving the rebuilding of the Millbrae Community Center?

CONCLUSION

Yes. While you are a named beneficiary of a family trust established by your parents, which consists of your parents’ residence, you do not have an economic interest in the trust or real property held in the trust because your parents, the trustees of the trust, may revoke the trust at their discretion and you are not currently receiving income from the trust. Accordingly, you do not have a disqualifying conflict of interest arising from the trust.

FACTS

A. Palm Avenue Property.

You live on Palm Avenue in Millbrae. Palm Avenue runs from Richmond Boulevard to Millbrae Avenue and forms the eastern side of Millbrae’s Central Park. The Palm Avenue Property is currently owned by your parents, and you will inherit the property under the terms of the

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.

Schneider Family Trust. You do not own the property or pay rent. Your parents have owned the home since 1974. They estimate its present value at over \$1.5 million. You will inherit the property under your parents' revocable trust. Your parents can modify the trust, but you cannot. You are not a trustee or co-trustee, and you receive no income from the trust. Your only interest in the trust is a beneficiary; specifically, to inherit the property when your parents are deceased.

The property is within 500 feet of Central Park where at least one of many proposed city park improvement projects are under consideration. The foundation of the former Community Center is located on the western end of Central Park. Based on your estimate, this structure is more than 500 feet from your home.

B. Proposed Changes to the Community Center.

The Millbrae Community Center was destroyed in an arson fire in July 2016. On November 28, 2017, the Millbrae Council voted to send a set of concepts to the next stage of rebuilding by hiring an architect, drafting plans and developing cost estimates. You recused yourself from the discussion and from Council Chambers. Future decisions regarding the rebuilding of the park will also come before the Millbrae Council.

You state that proposed changes outside the grassy area of the park would be more than 500 feet from your home. You state that Palm Avenue is a park access point. Because picnic tables are located there, Palm Avenue is the closest location for visitors to park and unload food and supplies for parties and play activities.

ANALYSIS

A. Legal Standard for Conflicts of Interest Under the PRA.

The Act's conflict-of-interest provisions ensure that public officials "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).) Specifically, 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. Interests from which a conflict of interest may arise are defined in Section 87103 and include the following:

- Any business entity in which the public official has a direct or indirect² investment worth two thousand dollars (\$2,000) or more. (Section 87103(a).)
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)

² "For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater." (Section 87103 [emphasis added].)

In this case, you have a potential conflict with your interest in the Schneider Family Trust (Section 87103(a)), and an interest in the Palm Avenue Property (Section 87103(b)).

B. No Interest in the Schneider Family Trust or the Palm Avenue Property Under the PRA.

The first question is whether you have an interest or investment in the Schneider Family Trust or the Palm Avenue Property. Regulation 18234 defines when an official has a direct, indirect, or beneficial interest in a trust, and provides the following (in pertinent part):

“(c) For purposes of determining whether an official has an economic interest in interests in real property, sources of income, and investments of a trust, the official has a direct, indirect, or beneficial interest in a trust if the official is:

“(2) A beneficiary and:

“(A) Presently receives income; or

“(B) Has an irrevocable future right to receive income or principal.

Applying Regulation 18234 to the facts you have provided, you are a beneficiary of the Schneider Family Trust but do not presently receive income. The trust is also revocable by your parents. Accordingly, you have no direct, indirect or beneficial interest in the trust or the Palm Avenue Property under the Political Reform Act.³ You do not have a conflict of interest under the Political Reform Act that prevents you from participating in decisions regarding the city’s improvements to Central Park.

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

Sincerely,

Brian G. Lau
Assistant General Counsel

By:  John M. Feser Jr.
Senior Counsel, Legal Division

JMF:jgl

³ You state that you live at the Palm Avenue Property with your parents and pay no rent. Accordingly, you do not have a leasehold interest in the property and you do not have an interest in your parents as a source of gifts. Under Section 82028, a gift from a parent is not a disqualifying interest under the Act.