



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 12, 2018

Craig A. Steele
City Attorney
City of Seal Beach
RWG Law
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101

Re: Your Request for Advice
Our File No. A-18-019

Dear Mr. Steele:

This letter responds to your request for advice regarding 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.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

May Councilmember Deaton take part in decisions related to Bay City LLC's lease agreement with the City?

CONCLUSION

Yes. Based on the facts provided, the lease agreement will not affect any of the Councilmember's interests.

FACTS AS PROVIDED BY REQUESTOR

You are the City Attorney for the City of Seal Beach and the authorized representative of Seal Beach City Councilmember Ellery Deaton. Councilmember Deaton seeks advice regarding 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.

purchase a 1/24th share of a property located near Ensenada, Mexico. You note that her interest will grant her "trustee rights" in the trust that owns the property. The acquired rights are solely related to a segment of the property designated as "Lot 20."

Rights to Lot 20 are currently held by Brian Kyle, a resident of Seal Beach. His family also maintains the rights to another lot designated within the property. Mr. Kyle has agreed to exchange his interest in Lot 20 with the owners of the lot immediately adjacent to his family's lot so that they can combine the two lots into a family compound. If the Councilmember proceeds with purchasing Lot 20, she would only do so after the proposed exchange is complete. In other words, there would be no transfer of funds or property between her and Mr. Kyle. The proposed purchase price for Lot 20 is \$200,000, which you indicate is above fair market value.

Mr. Kyle owns an unspecified interest in the business entity, Bay City LLC. Bay City LLC recently negotiated a lease agreement with the City to operate a restaurant in a city owned building. The city council will soon consider the lease agreement for approval.

ANALYSIS

Section 87100 prohibits a 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. Section 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's interests that is distinguishable from the decision's effect on the public generally.

Section 87103 specifies the interests that may result in a conflict of interest under the Act:

- 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, 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 \$470 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. (Section 87103.)

You have identified potential interests for the Councilmember in Lot 20 as an interest in real property and in Mr. Kyle as a source of income and/or a gift.

First, for purposes of city council decisions involving Mr. Kyle or Bay City, LLC, any interest in Lot 20 is not a disqualifying interest as it is located outside of the Councilmember's jurisdiction – the City of Seal Beach. An ownership interest in real property is not considered an "interest in real property" for purposes of the Act if the real property is located outside of the official's jurisdiction.² (Section 82033.) Lot 20 is located in Ensenada, Mexico, and thus is not considered a disqualifying "interest in real property."

Secondly, based on the facts provided, we find that the Councilmember does not have an interest in Mr. Kyle or Bay City, LLC as a source of income or a gift to the extent that the Councilmember pays fair market value for Lot 20.

Therefore, as the facts provided indicate that the Councilmember does not have any interests that could give rise to disqualification, we find that she may take part in decisions related to the lease agreement between the City of Seal Beach and Bay City, LLC.

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

Sincerely,

Brian G. Lau
Assistant General Counsel

By: 
Adam Silver
Counsel, Legal Division

AS:jgl

² Real property is not considered within an official's jurisdiction with respect to a local government agency like the City of Seal Beach if the property is located more than two miles outside of the boundaries of the jurisdiction or any land owned or used by the local government agency. (Section 82035.)