



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 15, 2018

Noel Tapia
Alvarez-Glasman & Colvin
13181 Crossroads Parkway North, Suite 400
West Tower
Industry, California 91746

Re: Your Request for Advice
Our File No. A-18-072

Dear Mr. Tapia:

This letter responds to your request for advice on behalf of Commerce City Councilmember John Soria 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

Does the Act prohibit Councilmember Soria from voting on contracts related to the development of the proposed municipal public safety facility?

CONCLUSION

No. The development of the proposed municipal public safety facility would not have a reasonably foreseeable material financial effect on the Councilmember's interests, and thus he is permitted to vote on contracts related to it.

FACTS AS PROVIDED BY REQUESTOR

John Soria serves as a Councilmember for the City of Commerce (the "City"). He is also a salaried employee of the Los Angeles County Sheriff's Department (the "LACSD"), serving as a

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.

Law Enforcement Technician. The City currently contracts with the LACSD for law enforcement services. But their contract with the City is set to expire on June 30, 2019.

On May 16, 2017, the Successor Agency to the Commerce Development Commission (the "Successor Agency") approved a contingent purchase and sale agreement (the "Initial Agreement") to sell a 10.62-acre parcel (the "Parcel") owned by the Successor Agency to the following private parties for development: Wash-Tel Commerce LLC and Craig Realty Group Citadel LLC (the "Joint Venture").

The City, the Successor Agency, and the Joint Venture have since discussed revisions to the Initial Agreement that allow for the development of a municipal public safety facility (the "Facility") on the Parcel. You provided us with an amendment to the Initial Agreement (the "Amendment") memorializing the proposed revisions. Per the Amendment, the Successor Agency would sell the entire Parcel to the City who would then sell an 8.8-acre segment to the Joint Venture. The City would retain the remaining 1.86-acres for the development of the Facility.²

The City plans to house a combination of municipal law enforcement personnel and public safety staff in the Facility. However, the City does not currently have any contractual obligations regarding future occupation of the Facility. In fact, it is possible that the City's law enforcement personnel may not ultimately use the Facility. You also note that any non-city entities housed in the Facility, including the LACSD, would be expected to pay market rate rent.

Councilmember Soria's superior at the LACSD confirmed that neither the construction nor the operation of the Facility would have any impact on the Councilmember's employment status or salary.

Before moving forward with development, the City Council must approve the Amendment and the Purchase and Sale Agreement between the Successor Agency and the City for the Parcel.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or in any way using his or her position to influence a governmental decision in which the official has a financial interest. A conflict of interest arises when the reasonably foreseeable financial effect of a governmental decision on an official's financial interest is material. Section 87103 sets forth the interests that can give rise to a conflict of interest under the Act. These interests include:

- An interest in a source of income to the official aggregating \$500 or more in value to the official within 12 months prior to the decision. (Section 87103(c).); and
- An interest in the official's personal finances or those of his or her immediate family.³ This is known as the "personal financial effects" rule. (Section 87103; Regulation 18702.5.)

² The Amendment also provides the Joint Venture with an option to purchase the 1.86-acre segment from the City if arrangements for the development of the Facility are not finalized within two years of its execution.

³ Section 82029 defines "immediate family" as the official's spouse and dependent children.

The Councilmember is a salaried employee of the LACSD, and thus Los Angeles County. However, Section 82030 provides that salaries received from local agencies are not considered "income" for purposes of the Act. Therefore, the only interests identified here are in the Councilmember's own personal finances and those of his immediate family.

Foreseeability and Materiality

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. (Section 87100.) An effect on a financial interest is presumed reasonably foreseeable if the interest is explicitly involved in the decision. An interest is considered "explicitly involved" if it is a named party in, or subject of, the decision. (Regulation 18701(a).) You indicate that the personal finances of the Councilmember and his immediate family are not named in, or are the subject of, the contracts at issue. Therefore, an effect on the finances of the Councilmember or his immediately family arising from the contracts can only be recognized as reasonably foreseeable if it is "a realistic possibility and more than hypothetical or theoretical." (Regulation 18701(b).)

Regulation 18702.5 sets forth the materiality standard applicable to a decision's financial effect on the personal finances of an official or the official's immediate family where those interests are not explicitly involved in the decision. Under Regulation 18702.5(a), a financial effect is material if the official or the official's immediate family will receive a measurable financial benefit or loss from the decision.

Based on discussions with your client and his superior at LACSD, you indicate that the contracts at issue would not have a measurable effect on the finances of the Councilmember or his immediate family. These contracts concern the sale of the Parcel and the construction of the Facility, neither of which would have any financial effect on the Councilmember's interests. Therefore, the Councilmember is permitted to vote on the contracts at issue.

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

Sincerely,

Brian G. Lau
Acting General Counsel



By: Adam E. Silver
Counsel, Legal Division

AES:jgl