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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 15/073
13)
14 ROBERT SMITH,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Robert Smith agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Smith understands, and hereby knowingly and voluntarily waives, any and all procedural rights
25 set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Smith's own expense, to confront and cross-examine all witnesses testifying at the hearing,

1 to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside
2 over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Smith violated the Political Reform Act when, on
4 December 4, 2014, as President of SmithTech USA, Robert Smith attempted to use his official position
5 to influence a governmental decision in which he had a financial interest, by speaking before the
6 Bakersfield Planning Commission, regarding the approval of SmithTech USA's application for the
7 subdivision of two tracts of land owned by a client, in violation of Government Code Section 87100 (1
8 count). This count is described in Exhibit 1, which is attached hereto and incorporated by reference as
9 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Smith agrees to the issuance of the Decision and Order, which is attached hereto. Smith also
11 agrees to the Commission imposing upon him an administrative penalty in the amount of \$3,000. A
12 cashier's check from Smith, in said amount, made payable to the "General Fund of the State of
13 California," is submitted with this Stipulation as full payment of the administrative penalty, to be held
14 by the State of California until the Commission issues its decision and order regarding this matter. The
15 parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null
16 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation
17 is rejected, all payments tendered by Smith in connection with this Stipulation shall be reimbursed to
18 Smith. Smith further stipulates and agrees that in the event the Commission rejects the Stipulation, and
19 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
20 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
21 Stipulation.

22
23 Dated: _____
24 Galena West, Chief of Enforcement
25 Fair Political Practices Commission

26
27 Dated: _____
28 Robert Smith, Respondent

EXHIBIT 1

INTRODUCTION

Respondent Robert Smith is a member of the Bakersfield City Council. Smith also has an ownership interest in, and is president of, SmithTech USA. The Political Reform Act (the “Act”)¹ prohibits public officials from making, participating in making, or attempting to influence a governmental decision in which the official knows or has reason to know he has a financial interest. Smith violated the Act by making a recommendation to the Bakersfield Planning Commission to approve the subdivision of two tracts of land owned by SB/RBLI Land Company, LLC; a client of SmithTech USA he represented at the December 4, 2014 meeting.

SUMMARY OF THE LAW

All statutory/regulatory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation in question— December 4, 2014.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that public officials are disqualified from certain matters in order that conflicts of interest may be avoided.³ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁴

Conflicts of Interest

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, 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.”⁵

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 81001, subdivision (h).

³ Section 81002, subdivision (c).

⁴ Section 81002, subdivision (f).

⁵ Section 81001, subdivision (b).

financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.⁶

First, the individual must be a public official.⁷ Section 82048 defines “public official” to include every member, officer, or employee of a local government agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision.⁸ With regard to a governmental decision which is within or before an official's agency *or an agency appointed by or subject to the budgetary control of his or her agency*, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.⁹

Third, the official must have an economic interest that may be financially affected by the governmental decision.¹⁰ Such interests include any business entity for which the official is a director, officer, partner, trustee, employee, or holds any position of management—and any business entity in which the official has a direct or indirect investment worth \$2,000 or more.¹¹ (For purposes of determining whether an investment is worth \$2,000 or more, fair market value is used.¹²)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision.¹³ A person, including business entities, sources of income, is directly involved in a decision if that person either initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or; is a named party in, or is the subject of, the proceeding concerning the decision. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement.¹⁴

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest.¹⁵ In the case of an economic interest that is directly involved, the financial effect is presumed to be material.¹⁶

⁶ The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

⁷ Section 87100.

⁸ Section 87100 and Regulation 18700.

⁹ Regulation 18702.3(a), emphasis added.

¹⁰ Sections 87100, 87103; and Regulations 18700, et seq.

¹¹ Section 87103, subdivisions (a) and (d).

¹² See Section 82034, which provides that an asset shall not be deemed an investment unless its fair market value is \$2,000 or more.

¹³ Regulation 18704.

¹⁴ Regulation 18704.1.

¹⁵ Sections 87100 and 87103.

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect.¹⁷ A material financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision. An economic 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.¹⁸

SUMMARY OF THE FACTS

As stated above, at all relevant times, Smith was a member of the Bakersfield City Council, as well as an owner and president of SmithTech USA, a civil engineering firm.

In his capacity as President of SmithTech USA, Smith attempted to influence a governmental decision when he recommended approval of the subdivision of two tracts of land on behalf of a client, to the Bakersfield Planning Commission, at the December 4, 2014 meeting.

SmithTech USA was the applicant for the project, and Smith, in his capacity as company president, appeared before the planning commission as the project's representative to support the project. Smith spoke before the planning commission during a rebuttal time. He addressed comments made against the projects which included concerns about traffic impacts, lot size, and road widening, and requested changes to the proposed project. Smith asked staff to make changes, and this delayed the decision by the planning commission to approve the project.

Smith's economic interest was directly involved with the governmental decision in question because the decision involved approval of SmithTech USA's application for the subdivision of two tracts of land. Smith spoke at the meeting as the project applicant and representative of the property owner. The financial effect on the economic interest is presumed to be material because the interest was directly involved.¹⁹ Also, the financial effect was reasonably foreseeable because Smith's attempt to influence the decision to approve the subdivision specifically involved a project for which he was the applicant, and was speaking on behalf of a client.

VIOLATION

Count 1: Conflict of Interest

On December 4, 2014, as President of SmithTech USA, Robert Smith attempted to use his official position to influence a governmental decision in which he had a financial interest, by speaking before the Bakersfield Planning Commission, regarding the approval of SmithTech USA's application for the subdivision of two tracts of land owned by a client, in violation of Section 87100.

¹⁶ Regulation 18705.1.

¹⁷ Sections 87100 and 87103.

¹⁸ Regulation 18706, subdivision (a).

¹⁹ Regulation 18705.1, subdivision (b).

The relevant analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision are set forth below.

Step One: Smith was a Public Official as Defined by the Act

As a member of the Bakersfield City Council, Smith was a member of a local governmental agency. Therefore, he was a public official as defined in the Act.

Step Two: Smith Attempted to Use His Official Position to Influence a Governmental Decision

At the December 4, 2014 Bakersfield Planning Commission meeting, as President of SmithTech USA, Smith attempted to use his official position to influence a governmental decision in which he had a financial interest, by speaking in favor of an application for the subdivision of two tracts of land, which was before the planning commission. The planning commission is appointed by, and subject to the budgetary control of, the city council.

Step Three: Smith had an Economic Interest in the Decision

At all times relevant to this matter, Smith was an owner, and held the position of President of, SmithTech USA. SB/RBLI Land Company, LLC was a client of SmithTech USA.

Step Four: Smith's Economic Interest was Directly Involved

The governmental decision involved the approval of SmithTech USA's application for the subdivision of two tracts of land. In addition, SB/RBLI Land Company, LLC was a client of SmithTech USA and owned the property in question. As a named party and subject of a decision, Smith's business was directly involved in the governmental decision.

Step Five: The Effect Meets the Materiality Standard

Because SmithTech USA was directly involved in the governmental decision regarding the application, the financial effect of the governmental decision is presumed to be material.

Step Six: It was Reasonably Foreseeable that the Materiality Standard Would be Met

The material financial effect on Smith's economic interest was reasonably foreseeable in this matter, because SmithTech USA was a named party in the proceeding. A material financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision. In addition, it was reasonably foreseeable at the time of the decision that the effect would be material since the decision was the approval or denial of the application for the subdivision of two tracts of land that Smith's company would play a role in developing.

By attempting to use his official position to influence a governmental decision in which he knew, or had reason to know, he had a financial interest, Smith violated Section 87100.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Cases similar to this one include:

- *In the Matter of Harold Griffith*, FPPC No. 12/192. Harold Griffith, President of the Rancho Adobe Fire Protection District, attempted to use his official position to influence a governmental decision in which he had a material financial interest, by testifying before the City of Cotati Design Review Committee regarding a proposed highway rehabilitation project, located within 500 feet of his real property. On December 13, 2012, the Commission approved a penalty of \$3,000 for the violation.

A conflict of interest violation typically results in fines in the medium to high range. Smith contends he did not realize that he had a conflict of interest when he participated in making the decision, and made no attempt to conceal his action or financial interest. He cooperated fully with Commission staff in investigating and resolving this matter. Smith also has no prior violations of the Act.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5 and penalties in prior similar cases, a penalty of \$3,000 is recommended.