



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 16, 2024

Russell Betts
Desert Hot Springs City Council Member
11999 Palm Drive
Desert Hot Springs, California 92240

Re: Your Request for Advice
Our File No. A-24-073

Dear Mr. Betts:

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

Under the Act, may you participate in decisions related to the intersection of Mission Lakes Blvd. and Sonora Drive (the “Intersection”) notwithstanding your interest in two rental properties and your primary personal residence?

CONCLUSION

Yes. Based on the facts provided, the proposed decisions concerning the Intersection involve the imposition of traffic controls, deterring vagrancy, reducing nuisance, or improving public safety. As analyzed below, the Limited Neighborhood Effects Exception permits you to take part in these decisions notwithstanding any potential financial effect on your interests.

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 18104 through 18998 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.

FACTS AS PRESENTED BY REQUESTER

You are a member of the Desert Hot Springs City Council and seek advice regarding whether you may participate in the City Council's decisions regarding the intersection of Mission Lakes Blvd. and Sonora Drive (the "Intersection") in Desert Hot Springs, given the proximity of your personal residence and rental property to the Intersection.

You are concerned that the Intersection poses a safety hazard because it was the site of a fatal car accident in 2017 and because it is heavily traveled by parents driving their children to and from nearby Painted Hills Middle School and Bella Vista Elementary School, both located off Sonora Drive, approximately half a mile north of the Intersection. In addition, school children cross the street on foot at the Intersection, which currently lacks a stop sign, crosswalk markings, or any signs notifying motorists that school children cross the road there. The speed limit for cross traffic at the Intersection is 45 miles per hour, with no reduced speed for a school zone during school hours, and the visibility of cross traffic is obscured.

As a City Councilmember, you wish to bring it to the attention of the City Manager and, if necessary, raise the issue publicly at a City Council meeting. You anticipate proposing mitigation measures such as adding chicanes (road winding to slow traffic), a four-way stop, speed limits, children crossing signs, improving sightlines, and clearing brush around the Intersection to improve visibility.

You own a personal residence 750 feet from the Intersection (the "Primary Residence"). You also own one rental property located 310 feet from the Intersection ("Rental Property 1") and a second rental property located 1,200 feet from the Intersection ("Rental Property 2"). Abutting the western corner of the Intersection, there is a cul de sac comprised of approximately 20 residential properties accessible via Avenida Dorado and Cam Del Sol. Directly north of this cul de sac, accessible via Avenida Dorado, are approximately 60 more residential properties and a daycare; a third cul de sac with approximately 60 more residential properties is located across Sonora Drive to the west. In total, there are approximately 180 residential properties located at or around the Intersection.

ANALYSIS

Under the conflict of interest provisions of the Act, a public official may not make, participate in making, or use their position to influence a governmental decision in which they have a financial interest. (Section 87100.) As a member of the Desert Hot Springs City Council, you are a public official and thus subject to the Act's conflict of interest provisions. (Section 82048.)

A public official has a "financial interest" in a governmental 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 public official's interests. (Section 87103; Regulation 18700(a).) The interests from which conflicts of interest may arise include:

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

- An interest in a source of income, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- A business entity interest, where an official has a direct or indirect investment of \$2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

Relevant here, your economic interests include:

- A business entity interest as a landlord of the rental properties.²
- Interests in the rental business and tenants of rental business as sources of income.³
- An interest in the rental properties.
- An interest in your personal residence.

The standards for foreseeability and for materiality depend on whether an interest is explicitly involved in the decision. A financial interest is explicitly involved in the decision if the interest:

[I]s a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial 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 to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

(Regulation 18701(a).)

Where, as here, the official's financial interest is not explicitly involved as a named party or subject of the decision, the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).)

² The facts provided do not indicate the value of your personal real property, the amount of income that you receive from your rental property, or the value of your investment in your rental business. We presume that your real property is worth more than \$2,000, you receive more than \$500 in income from your rental property in the span of 12 months, and your investment in your rental business is greater than \$2,000.

³ No specific tenant has been identified and no facts were provided in relation to this specific conflicts questions that would warrant an analysis of this interest. However, to the extent decisions regarding the Intersection may implicate a tenant distinctly from the financial effect on the rental business and rental property, you should seek additional advice.

Rental Properties: Business Entity and Source of Income Interests

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income, is material if:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than: (A) \$1,000,000; or (B) five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or greater than: (A) \$250,000; or (B) one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.
- The official knows or has reason to know that the entity has an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

(Regulation 18702.1.)

Based upon the nature of the decisions identified, there is little indication that it is reasonably foreseeable the decisions will have a material financial effect on your interests in Rental Properties 1 and 2 as business entities or sources of income. Moreover, in light of the determination below that the Public Generally Exception applies, it is unnecessary to further consider any potential financial effect on your interests in the rental businesses. To the extent it is reasonably foreseeable the decisions will have a material financial effect on these interests, the Public Generally Exception applies.

Real Property Interests in Your Personal Residence and Rental Properties

Next, we examine your real property interests in your Primary Residence and Rental Properties 1 and 2, respectively. With respect to your Primary Residence, located 750 feet from the Intersection, Regulation 18702.2 sets forth the applicable materiality standard regarding an official's real property parcel that is located within 500 to 1,000 feet from property involved in a decision. Specifically, under Regulation 18702.2(a)(8)(A)-(E), a decision's effect on an official's real property interest is material if the decision would change the parcel's development potential, income producing potential, highest best use, character, or market value. A decision changes a parcel's character if it substantially alters traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality. (Regulation 18702.2(a)(8)(D).)

Similarly to your interest in the Rental Properties as business entities and sources of income, there is little indication that it is reasonably foreseeable the decisions will have a material financial effect on your interest in your Primary Residence. Moreover, it is unnecessary to further consider the potential financial effect on your personal residence, in light of the conclusion below that the public generally exception applies.

Turning to the Rental Property 1, located 310 feet from the Intersection, where a governmental decision involves property located 500 feet or less from the property line of the parcel, the reasonably foreseeable financial effect of the decision is presumed to be material, absent clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702(a)(7).) Based on the facts provided, there is no clear and convincing evidence that the proposed traffic control and safety measures will *not* have any measurable impact on your rental property. Thus, a presumption exists that it is reasonably foreseeable that decisions regarding the Intersection will have a material effect on your real property interest in Rental Property 1, since it is located within 500 feet of the intersection. Generally, you may take part in the decision only to the extent the public generally exception applies as analyzed below.

Regarding Rental Property 2, located 1,200 feet from the Intersection, where a governmental decision involves property located 1,000 feet or more from the property line of the parcel, the reasonably foreseeable financial effect of the decision is presumed not to be material, absent clear and convincing evidence that the decision will have a substantial impact on the official's property. (Regulation 18702(b).) Based on the facts provided, we cannot determine whether there is clear and convincing evidence that the proposed traffic control and safety measures will have a substantial impact on Rental Property 2. However, we need not make this determination because the public generally exception applies to your situation, as elaborated below.

Public Generally Exception: Limited Neighborhood Effects

Despite your disqualifying interest in Rental Property 2, under what is known as the Public Generally Exception, a financial effect on an official's financial interest is only disqualifying if the decision's effect on that interest is "distinguishable from its effect on the public generally." (Section 87103.) Specific rules govern the application of the Public Generally Exception to special circumstances. One specific rule, which applies to limited neighborhood effects, provides:

The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

[¶]...[¶]

The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

(Regulation 18703(e) and (e)(3).)

Here, the Intersection is a specific location encompassing more than 50 residential properties and the governmental decisions at issue would seek to impose traffic controls and improve public safety. Based on the facts provided, governmental decisions relating to

implementing mitigation measures at the Intersection would fall under the Limited Neighborhood Effects Exception, provided there is sufficient evidence to support the need for action. Based on your description of the Intersection in its current condition, in addition to the fact that a fatal car accident has already occurred there, we find that you have provided sufficient evidence to support the need for action at the Intersection as a basic matter of public safety.

Additionally, there is no indication of a unique effect on your interest. While you have multiple interests, the cumulative effect on your interests does not appear to be substantially greater than the effect on any other single residence within the neighborhood. (See Regulation 18703(c)(3).)

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to read 'T. Lewis', with a stylized flourish at the end.

By: Toren Lewis
Counsel, Legal Division

TL:aja