



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 2, 2023

Isaac Rosen
Deputy City Attorney
City of West Hollywood
300 South Grand Ave., 25th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-23-005

Dear Mr. Rosen:

This letter responds to your request for advice on behalf of Planning Commissioner Michael Lombardi 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 Michael Lombardi, a Planning Commissioner for the City of West Hollywood, from taking part in decisions, including Design Review Subcommittee recommendations, related to the 8850 Sunset project (the “Project”) given his employer currently works for two companies involved in the Project on unrelated projects?

CONCLUSION

Yes. Commissioner Lombardi may not take part in decisions concerning the Project because of the impermissible nexus between the decisions and income he receives from his employer. In addition, he is prohibited from taking part in recommendations by the Design Review Subcommittee to the full Planning Commission concerning the Project.

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 the Deputy City Attorney for the City of West Hollywood seeking this advice on behalf of Commissioner Lombardi. The Planning Commission and Design Review Subcommittee of the City have initiated a planning process to consider various approvals associated with the Project, including the development of a hotel, an update to the existing Viper Room bar and club establishment, and the construction of affordable and market-rate homes, among other approvals.

The Design Review Subcommittee's role is to analyze the project and provide feedback to the applicant, but not to take any formal action. The Planning Commission will ultimately make a recommendation to the City Council regarding certification of the Environmental Impact Report, and approval of the overall Project package, including a Sunset Specific Plan Amendment, Demolition Permit, Development Permit, Development Agreement, Billboard Permit, Conditional Use Permit, Administrative Permit, and subdivision map.

Commissioner Lombardi, who is also a member of the Design Review Subcommittee, is employed as an associate principal by Sean O'Connor Lighting (the "Company"). Commissioner Lombardi is a salaried employee, paid by the Company directly, and does not own any shares of the Company. The Company does provide a bonus payment structure, loosely based upon each design team's profitability and the amount of new work brought in by principals such as Commissioner Lombardi, but the bonus structure is not directly tied to individual projects.

You provided a document that details the expectations of an associate principal at the Company. Specifically, Commissioner Lombardi has primary responsibilities for participating in studio management activities involving the firm's financial performance and business development as well as building client trust/loyalty. He is expected to "build and improve external firm image through active participation in appropriate organizations . . . and maintain contact with current and potential clients."

In a follow-up email, you stated that the Company was not asked to submit a proposal on the Project and has no plans on bidding on the project in future phases. In addition, you stated the Design Review Subcommittee's role is to review a project's architecture and urban design, consider public comments regarding these topics at its regularly scheduled meetings, and provide relevant design-based feedback to the applicant consistent with such things as the City's adopted goals, policies and programs. The Design Review Subcommittee reports back to the full Planning Commission, most commonly through a summary included in the staff report for the project entitlements that the Planning Commission considers during its own scheduled hearings for the project. Its recommendations are considered advisory to the formal action subsequently taken by the full Planning Commission.

Relationship with Plus Development

The Company is currently working on a different project in the Los Angeles region for Plus Development Group ("Plus Development"), a real estate company. Plus Development currently serves as the applicant's representative for the Project. However, the project on which the Company is currently working with Plus Development is completely separate from the Project here. Commissioner Lombardi anticipates that the particular project on which the Company works for Plus Development could generate 10% or more of the Company's annual gross revenue.

Relationship with Rockwell Group

The Company also works with Rockwell Group, an interdisciplinary architecture and design firm. The Company has two contracts with Rockwell Group, one of which is among the largest contracts that the Company has secured in the past year. The Company is presently consulting on a project in Los Angeles and a project in Austin, Texas, both of which are being designed by Rockwell Group's New York office. The Company has also recently completed work on a project in Las Vegas, Nevada that was also designed by Rockwell Group's New York office with assistance from the LA office. Rockwell Group's Los Angeles office is serving as the project designer for the Project, and although the Company has not worked on the Project with the Rockwell Group's Los Angeles office, it is possible the Company may work on a different project with the Rockwell Group's Los Angeles office in the future.

ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) An official's financial interests, which may give rise to a disqualifying conflict of interest under the Act, are identified in Section 87103. The following interests are relevant to your situation:

- 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 a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- An interest in the official's personal finances and those of immediate family members. (Section 87103.)

Here, as an employee of the Company, Commissioner Lombardi has both a business entity and source of income interest in his employer. In addition, an official always has an interest in the official's personal finances and those of immediate family members. (See Section 87103.)²

Foreseeability and Materiality

² Under Regulation 18702.5(c), an effect on an official's personal finances is not considered separately than an effect on the official's interest in a business entity or real property. Accordingly, we do not analyze the effect on Commissioner Lombardi's personal finances further and apply Regulation 18702.1 to determine whether the Act's conflict of interest provisions prohibit him from taking part in decisions relating to the Project.

Regulation 18701(a) provides that a decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision as a named party in, or the subject of, the decision. An 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 interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). The facts indicate the Company, Commissioner Lombardi's employer, is not explicitly involved in the Project decisions, as it is not named in the decisions nor is it the subject of the decisions. Regulation 18701(b) sets forth the foreseeability standard applicable here, for a decision's effect on an official's interest that is not explicitly involved in the decision – the effect of the decision on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Business as a Source of Income

For a business entity not explicitly involved in the decision, Regulation 18702.1(a)(2) provides that the decision's reasonably foreseeable financial effect 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 more than \$1,000,000, or five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000. Alternatively, the financial effect may also be deemed material if the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000, or one percent of the entity's annual gross revenues and the change in expenses is at least \$2,500. (Regulation (18702.1(a)(3).)³

Additionally, Regulation 18702.3(b) provides that "[a]ny reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal." Therefore, the Act will prohibit Commissioner Lombardi from taking part in the decisions if they will achieve or aid a goal of the Company and he is promised income for achieving this goal.

As an associate principal of the Company, Commissioner Lombardi is expected to be actively involved in enhancing the firm's financial performance and business development, including building client trust and loyalty. In addition, he is expected to improve the firm's image through active participation in organizations while maintaining contact with current and potential clients. In doing so, he receives a salary and is eligible to receive a bonus payment that is not tied to individual projects but generally based upon his design team's profitability and the amount of new work he brings to the Company. The Planning Commission decisions concerning the Project involve Plus Development as the applicant's representative and the Rockwell Group as the project designer, and are the types of decisions that would appear to aid the Company's goal of

³ Note that Regulation 18702.3 sets forth the materiality standards with respect to an official's source of income interest. Regulation 18702.3(a)(4) provides that a decision's reasonably foreseeable financial effect on an official's source of income interest in a business entity is material if the business entity "will be financially affected under the materiality standards of Regulation 18702.1."

demonstrating client trust and loyalty as well as generally improving the firm's image and future business opportunities with those companies.

Based on these facts, Commissioner Lombardi will be disqualified from taking part in Planning Commission decisions concerning the Project because of the impermissible nexus between the decisions and income he receives from the Company.

Design Review Subcommittee

When a planning commissioner has a conflict of interest with respect to a planning commission decision, the commissioner will not only be prohibited from making and participating in the making of the decision but will also be prohibited from using their official position to influence the decision. Regulation 18704(c) provides that with regard to a governmental decision which is within or before the official's own agency, or any agency appointed by or subject to the budgetary control of the official's agency, the official is attempting to use their 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. (Regulations 18704(c)(1).)

This provision applies to influencing the planning commission or any advisory bodies that are created or have members appointed by the planning commission. For example, if a commissioner is prohibited from voting as a planning commissioner in a specific decision, the commissioner may not participate in discussions or make recommendations to the planning commission as a member of a planning commission subcommittee in order to influence the planning commission's decision. (See, e.g., *Furth* Advice Letter, No. I-87-079.)

Here, the facts state that the Design Review Subcommittee makes recommendations that are advisory to the full Planning Commission, most commonly through a summary included in the staff report for the project entitlements that the Planning Commission considers during its own scheduled hearings for the project. Therefore, the Act likewise prohibits Commissioner Lombardi from taking part in such recommendations by the Design Review Subcommittee concerning the Project.

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

Sincerely,

Dave Bainbridge
General Counsel

JW:aja

By: *Jack Woodside*

Jack Woodside
Senior Counsel, Legal Division