



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 3, 2023

Rachel H. Richman
City Attorney
City of Camarillo
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Your Request for Advice
Our File No. A-23-023

Dear Ms. Richman:

This letter responds to your request for advice on behalf of Camarillo City Councilmember Kevin Kildee 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 Kildee take part in the discussion and action by the City Council in regard to entering into a Project Homekey owner/operator agreement whereby the City will select an operator to jointly apply for grant funds, acquire an existing hotel, rehabilitate the hotel and then operate a homeless shelter, given that he owns a business operating out of a leased commercial space, located 371 feet from a potential project site?

CONCLUSION

No. Councilmember Kildee has a conflict of interest and may not take part in decisions related to Project Homekey because it is reasonably foreseeable the decision regarding 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.

Homekey owner/operator agreement may impact the potential rental value, and use and enjoyment of the property.

FACTS AS PRESENTED BY REQUESTER

The City of Camarillo is seeking proposals from interested parties to act as a partner in a Homekey Grant application to negotiate a purchase with a motel/hotel property owner; manage the property; and provide homeless services, rehabilitation into Permanent Supportive Housing and an Emergency Shelter/Navigation Center, and housing administration of an approximately 80-unit complex for the City of Camarillo. An interested party may provide all requested services, but proposals for a portion of the services, like strictly acquisition and rehabilitation or strictly homeless services and administration, will also be considered. Multiple interested parties may be selected to perform different portions of the scope of work.

Although the property site has not been determined, as that is an action to be undertaken by the chosen operator and not by the City, the owner of the Days Inn Hotel has stated that it is interested in selling its hotel to the selected City operator, as such, the chosen operator will initially negotiate with the Days Inn with the understanding that a purchase and sale agreement will be entered into by the two parties if an agreement can be reached. The City will not be a party to that agreement, nor will it be funding the purchase with City funds beyond being an applicant with the operator for securing Homekey funds from the State for the operator to use for the Project.

In a follow-up email, you stated that the County of Ventura which, is experienced in assisting and developing project Homekey sites for the County and with cities in the County, reached out to City staff to see whether Camarillo would be interested in working with the County and a developer for a Homekey project in Camarillo. At that time, the County also informed staff that there was a broker that had reached out to the County about the Days Inn being interested in selling its property for a project Homekey development. Thereafter the City connected with the Broker. You also stated that the hotel is currently open and operating.

The Days Inn is located 371 feet from Councilmember Kildee's property and business. The Councilmember owns, and is the sole proprietor of, Bob Kildee Clothing, a family-owned clothing store with annual gross revenues under \$1 million. The Councilmember has a long-term leasehold interest in the property out of which the business operates.

ANALYSIS

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests are:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.²
- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, 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(a)-(c).) As the sole owner of Bob Kildee Clothing, Councilmember Kildee has a real property interest in the commercial space he leases, as well as an interest in Bob Kildee Clothing as a business interest and source of income.³

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is 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).” None of the interests at issue here are explicitly involved in the Project Homekey decision.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.” Here, the owner of the Days Inn Hotel has stated that it is interested in selling its hotel to the selected City operator. Given that the purchase of a motel/hotel property to provide homeless services will be a necessary component of the Project Homekey decision, and the property owner has stated a desire to sell the Days Inn Hotel to both the County of Ventura and to the City for this express purpose, the conversion of the hotel to a facility that provides homeless services and housing is a realistic possibility should the Project Homekey decision be approved.

² Section 82033 defines “interest in real property” for purposes of the Act and provides that an individual has a real property interest in the real property of any business or trust in which the individual or immediate family owns a 10-percent interest or greater.

³ We note that Councilmember Kildee may also have interest in clients of his business as sources of income. However, because you have not identified any clients, we do not analyze the Councilmember’s potential disqualification resulting from a financial effect on his interests in clients as sources of income. (See Section 87103(c).) If the decision may implicate a client, Councilmember Kildee should seek additional advice.

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business 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. (Regulations 18702.1(a)(2) and 18702.3(a)(4).)

The reasonably foreseeable financial effect on a business entity is also 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 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. (Regulation 18702.1(a)(3).)

The reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

(Regulation 18702.2(c).)

Councilmember Kildee is a small business owner who leases commercial real property 371 feet from the Days Inn Hotel. Moreover, the city has reason to know that the Days Inn Hotel is a likely location for the Project Homekey program as the City has been informed of the hotel owners intent to sell the hotel to the selected City operator under the Project Homekey program and that the chosen operator will initially negotiate with the Days Inn with the understanding that a purchase and sale agreement will be entered into by the two parties if an agreement can be reached. Under these facts, there is no indication that the decision to enter into a Project Homekey owner/operator agreement would change the termination date of the lease, nor Councilmember Kildee's actual or legally allowable use of the property. However, the nature of the project indicates that the approval of the Project Homekey program and acquisition of the Days Inn Hotel by the selected City operator could result in a significant change in use of the hotel property, which would be transformed into a large Emergency Shelter/Navigation Center providing homeless services. This is a very different, and more intense, use of an existing property, located within 371 feet of the Councilmember's leased business, which would likely affect the potential rental value and use and enjoyment of the property. Based on these facts, Councilmember Kildee has a disqualifying conflict of interest based on his leasehold real property interest and must recuse himself from this decision.⁴

⁴ Based on the conclusion that Councilmember Kildee has a conflict based on his real property interest, we do not further examine his interest in the business.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:aja