



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

June 26, 2014

Anne Russell
Interim Assistant City Attorney
990 Palm Street
San Luis Obispo, CA 93401-3249

Re: Your Request for Advice
Our File No. A-14-114

Dear Ms. Russell:

This letter responds to your request for advice on behalf of Mayor Jan Marx regarding the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ and is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws.

QUESTION

Does Mayor Marx have a conflict of interest that would prevent her from participating in a study session (and later decisions) regarding an update to the City's Land Use and Circulation Element?

CONCLUSION

The Mayor does not have any interests that will be foreseeably and materially financially affected by the update to the City's Land Use and Circulation Element.

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.

FACTS

The City is holding a study session to discuss the update to its Land Use and Circulation Element (“Update”) scheduled as part of its regular meeting on July 1, 2014. Among many other things, the Update proposes the creation of an Airport Overlay Zone for properties near the San Luis Obispo Regional Airport. The Airport is outside City limits and is operated by the County, not the City, but the City is adjacent to the Airport in many locations. The proposed Airport Overlay Zone is on top of and in addition to the underlying City zoning, such as residential or commercial.

Mayor Marx and her husband own a mobile home that is rented to their adult daughter. The Mayor’s daughter and the Mayor’s grandchild live in the mobile home. The mobile home is located on a space in the Colonial Manor Mobile Home Park (Colonial) within the City, held by a month-to-month lease between the mayor’s daughter and Colonial. Neither the Mayor nor her husband is a party to the lease of the land on which the mobile home is situated. The Mayor and her husband usually pay the rent to assist their daughter. The mobile home space rent is controlled by the City’s Rent Control Ordinance.

Colonial is outside of the proposed Airport Overlay Zone but within the Airport Land Use Plan (“ALUP”) for the Airport. The proposed Airport Overlay Zone is smaller and less restrictive than the ALUP, and could be interpreted as a possible zoning change affecting Colonial property (by excluding Colonial, and other property that is currently within one of the safety zones of the ALUP, from the Airport Overlay Zone). As a result the Update may be proposing development at densities and types that may be found by the Airport Land Use Commission (“ALUC”) to be inconsistent with the ALUP. The City Council can choose to override the ALUC’s expected decision by a two-thirds vote under Public Utilities Code Section 21676.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. 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 as set forth in Section 87103. (Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest in a given governmental decision.

As mayor of the City of San Luis Obispo, Mayor Marx is a public official subject to the Act’s conflict-of-interest provisions. However, your question involves only steps three through six of the analysis, determining whether Mayor Marx has interests that may be implicated by the governmental decisions in which she participates. Interests from which a conflict of interest may arise are defined in Section 87103 and Regulations 18703-18703.5 and include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).) An “indirect interest” means any investment in a business entity owned by the spouse of an official or by a member of the official’s immediate family,² by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.)
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.) Section 82033 provides that an “interest in real property” includes any leasehold, beneficial, or ownership interest in real property located in the jurisdiction that the public official owns directly, indirectly, or beneficially if the fair market value of the interest is \$2,000 or more. This interest does not include a month-to-month tenancy. (Regulation 18233.)
- An interest in a source of income to the official, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An interest in a source of gifts to the official if the gifts aggregate to \$440 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- An interest in the official’s personal finances, including those of the official’s immediate family. This is known as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

According to your facts, while the mayor owns a mobile home, neither the Mayor, her spouse nor any member of her immediate family has an interest in the real property on which the mobile home is located. The Mayor does receive income from her adult daughter who rents the mobile home from her. Otherwise, the Mayor has no interest that could be potentially affected by the decision in question.³

² Section 82029 defines “immediate family” as “the spouse and dependent children. For purposes of the Act and Commission Regulations, “dependent child” or “dependent children” means a child, (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return. This definition

³ We note that the *Dietrick* Advice Letter, No. A-09-102, also providing advice to the Mayor in 2009, contained inaccurate facts which may have affected the analysis and conclusion in that letter. Thus, the *Dietrick* Advice Letter, No. A-09-102 is superseded with the issuance of this letter.

Step Four: Will the Mayor's interests be directly or indirectly involved in the upcoming governmental decision?

In order to determine if a governmental decision's reasonably foreseeable financial effect on a given interest is material, we must first determine if his interest is directly involved or indirectly involved in the governmental decision. (Regulation 18704(a).) Regulation 18704.1(a) states that a person who is a source of income is directly involved in a decision before the official's agency when that source of income, either directly or by agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. 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 to, or contract with, the subject person.”

The mayor's daughter is not directly involved in the decision. Persons that are not directly involved in governmental decisions under the rules quoted above are regarded as indirectly involved. (Regulations 18704(a) and 18704.1(b).)

Steps Five and Six: Will there be a reasonably foreseeable material financial effect on Mayor's interests?

Regulation 18705.3(b)(3) provides the materiality standards for interests in persons, other than business entities, who are sources of income to the public official and are indirectly involved in a governmental decision. For an indirectly involved source of income, who is an individual, the effect of a decision is material if any of the following apply:

“(A) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

“(B) The decision will affect the individual's real property interest in a manner that is considered material under [Regulation] 18705.2(b).”

According to your facts, the Mayor's daughter has no interest in real property involved in the decision. Moreover, Colonial is a rent-controlled mobile home park. It is not foreseeable⁴ that the decisions in question will impact the rent paid by the Mayor's daughter by \$1,000.

⁴ 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.

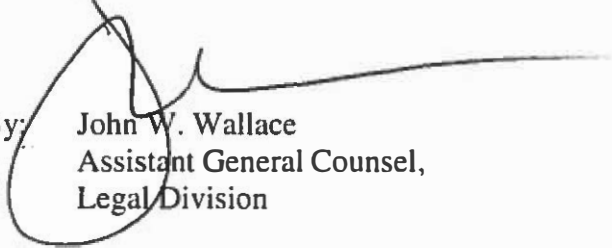
Steps Seven and Eight: Does the governmental decision come within any exception to the conflict-of-interest rules?

Since we conclude that the Mayor does not have a conflict of interest, we do not analyze either the “public generally” or the “legally required participation” exceptions.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By:  John W. Wallace
Assistant General Counsel,
Legal Division

JWW:jgl