MEMORANDUM OF LAW

DATE: September 23, 1986

TO: Councilmember Abbe Wolfsheimer

FROM: City Attorney

SUBJECT: Potential Disqualification on Famosa Slough

In a brief note, you advised the City Attorney of your recent purchase on a condominium at 437 Valeta Street which is adjacent to the property known as the Famosa Slough. We understand that while this was purchased for your daughter with no "intent to lose or gain", you hold a joint tenancy interest in this property. Hence you asked for our review of the potential for disqualification on issues arising from the City's ongoing activity with the Slough.

Since we have no identifiable or quantifiable manner of assessing the financial impact on this property as a result of the prospective votes of the Council, we find we can best advise you by outlining the restrictions and realistic problem areas. With these guidelines in place, the propriety of future votes may be measured.

The Political Reform Act found in California Government Code section 81000 et seq. prohibits a public official from making or participating in making a governmental decision in which he or she knows or has reason to believe he or she has a financial interest. California Government Code section 87100. A person has a financial interest within the meaning of section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on

> . . . .
>
> (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars ($1,000) or more.
>
> California Government Code section 87103

In administering and construing the disqualification provisions, the Fair Political Practices Commission has formulated a four (4) part test:

> Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably foreseeable that

the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

In re Opinion requested by Tom Thorner, 1 FPPC Opinions 198, 202 (1975)

The tests of "material financial effect" and "effect on the public generally" have been further refined in 2 Cal. Admin. Code 18702 and 18703.

18702. Material Financial Effect.

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

. . .

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars ($1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

. . .

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars ($10,000); or
2. One half of one percent if the effect is one thousand dollars ($1,000) or more.

18703. Effect on the Public Generally.

A material financial effect of a governmental decision on an official's interests, as described in Government Code section 87103(a) through (d), is distinguishable from its

> effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public . . . .

The "significant segment" exception cannot be measured with caliper-like precision. Therefore we cannot say that the properties surrounding the Slough constitute a "significant segment" of the population that would permit you to vote.

> As noted in our analysis of the facts before us, we have previously interpreted the "public generally" rule of Section 87103 in a manner which requires disqualification unless the decision will affect the interests of all of or a significant segment of the public within the decision-maker's jurisdiction in substantially the same manner. This is not a per se rule but rather one which requires examination of each situation to determine if a particular public official's financial interests are affected and to determine if that effect is distinguishable from the effect on the public generally.
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> In re Opinion requested by Brown, 4 FPPC Ops. 19, 24-25 (1978)

With decisions on the Slough, each piece of property may very well be affected differently depending on the size and proximity of the property. This is in contrast to properties within an improvement district in which decisions affecting the district are uniform and have a neutral impact on each piece of property within the district.

Therefore to determine whether disqualification is required we return to the threshold issue of whether there is a financial impact as defined on your property interest. If the financial impact of the potential vote on the property is the lesser of the ten thousand dollars ($10,000) or one half of one percent if the impact is one thousand dollars ($1,000) or more, you should abstain; if the impact is less, you may participate.

As you can see disqualification is a complex matter where regulations are road maps but passage or detour depends on the traveler.

JOHN W. WITT, City Attorney
By
Ted Bromfield

Chief Deputy City Attorney

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ML-86-114