

T-88-114

OFFICE OF

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MAR 21 3 51 PM '88

March 15, 1988

Cathy Donovan, Esq.
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Cathy:

This will confirm our cordial conversation of March 15, 1988 in which I described my advice to Mayor Maureen O'Connor that no disqualification is required where the attorney of an applicant for a variance is indebted to the Mayor under deeds of trust on wholly unrelated property. The Mayor having no financial interest in the property under consideration and there being no material effect on payment of the debt as a result of the pending decision, disqualification is not required under California Government Code sections 87100; 87103.

You concurred in this general advice absent any showing that the governmental decision would have a material financial effect on the debtor (i.e., that a contingency fee flowed from the decision which we understand is not the case). I enclose our two (2) December 1, 1988 Memoranda of Law detailing this advice. Memorandum of Law 87-115 references 87-113.

I am not requesting any further action but rather enclose my research should any future complaints be lodged.

As always, I appreciate the professional and accessible assistance from you and the staff.

Sincerely yours,

JOHN W. WITT, City Attorney

By



Ted Bromfield
Chief Deputy City Attorney

TB:js:048.7.2
Enclosures

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MEMORANDUM OF LAW

DATE: December 1, 1987
TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Potential Disqualification

You have inquired whether you can participate in a variance hearing because the attorney for the applicant is the obligor under three (3) deeds of trust on property neither involved nor affected by the variance hearing.

As we stated in our December 1, 1987 memorandum of law, the governmental decision under scrutiny must have a material financial effect on a financial interest of yours as defined in California Government Code section 87103. The decision in question here has no effect on any property interest of yours. Rather the decision can only affect the property of others and hence you have no material financial interest in this decision.

To point out that the attorney for the project is a debtor of yours under deeds of trust on unrelated property is irrelevant. The security for the trust deeds is the property not the debtor. As pointed out above, there is no definable financial interest of yours involved in the La Jolla Mediterranean Villas decision. Accordingly, you may participate in the discussion and the decision on the project.

JOHN W. WITT, City Attorney

By


Ted Bromfield
Chief Deputy City Attorney

TB:js:048.7.2(x043.2)
ML-87-115

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MEMORANDUM OF LAW

DATE: December 1, 1987
TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Potential Disqualification on Uptown Community Plan

A decision on the Uptown Community Plan was continued until December 1, 1987 and you have asked for a priority review of a financial interest in the affected area. The interests consist of trust deed interests in two (2) unimproved parcels at 8th and Brooks and one (1) improved parcel at 3565 Seventh Avenue. Of significance is the fact that the Uptown Community Plan contemplates no change in zoning on any of the noted parcels nor on any of the adjoining parcels.

In light of the foregoing facts that a governmental decision on this Community Plan will have no effect on either the noted parcels or adjoining parcels, we find no reason for you to disqualify yourself from participation in the discussion and decision on this community plan. Our reasoning follows.

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

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(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 FPFC Opinions 198, 202 (1975)

While we assume the trust deed interest exceeds one thousand dollars (\$1,000) and thus is a financial interest within Section 83103(b), one need look no further than the second prong of this four-part test. Obviously, there must be some connection, some nexus, between the governmental decision and the financial interest of the public official. Here we find no such connection. No change whatsoever is contemplated in the present zoning of the property in which you have an interest. Further no change in adjacent property is contemplated which at times can impact adjoining property.

Since there is no nexus between the governmental decision and your property or adjacent property, it is unnecessary to consider the remaining tests. The whole purpose of disqualification is to insure that public officials perform their duties free from bias caused by an effect on their own interests [California Government Code section 81001(b)]. Since there is no effect on your interests, you are free to participate in the decision.

JOHN W. WITT, City Attorney

By



Ted Bromfield
Chief Deputy City Attorney