



FAIR POLITICAL PRACTICES COMMISSION

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December 15, 2010

Robert Bergman
Mayor, Nevada City
City Hall
317 Broad Street
Nevada City, CA 95959

Re: Your Request for Advice
Our File No. A-10-189

Dear Mr. Bergman:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, this letter 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 such as common law conflict of interest or Government Code Section 1090.

QUESTION

Do you have a disqualifying conflict of interest that would preclude you from participating in the city council's vote on a proposed ordinance allowing former bed and breakfast operators to reacquire their abandoned use permits and reopen?

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.

Step One: Are you a public official?

As Mayor of Nevada City, you are a public official under the Act. (Section 82048.) Consequently, you may not make, participate in making, or otherwise use your official position to influence any decisions that will have a reasonably foreseeable material financial effect on any of your economic interests. (Regulations 18702.1-18702.4.)

Step Two: Will you be making, participating in making, or using or attempting to use your official position to influence a governmental decision?

You will be voting with the city council regarding the B&B ordinance. By voting on or otherwise participating in the city's decision, you will be making, participating in making, or otherwise using your official position to influence a governmental decision.

When a public official who holds an office specified in section 87200 has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. For closed sessions, consent calendars, absences and speaking as a member of the public regarding personal interests, special rules found in regulation 18702.5(c) and 18702.5(d) apply.

Step Three: What are your financial interests?

A public official has a financial interest in a decision within the meaning of Section 87103 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 his or her immediate family, or on any one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.).

The applicable economic interests include:

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).) An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)

proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property. (*Ibid.*)

Indirectly Involved Real Property: For real property indirectly involved in a government decision, the effect of the decision on an official's real property is presumed not to be material. This presumption may also be rebutted, by proof that it is reasonably foreseeable that the governmental decision will have a material financial effect on the real property as discussed further below.

Step Six: Is it reasonably foreseeable that the decision will have a material financial impact on your real property interest?

An effect upon economic interests is considered "reasonably foreseeable" if there is a substantial likelihood that it will occur. (Regulation 18706(a).) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made depends on the facts surrounding the decision. A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

Decisions Involving the Former B&Bs: Indirectly Involved Real Property:

A governmental decision on indirectly involved real property is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest that make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest.

For real property that is not directly involved in a governmental decision, we apply the materiality standards of Regulation 18705.2(b):

"(b) Indirectly involved real property interests.

"(1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

"(A) The development potential or income producing potential of the real

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

Sincerely,

Scott Hallabrin
General Counsel

Emelyn Rodriguez / jsl

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

Enclosures