



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 19, 2023

Steven Mattas
General Counsel
Santa Cruz County Regional Transportation Commission
1999 Harrison Street, 9th Floor
Oakland, California 94612

Re: Your Request for Informal Assistance
Our File No. I-23-128

Dear Mr. Mattas:

This letter responds to your request for assistance on behalf of Santa Cruz County Regional Transportation Commission (“RTC”) Vice Chair Kristen Brown regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because it does not relate to a specific governmental decision, we are treating it as a request for informal assistance.²

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.

QUESTIONS

1. Under the Act, may RTC Vice Chair Brown, who also serves as a City Councilmember for the City of Capitola, take part in various governmental decisions impacting the Santa Cruz Branch Rail Line, given that her leased residence is located less than 500 feet from a portion of the Rail Line?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. For purposes of applying the Public Generally Exception, what is RTC Vice Chair Brown's jurisdiction for RTC decisions?

CONCLUSIONS

1. Whether RTC Vice Chair Brown will be able to take part in a governmental decision involving the Rail Line is a fact-specific inquiry that will depend on whether it is reasonably foreseeable that a particular decision will have a material financial effect on her leased property, including consideration of impacts on the potential rental value of the property and Vice Chair Brown's use and enjoyment of the property.

2. The relevant jurisdiction for determining whether a "significant segment of the public" would be affected for purposes of the "Public Generally Exception" is Santa Cruz County—the jurisdiction served by RTC—and not the City of Capitola.

FACTS AS PRESENTED BY REQUESTER

Santa Cruz County Regional Transportation Commission ("RTC" or "Commission") is the Regional Transportation Planning Agency and Transportation Authority for Santa Cruz County and is responsible for administering the powers granted to transportation commissions and transportation authorities under California law. The Commission consists of a twelve-member Board: the five members of the Santa Cruz County Board of Supervisors, one councilmember each from the cities of Watsonville, Santa Cruz, Scotts Valley, and Capitola and three board members appointed by the Santa Cruz Metropolitan Transit District ("Santa Cruz Metro").

RTC Vice Chair Kristen Brown is a City Councilmember for the City of Capitola ("City"). She also serves as the City's appointed representative to the Santa Cruz Metro Board of Directors and one of Santa Cruz Metro's appointed representatives to the RTC. Vice Chair Brown's authority to serve as a member of RTC flows from her position as a Capitola City Councilmember serving as the City's representative to Santa Cruz Metro.³

RTC sets priorities for major improvements to the transportation infrastructure system in Santa Cruz County, pursues and allocates funding for major capital improvements to all elements of the transportation system, adopts policies to maximize the efficiency of the current transportation system, and plans for future projects and programs to develop a balanced transportation system that addresses all modes of transportation, informs businesses and the public about actions needed to better manage the existing transportation system, and conducts programs and advocates for the use of alternative transportation modes.

With regards to the Santa Cruz Branch Rail Line ("Rail Line") (i.e., railroad right-of-way), which RTC owns, RTC contracts with a rail operator who currently conducts freight operations in the southern part of the County. The remainder of the Rail Line consists of non-operational railroad tracks and related infrastructure (such as bridges and trestles). These portions of the Rail Line are non-operational due to storm damage and structural deficiencies in some of the railway bridges. The

³ You confirmed by email city councilmembers serve in this role by practice and it is not a state law requirement.

Rail Line right-of-way is also the location for most of the existing and planned Monterey Bay Sanctuary Scenic Trail, a planned multi-modal pedestrian and bicycle trail that is planned to run through all of Santa Cruz County and into Monterey County.

The types of actions that the RTC Commission may consider related to the Rail Line right-of-way include contractual issues with the freight operator, maintenance activities within the Rail Line right-of-way, such as railway facility replacement and repair contracts, vegetation management contracts, encroachment and license agreements, multi-modal trail design, and funding and trail maintenance agreements. In addition, the RTC continues to evaluate the possibility of electric passenger rail along the Corridor, but any such program would require a substantial new source of funding.

RTC Vice Chair Brown leases her residence on a yearly basis in the City. Her yearly rent exceeds \$2,000 annually. The property is approximately 475 feet away from the nearest point of the Rail Line right-of-way and 684 feet to the nearest railroad crossing.

As set forth above, RTC owns the Rail Line and associated right-of-way. The Rail Line is a 32-mile continuous rail corridor traversing the County of Santa Cruz (“County”). The Corridor runs through highly urbanized portions of the County, as well as more rural and agricultural areas. RTC estimates that approximately 50 percent of the County population currently lives within 1 mile of the Rail Line. City staff determined, using the City Assessor’s data, that roughly 20-24 percent of the City’s residential units are within 500 feet of the Rail Line Corridor (i.e., the Santa Cruz Branch Line right-of-way within the City). In a follow-up email, you confirmed that the RTC’s jurisdiction covers all of the County and stated that approximately 6.6 percent of County residential parcels are located within 500 feet of the Rail Line, and 13 percent of residential parcels are located within 1,000 feet.

In a letter attached to your request for advice, RTC Vice Chair Brown’s landlord states that “none of the terms of the lease agreement are subject to change should, if at any future time, any governmental or regulatory body makes a change to the use or intensification of the use of the Santa Cruz Branch Rail Line (SCBRL) owned by the Regional Transportation Commission (RTC).” The letter also states that if the Rail Line is developed, the terms of the lease will not be subject to modification, specifically the termination date or amount of rent due pursuant to the current lease agreement.

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 official’s 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 is “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Vice Chair Brown has a real property interest in her leased residence. No specific decisions with accompanying

facts as to the possible effect of the decision on her leasehold interest are provided for a full analysis. The following is provided for general information.

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).”⁴

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.”

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 only 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).)

We note that there is an exception to the finding of materiality in Regulation 18702.2(d)(1) where the “decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities.” (See, e.g., *Craven* Advice Letter, No. I-20-030 [Regulation 18702.2(d)(1) may apply to decisions solely concerning repair, replacement, or maintenance of city’s trolley stop].)

You have identified potential governmental decisions by the RTC concerning contractual issues with the freight operator, maintenance activities within the Rail Line right-of-way (such as railway facility replacement and repair contracts), vegetation management contracts, encroachment and license agreements, multi-modal trail design, and funding and trail maintenance agreements. Also, the RTC may also continue to evaluate the possibility of electric passenger rail along the Corridor in the future.

Without knowing the details of any specific governmental decision, we cannot provide definitive advice on whether it is reasonably foreseeable that a particular decision would have a

⁴ Note: Regulation 18702.2(a)(1)-(6) is not applicable to a leasehold interest.

material financial effect on Vice Chair Brown's leasehold interest in her residence. In general, RTC Vice Chair Brown will need to consider the impact of a decision on her leasehold, in regard to the above four factors, to determine if she has a prohibited financial interest. We note that decisions solely pertaining to the repair, replacement or maintenance of the Rail Line and surrounding property would likely fall under the exception in Regulation 18702.2(d)(1).

Further, we note that although Vice Chair Brown's landlord has indicated that any governmental decisions related to the use or intensification of use of the Rail Line would not impact the terms of the lease agreement, including the amount of rent, the relevant standard under Regulation 18702.2(c) is the *potential* rental value. We have previously advised that the presence of set base pay rent and a lease term prohibiting subleasing do not alter the determination of whether a decision will affect the potential rental value of leased property. (See *Summers* Advice Letter, No. A-23-047; *Gallogly* Advice Letter, No. A-19-112.)

Finally, in regard to the "Public Generally Exception, the application of the exception depends on and the factual circumstances and nature of a specific decision before the agency. Under the "Public Generally Exception," a public official is only prohibited from taking part in a governmental decision that would have a reasonably foreseeable, material financial effect on the official's interest(s) if that effect is distinguishable from the effect on the public generally. (See Sections 87100, 87103.) A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes "[a]t least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence." (Regulation 18703(b)(2).) "Jurisdiction" means "the jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected." (Regulation 18703(d).)

Because you have not sought advice limited to a specific decision before the RTC, we can express no opinion regarding the application of the exception at this time. However, you have generally asked for assistance in determining Vice Chair Brown's jurisdiction for purpose of the Public Generally Exception. Based on the facts provided, Vice Chair Brown was appointed to the Santa Cruz Metro board by and at the discretion of the City of Capitola. As a member of the Santa Cruz Metro board, she was appointed by that board as a member of the RTC. While she serves on the RTC board in her capacity as a member of the Santa Cruz Metro board, she was appointed to the RTC position by the Santa Cruz metro board, and her appointment to the RTC was not predicated on her status as an elected city councilmember. Moreover, as a member of the RTC, her authority and duties extend to the County. Therefore, her jurisdiction in regard to RTC decisions is the County.

Based on the above, "the official's jurisdiction," for purposes of the Public Generally Exception in this context, is Santa Cruz County, not the City of Capitola. Accordingly, the fact that approximately 20-24 percent of Capitola residential units are within 500 feet of the Rail Line is insufficient to establish that a significant segment of the public would be affected by the same RTC decisions that may have a reasonably foreseeable, material financial effect on Vice Chair Brown's leasehold interest. Given that only approximately 6.6 percent of Santa Cruz County residential

parcels are located within 500 feet of the Rail Line, and 13 percent of residential parcels are located within 1,000 feet, it appears that in many, if not most instances where a governmental decision would have a reasonably foreseeable, material financial effect on Vice Chair Brown's leasehold interest, she will be unable to establish that a significant segment of the public would be similarly affected. In such instances, the Public Generally Exception would not apply.

While this letter is intended to help clarify the relevant standards and considerations for determining whether a governmental decision would have a reasonably foreseeable, material financial effect on Vice Chair Brown's leased property interest, she should seek additional advice in the future if she is uncertain about any specific governmental decision.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Counsel, Legal Division

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