

May 17, 1994

Michael Downey  
City Attorney  
City of Santa Clara  
City Hall  
1500 Warburton Avenue  
Santa Clara, CA 95050

Re: Your Request for Advice

Our File No. A-94-149

Dear Mr. Downey:

This is in response to your letter requesting advice on behalf of Councilmember Lisa Gillmor regarding her responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

#### QUESTION

Councilmember Gillmor is employed by Public Property Advisors to represent school districts in selling and buying property. May Councilmember Gillmor participate in Santa Clara City Council decisions affecting clients of Public Property Advisors such as the following:

1. The city budget which may include the distribution of block grant funds for school districts which were clients of Public Property Advisors.
2. Land use issues pertaining to school sites for the school districts.
3. Agreements to share use and maintenance of public facilities with the school districts.

#### CONCLUSION

According to your facts, the councilmember will not have an economic interest in the clients of Public Property Advisors. Consequently, so long as the decisions in question will not materially affect Public Property Advisors, or any other economic interest of the councilmember, she may participate in the decisions.

#### FACTS

Councilmember Gillmor is employed by Public Property Advisors, a real estate consulting firm assisting public entities (primarily school districts) with the disposition (sale or lease) of public property. The business is solely owned by the councilmember's father and employs seven persons. Councilmember Gillmor is retained as an independent contractor and receives a fixed salary which is unrelated to fluctuations of revenue to Public Property Advisors.

Periodically, clients of Public Property Advisors (school districts) appear before the city council in connection with the city's disposition of block grant funds, various land use issues, and agreements between the city and the district regarding the shared use and maintenance of public facilities. You have asked whether Councilmember Gillmor has a conflict of interest in these decisions.

#### ANALYSIS

##### Economic Interests

The Act was adopted by the people of California by initiative in 1974. The purpose for the conflict-of-interest provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Section 87103 specifies that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

According to your facts, Councilmember Gillmor is a salaried independent contractor of Public Property Advisors. Thus, pursuant to Section 87103(c) and (d), Public Property Advisors would be considered a source of income to the councilmember and the councilmember could not participate in any decision that will have a reasonably foreseeable and material financial effect on Public Property Advisors.

However, under some circumstances we have treated multiple persons as sources of a single payment. (Dorsey Advice Letter, No. A-87-176.) For example, Regulation 18704.3 provides guidelines for the attribution of commission income for conflict-of-interest purposes. Pursuant to Regulation 18704.3(c)(2), the full value of any commission income received by a real estate agent in a transaction is attributable to: the broker and brokerage business entity under whose auspices the agent works; the person the agent represents in the transaction; and any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

In addition, in the Larsen Advice Letter (No. I-89-555), the Commission advised that where an official received a fixed salary and annual bonuses based on the volume of processing, the clients themselves were considered the source of the bonus income to the official.

According to your facts, the councilmember receives a fixed salary that does not fluctuate based on the conduct of the clients of Public Property Advisors. Thus, the only source of income to the councilmember evidenced in your facts would be from Public Property Advisors. Consequently, Councilmember Gillmor would not have a conflict of interest in decisions

affecting clients of Public Property Advisors, unless the decision will also foreseeably and materially affect Public Property Advisors.

#### Materiality

The Commission has adopted regulations which contain several objective standards for determining whether the effect of a decision will be material, depending on the nature of the decision and economic interest. (Regulation 18702.)

If Public Property Advisors is directly involved in the decision, Regulation 18702.1 provides that the effect is considered material. (Regulation 18702.1(a)(1).) Public Property Advisors would be directly involved in a decision when it initiates the proceeding by filing an application, claim, appeal, or similar request, or is a named party in, or the subject of, the proceeding. (Regulation 18702.1(b).) It does not appear that Public Property Advisors would be directly involved in any of the decisions you have described.

However, the councilmember may still have a conflict of interest in decisions that have an indirect financial effect on Public Property Advisors. Where a source of income is not directly before the city council, but may be indirectly affected, Regulation 18702.2 applies. Regulation 18702.2 provides differing standards of materiality depending on the size of the business entity. For example, Regulation 18702.2 provides for a relatively small business entity that the indirect effect of a decision is material where:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in the increase or decrease in the value of assets or liabilities of \$10,000 or more.

While decisions to allocate funds to a school district, or affecting the land use of school sites, or share use and maintenance of public facilities will have a significant effect on the districts, it does not appear substantially likely that any of the decisions in question will materially affect Public Property Advisors. However, we must leave the factual determination of materiality to you and the councilmember.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.\

Sincerely,

Steven G. Churchwell

General Counsel

By: John W. Wallace  
Counsel, Legal Division