

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11

12 In the Matter of) FPPC No. 12/204
13 ROSANNE FOUST,)
14 Respondent.) STIPULATION, DECISION and
15) ORDER
16)
17)

18 Complainant, the Fair Political Practices Commission, and Respondent Rosanne Foust agree that
19 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
20 regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Rosanne Foust violated the Political Reform
4 Act by attempting to use her official position to influence a governmental decision, placement of an
5 advisory measure on the ballot as described in Exhibit 1, in which she is presumed to have a financial
6 interest, in violation of Government Code section 8700 (1 count). Exhibit 1 is attached hereto and
7 incorporated by reference as though fully set forth herein, and is a true and accurate summary of the
8 facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon her an administrative penalty in the amount
11 of Three Thousand Dollars (\$3,000). A cashier’s check from Respondent in said amount, made payable
12 to the “General Fund of the State of California,” is submitted with this Stipulation as full payment of the
13 administrative penalty, to be held by the State of California until the Commission issues its decision and
14 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
15 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
16 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
17 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
18 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
19 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
20 disqualified because of prior consideration of this Stipulation.

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23 Dated: _____
24 Gary S. Winuk, Chief of Enforcement
25 Fair Political Practices Commission

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27 Dated: _____
28 Rosanne Foust, Respondent

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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Rosanne Foust,” FPPC No. 12/204, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Rosanne Foust was a member of the Redwood City Council at all times relevant to this complaint. As a member of the Redwood City Council, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use her official position to influence any governmental decision in which she had a financial interest.

Respondent Foust was also the paid President and CEO of the San Mateo County Economic Development Association (“SAMCEDA”), at all times relevant. The Cargill Corporation (“Cargill”) and DMB Pacific Ventures (“DMB”) were dues paying members of SAMCEDA, as well as the Saltworks project’s proponents. SAMCEDA’s stated objectives include advocating for housing development, and it had previously taken a position in favor of a conceptual version of the project, although Ms. Foust was not involved in that decision.

In this matter it has been concluded Respondent impermissibly used her official position to attempt to influence a governmental decision in which she knew or should have known as a matter of law she had a financial interest by way of the fact that she was employed by SAMCEDA at the time she expressed her opinion about the project being placed on the ballot for an advisory opinion of the electorate.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On April 9, 2012, as a member of the Redwood City Council, Respondent Rosanne Foust attempted to use her official position to influence a governmental decision in which she had a financial interest, by proposing that the city council place the Saltworks development project on the November ballot, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

Conflicts of Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, 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, subdivision (b).)

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 18109 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.

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.3, subdivision (a), a public official “attempts to use his or her official position to influence a governmental decision” when the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (c), a public official has a financial interest in any person from whom he or she has received income aggregating \$500 or more within 12 months prior to the time when the relevant governmental decision is made. The definition of "person" includes an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision, or if there is a nexus between the official's duties owed to the source of income and the official's public agency. A nexus exists between the official's duties owed to the source of income and the official's public agency if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision. (Regulation 18705.3, subdivision (c).)

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision. (Regulation 18705.3, subdivision (c).)

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic

² Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

Respondent Rosanne Foust was a member of the Redwood City Council at all times relevant to this complaint. Respondent Foust was also the paid President and CEO of the San Mateo County Economic Development Association (“SAMCEDA”), at all times relevant. The Cargill Corporation (“Cargill”) and DMB Pacific Ventures (“DMB”) were dues paying members of SAMCEDA, as well as the Saltworks project’s proponents.

In 2009, Cargill and DMB proposed development of the Saltworks site. The proposed Saltworks project included high density housing, with up to 12,000 homes, several office buildings, shops, and schools on half of Cargill's property, with parks, open space and restored tidal marshes on the other half of the 1,433-acre property. The Saltworks Project was controversial, and many decisions relating to it had come before the City Council. In 2010, SAMCEDA took a position in favor of a conceptual version of the project but Ms. Foust took no part in that decision.

Cargill and DMB suspended the project with the City on November 4, 2011, to consider a revised plan. At the April 9, 2012 Redwood City Council meeting, Respondent Foust suggested during a council member comment period on matters not on the agenda that if the project was resubmitted to the City, city council should consider placing an advisory vote about the Saltworks development project on the November ballot. A new plan, however, was never submitted to the City and the City Council took no further action on the project and never placed any measure on the ballot.

COUNT 1

ATTEMPTING TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. **Respondent Was a Public Official as Defined by the Act**

As member of the Redwood City Council, on April 9, 2012, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against making a governmental decision in which she has a financial interest under Section 87100.

2. **Respondent Attempted to Influence a Governmental Decision**

At the April 9, 2012 Redwood City Council meeting during council comment period for non-agenda items, Respondent Foust suggested that the city council at a later date consider placing an advisory measure about the Saltworks development project on the November ballot if a revised plan was submitted. Respondent attempted to influence a governmental decision for purposes of Regulation 18702.1, subdivision (a).

3. Respondent Had an Economic Interest

At the time of the governmental decisions, Respondent was the paid President and CEO of the San Mateo County Economic Development Association. As Respondent received income aggregating \$500 or more within 12 months prior to the time of the relevant governmental decision, Respondent had an economic interest for the purposes of Section 87103, subdivision (c)

4. There was a Nexus between Respondent's Duties owed to SAMCEDA and the Council

Respondent's duties as the President and CEO included promoting SAMCEDA's policies and activities. SAMCEDA had specifically endorsed a conceptual version of the proposed Saltworks development project. The Saltworks project's proponents, Cargill and DMB, were dues paying members of SAMCEDA. Respondent's suggestion that the city council place the Saltworks development project on the November ballot created a nexus between Respondent's duties owed to SAMCEDA and her duties owed to the Council under Regulation 18705.3, subdivision (c) despite the fact that she did not advocate a position on the project.

5. Applicable Materiality Standard

It is concluded that because there existed a nexus between Respondent's duties to SAMCEDA and the Council, any reasonably foreseeable financial effect on SAMCEDA is deemed material. (Regulation 18705.3, subdivision (c).)

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

The governmental decision which Respondent attempted to use her official position to influence was the placement of an advisory measure on the ballot if the project was resubmitted to the City. Under the nexus test, when an employee earns a salary to accomplish what he or she does as a public official, it is legally presumed that the employer is benefiting from the situation. As such, it is presumed that it was reasonably foreseeable at the time Respondent stated her opinion on the advisory ballot that a decision to do so would be beneficial to Respondent's source of income, whether or nor Respondent or SAMCEDA were ultimately financial affected by the decision.

By attempting to use her official position to influence the aforementioned governmental decision in which she is presumed to have a financial interest, Respondent Foust violated Section 87100 of the Act.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent;

whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

On August 12, 2010, the Commission sent an Advisory Letter after she voted on a previous matter concerning the Saltworks project, which explained the existence of the nexus between Ms Foust's official duties owed to SAMCEDA and the Redwood City Council. As such, Respondent was aware that when an official receives income to advocate the policies of an individual or group, he or she may not then participate in a governmental decision promoting or defeating those policies. At the April 9, 2012 council meeting, Respondent acknowledged that she had been advised she cannot vote on matters concerning the Saltworks project, and stated that she would not vote on those matters, but proceeded to suggest that if the matter came back to the city, the council should consider placing an advisory vote on the ballot.

Attempting to use an official position to influence a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

Another recent case regarding a violation of Section 87100, where a nexus between the official's duties owed to the source of income and the official's public agency existed, that has been approved by the Commission includes:

In the Matter of Chris Canning, FPPC No. 12/696. Chris Canning, in his capacity as a member of the Calistoga City Council, made governmental decisions in which he knew, or had reason to know, he had a financial interest, by voting on matters that had a reasonably foreseeable financial effect on the Calistoga Chamber of Commerce while he was the executive director of the Calistoga Chamber of Commerce. The agreed upon penalty in that case was \$3,000 for the conflict count, approved by the Commission on September 19, 2013.

In mitigation, Ms. Foust contends that when she spoke, the Saltworks project was suspended, she expressed no opinion on the merits of the project, and the Council had no decision before it concerning the project. The project was subsequently withdrawn and has not been resubmitted. Furthermore, there is no finding that Ms. Foust or her employer actually financially benefited as result of Ms. Foust expressing her opinion.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division recommends the imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).