

MEMORANDUM OF LAW

DATE: March 18, 1988

TO: James Sills, Chief of Staff for Councilmember
J. Bruce Henderson
FROM: City Attorney
SUBJECT: Potential Conflict of Interest Following Sale
of Public Utility Stock/Dividends as Source of
Income

This is in response to your letter dated March 4, 1988, asking for legal analysis and opinion on whether receipt of dividends from a public utility company requires disqualification from voting. This memorandum supplements my memorandum of law dated February 19, 1988, regarding the potential conflict of interest arising from the ownership of stock in a public utility company.

FACTS

The following facts are from your letter of March 4, and the letter of January 21, 1988, which contained the previous inquiry about the effect of stock ownership under the Political Reform Act (PRA): Sometime between February 19, 1988 and March 4, 1988, Councilmember Henderson sold over \$1,000 worth of stock he held in the San Diego Gas & Electric Company (SDG&E). In the twelve (12) months prior to the sale of the SDG&E stock, he received dividends from SDG&E amounting to more than \$250. You later, by telephone, informed me that SDG&E is on the New York Stock Exchange and therefore registered with the Securities & Exchange Commission.

Phase One Development Company (Phase One) is a wholly owned subsidiary of SDG&E. Under the terms of an existing lease, Phase One is redeveloping a portion of Belmont Park located in Mission Beach in a shopping center.

QUESTION

Should Councilman Henderson refrain from voting during the next twelve (12) months on matters of substantial interest for SDG&E or its subsidiaries such as Phase One Development?

LEGAL ANALYSIS

The fundamental rule of disqualification for public officials under state law was stated in the memorandum of February 19. Essentially, the PRA prohibits a public official from making or participating in a governmental decision if that official knows or has reason to believe that he or she has a financial interest within the meaning of Government Code Section 87100 if it is

reasonably foreseeable that the decision will have a material financial effect on financial interests as defined in the PRA. Government Code Sections 87100 and 87103.

In the previous memorandum, we discussed when an "investment" constitutes a financial interest within the meaning of the PRA and concluded that investment in a company's wholly owned subsidiary constitutes investment in the company. In the present instance, the question concerns whether receipt of dividends from stock of a company makes that company a "source of income" to a public official and, therefore, a financial interest within the meaning of the PRA.

Government Code Section 87103 defines financial interest to include certain sources of income, as follows:

Any source of income, other than gifts and other 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, secured by or promised to the public official within 12 months prior to the time when the governmental decision was made.

Government Code Section 87103(c).

The term "income" in relevant part is defined in the PRA as follows:

(a) 'Income' means, except as provided in sub-division (b), a payment received, including but not limited to any . . . dividend, . . . paid by any person other than an employer, and including any community property interest in income of a spouse. . . . 'Income,' other than a gift, does not include income

received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) 'Income' also does not include:

. . .

(5) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States government. Emphasis added.

Government Code Section 82030.

The question presented appears to be answered by the definition of the term "income" under the PRA. The term

specifically excludes dividends received from companies registered with the SEC. Since SDG&E is registered with the SEC, then any dividend Mr. Henderson received from that company in the past twelve (12) months does not count as income to him.

Therefore, Mr. Henderson is not disqualified from voting on or participating in a decision concerning Belmont Park because of any dividend he received from SDG&E in the twelve (12) months prior to the date he sold his stock in that company.

It should be noted that although the PRA requires analysis of the relationship of companies to their subsidiaries when considering investments that constitute potential financial interests, there is no parallel requirement for sources of income. Government Code Sections 87103(a) and (c). Therefore, the fact that Phase One is a wholly owned subsidiary of SDG&E is irrelevant to the analysis addressed here regarding sources of income. The fact that Phase One's profits, if any, were passed through to SDG&E, its parent company, and paid out in the form of dividends to shareholders of SDG&E, if that was done, does not make Phase One a source of income to Mr. Henderson.

In conclusion, Mr. Henderson is not required to disqualify himself from voting on or participating in Belmont Park matters because he received dividends from SDG&E in the twelve (12) months prior to March 4, 1988.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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