

MEMORANDUM OF LAW

DATE: February 12, 1990

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Potential Conflict of Interest Arising Out of
Leasehold Interest/Council Docket Item No. 336,
Tuesday, February 13, 1990

This is in response to your memorandum dated February 8, 1990, addressed to John Witt, City Attorney, and John Lockwood, City Manager, regarding your potential conflict of interest with respect to Item 336 of the Council docket scheduled for February 13, 1990.

Your concern arises because you have a leasehold interest in four (4) storage units at Secure Self Storage, 3865 Rosecrans, which is located in the Midway Community Planning Area. You also list this leasehold interest on page B-4 of your Statement of Economic Interest (S.E.I.) form for calendar year 1988. You paid \$1,000 - \$10,000 for this lease during that calendar year. You state that the current use and intended future use of the lease is for self storage of personal items. From information obtained from your assistant Alexandra Hart by telephone on February 9, we also learned that your tenancy at Secure Self Storage is on a month-to-month basis.

Item 336 on the February 13 docket involves consideration of an interim ordinance which would require a Planned Development Permit for future development or redevelopment of drive-in and drive-through facilities within the adopted Midway Community Planning Area. A more complete description of the docket item is on the attached excerpt of the agenda for February 13, 1990.

Applicable Law

The fundamental law requiring analysis of potential conflicts of interest for purposes of disqualification from governmental decisions is located in the Political Reform Act of 1974, which is codified at Government Code section 87100 et seq. Government

Code section 87100 states: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

A public official is disqualified from participating in or making a governmental decision only if he or she has a "financial interest" that may be affected. An interest in real property is

among the types of financial interests with which section 87100 is concerned, as stated in Government Code section 87103. This section reads in relevant part:

An 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 or a member of his or her immediate family or on:

. . . .

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

The term "interest in real property" is defined for purposes of the Political Reform Act in Government Code section 82033. "An interest in real property" includes a leasehold interest if the fair market value of the interest is \$1,000 or more. However, the Fair Political Practices Commission (FPPC) has by regulation defined the term "leasehold interest" to exclude the interest of a tenant in a periodic tenancy of one month or less. 2 Cal. Code of Regulations section 18233.

Legal Analysis

According to the facts provided, you have a leasehold interest which involves payments between \$1,000 and \$10,000 annually. However, your tenancy is on a month-to-month basis. This fact is critical to the analysis, because a holder of a month-to-month tenancy, such as you have in the self storage units, does not have a "leasehold interest," since such an interest is specifically excluded from interests in real property as noted in the above-cited regulation. Therefore, you do not have in this case an interest in real property within the meaning of the Political Reform Act.

We conclude that you do not have a financial interest within the meaning of Government Code section 87100 and that you are permitted to participate and vote on Item 336 of the Council docket of February 13, 1990.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:048(x043.2)

Attachment

ML-90-27