



7-11 Committee on District Property – Member Recruitment Packet

In an effort to generate additional revenue, the Twin Rivers Unified School District (USD) is looking at how to better utilize many of its assets. Therefore, the District is currently forming what is referred to as a "7-11 Committee." If you would like to participate and are qualified, we invite you to apply to be a member of the Committee.

Purpose of 7-11 Committee

The purpose of the Committee is to review and analyze real property that is owned by Twin Rivers USD and to determine what real property could be designated as "excess" or "surplus" because it will not be needed for school purposes. The Committee will then present a report to the Board of Trustees recommending uses for the surplus property or how to dispose of the property (e.g., sale, lease, etc.). This is an important task and the District is looking for highly-qualified, capable, and committed individuals to be members of the Committee.

Under California law (Education Code sec. 17389), the Committee must have at least seven (7) members and no more than eleven (11) members and contain persons who can be representative of each of the following:

- a. The ethnic, age group and socioeconomic composition of the district;
- b. The business community, such as store owners, managers, or supervisors;
- c. Landowners or renters, with preference to be given to representatives of neighborhood associations;
- d. Teachers;
- e. Administrators;
- f. Parents of Students;
- g. Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

California law also designates the specific duties of a 7-11 Committee (Education Code § 17390) as follows:

- a. Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property;
- b. Establish a priority list of use of surplus space and real property that will be acceptable to the community;
- c. Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings or community input to the Committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458;
- d. Make a final determination of limits of tolerance of use of space and real Property;
- e. Forward to the Board of Trustees a report recommending uses of surplus space and real property.

Committee Meetings & Timeline

It is expected that the Committee will be in place by February 15, 2017 and will complete its work by May 3, 2017.

All Committee meetings, proceedings, and deliberations will be open to the public. Meetings have been scheduled from 5:30-7:30 p.m. at the District Office in the Board Room (5115 Dudley Blvd., Bay A, McClellan, CA 95652) as follows:

- February 22 - First meeting (organizational meeting)
- March 1 - Second meeting
- March 22 - Third meeting
- April 5 - Fourth meeting
- April 19 - Final meeting

It is anticipated that the Committee's report will be provided to the Board of Trustees at the Board's May 2, 2017 meeting. Subsequently, it is anticipated that a corresponding agenda item will be presented to the Board of Trustees on May 16, 2017 for consideration.

7-11 Committee Membership Recruitment and Application

Members of the Committee serve only on a voluntary basis.

This recruitment packet includes the application for serving on the Twin Rivers Unified School District 7-11 Committee and the Conflict of Interest Law: Real Property.

Applications are to be submitted to:

The Office of the Deputy Superintendent
Administrative Services, Bill McGuire
5115 Dudley Blvd. Bay A
McClellan, CA 95652.

Application submittal deadline: Friday, February 2, 2017, 4:30 p.m.

District Administration will submit committee membership recommendations to the Board of Trustees for approval on February 15, 2017.

For questions, please contact either Bill McGuire, Deputy Superintendent, bill.mcguire@twinriversusd.org or 916-566-1709 or Nicole Smith, Executive Assistant, Nicole.smith@twinriversusd.org or 916-566-1709

CONFLICT OF INTEREST LAW: REAL PROPERTY

1. DISCUSSION

There are two sets of laws that address Conflict of Interest issues in general and may apply to board appointed advisory committee members and their ownership of property in particular. The Government Code addresses conflicts of interest generally in Sections 1090, et seq. The Political Reform Act, which can be found in Government Code (Section 87100, et seq.) and the California Code of Regulations (Title 2, Section 18700 et seq.) also addresses conflicts of interest and specifically discusses the issue of property ownership. This memo focuses on the Political Reform Act since it addresses the issue of property ownership specifically and we do not think the Section 1090 would be triggered here.

A. **Political Reform Act**

The Political Reform Act is found in the Government Code (Section 87100, et seq.) and the California Code of Regulations (Title II, Section 18700, et seq.). In general, the Act prohibits any public official from participating in a governmental decision that may affect his or her financial interest. Specifically, the Act lays out a six step analysis to determine if a conflict of interest exists in any given situation. Special instructions are given throughout this analysis when property ownership is at issue. Below, we discuss each step in the context of property ownership.

1. Elements

a. Public Official

As defined by Section 82048, public official includes any member of a state or local government agency, including members of advisory bodies.

b. Influencing a Government Decision

In order for a conflict of interest to exist, the public official must be attempting to use his or her official position to influence a governmental decision. According to Section 18702.1(a), this occurs when “the official votes on a matter, obligates his agency to a course of action, or enters into any contractual agreement on behalf of his or her agency.” Any decision that relates to property will fall under this category.

c. Economic Interest

In order to be considered a conflict of interest, the official in question must have an economic interest that may be financially affected by the decision. (Section 87103(b).) In terms of property ownership, the public official in question will have an economic interest if he or she has some type of interest in a piece of property that is worth at least two thousand dollars. (Section 87103.)

d. Potential Effect on Economic Interest

Once it is established that the public official has a financial interest, it must be shown that the economic interest will be or possibly could be affected by the decision. According to Section 18704.2(a)(1), this step is satisfied if the member’s property is within 500 feet of the boundary of the government’s property.

e. Material Effect

The effect on the public official's property must be material. According to Regulation 18705.2(a), any "reasonably foreseeable" effect on the member's property is presumed to be material. If the public official can argue that the effect was not reasonably foreseeable, this presumption may be rebutted. The Regulation specifically states that a decision is not material if it does not foresee effect any of the following:

- (1) the termination date of the lease,
- (2) the amount of rent paid related to the property,
- (3) the value of the right to sublease the property,
- (4) the allowed use or actual use of the property, or
- (5) the use or enjoyment of the property.

f. Reasonably Foreseeable Effect

At the time the government decision was made, the financial effect on the member's property must be reasonably foreseeable. This standard depends on the facts of the case. However, according to relevant decisions, an effect is always considered reasonably foreseeable if the government's decision will alter the use or value of the property in any manner.

2. Consequences

Once it is determined the public official fits all the elements and has a conflict of interest, he or she must follow the following steps as outlined in Section 87105.

a. Public Identification

First, the member must make the conflict of interest known to the public. The code requires the public identification to be "in detail sufficient to be understood by the public" but it specifically states that "disclosure of the exact street address of a residence is not required." (Section 87105.)

b. Recuse

The member must then recuse himself from discussing and voting on the manner.

c. Absence

The member must leave the room during the vote as well as during any discussion of the matter and any disposition of the matter. The section allows the member to speak about the issue during the time that the general public is allowed to speak on the issue.

B. Government Code Section 1090

The Government Code Section 1090, et. seq. also deals with conflicts of interest. This section is boarder than the Political Reform Act but it does not specifically address the property ownership issue. It states that public officials cannot hold a financial interest in any contract made by them in their official capacity. As this advisory committee will not be contracting in their official capacity, we believe Section 1090 would not apply.

2. RELEVANT CASELAW

Conflict of interest issues concerning real property owned by a public official was addressed by the California appellate court in *Downey Cares v. Downey Community Development Commission* (1987) 196 Cal.App.3d 983. In *Downey Cares*, the court considered whether the material financial effect on the value of a councilmember's real property and real estate business of amendment of a redevelopment plan was reasonably foreseeable. The councilmember owned real property in both the old and amended redevelopment project areas and his real estate business was located in the amended area. The trial court based its decision in part on the fact that while amendment of the plan did not spend money on specific projects, it began the process of setting aside revenues for improvements in the plan area. The trial court also found that it had a reasonably foreseeable effect on the councilmember's income as a realtor because such income is based on percentage of property value sold and it was reasonably foreseeable that the amendment to the plan area would increase property values. (*Downey Cares*, supra, at 989-90.)

The councilmember argued that the conflict laws did not bar his participation in the action to amend the plan because the amendment of the plan did not specify or authorize any particular projects so it could not have a reasonably foreseeable financial affect on any specific property, including the councilmember's. The councilmember conceded that he might be barred from future votes on implementation of the redevelopment plan, but argued that he was not barred from voting on the amendment of the plan. (*Id.* at 990.)

The Court of Appeal rejected the councilmember's argument as too narrow an interpretation of the PRA. (*Ibid.*) According to the Court:

In determining the reasonably foreseeable effects of the adoption of the redevelopment plan, the court may justifiably consider that the very purpose of redevelopment is to improve the property conditions in the redevelopment area. [Citation and footnote omitted.] The fact that it might be possible to conceive of specific redevelopment projects which might fail to affect [the councilmember's] property and business does not show the trial court's decision was wrong. The test is whether it was reasonably foreseeable that the adoption of the plan would have a material financial effect on [the councilmember's] property and business, and we find the trial court's decision supported by reasonable inferences and the record.

* * *

Footnote 4: Drawing reasonable inferences that redevelopment will foreseeably increase property values and realtor income, while taking care to decide each case on its individual circumstances, is a reasonable accommodation of conflicting considerations. Such interpretation does not paralyze redevelopment agencies from taking the first steps toward redevelopment. Government Code section 87101 provides: "Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section." This section represents a compromise which permits government agencies to act but minimizes conflicts of interest, reflecting a policy that the actions of a closely divided council or commission should not be determined by a member who is financially interested in the

decision.

(Downey Cares, *supra*, at 991.)

3. CONCLUSION

If an advisory committee member owns a piece of property that may be financially affected by an act of the committee, the Political Reform Act may require that the committee takes steps to ensure its decisions are not influenced by the advisory committee member in question.

TWIN RIVERS UNIFIED SCHOOL DISTRICT 7-11 Committee on Surplus District Property

Application for Membership

Please Print

1. Full Name _____

2. Home Address _____

3. Mailing Address (if Different) _____

4. E-Mail Address _____

5. Home Phone (w/ Area Code) _____

6. Cell Phone (w/ Area Code) _____

7. Category under which you are eligible to apply (**check all categories that apply**)

Business community member, such as store owner, manager or supervisor:
Name of business organization you are active in:

Landowner or renter, with preference given to representatives of neighborhood associations.

Name of neighborhood association, if any, you are active in:

Teacher, Administrator

Work Site: _____

Parent /guardian of at least one child currently enrolled in a school in the district.
Name of your child(ren) and school(s) he/she is enrolled in:

Person with expertise in environmental impact, legal contracts, building codes and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

Describe your area of expertise:

8. Please indicate below why you are interested in serving on the Twin Rivers Unified School District Surplus Property (7-11) Advisory Committee. Attach additional page if needed.

Application Process

Completed applications must be received at the address below by no later than 4:30 p.m. on Friday, February 2, 2017.

Mail or Deliver to: Surplus Property (7-11) Advisory Committee
c/o Bill McGuire, Deputy Superintendent, Administrative Services
Twin Rivers Unified School District
5115 Dudley Blvd., Bay A
McClellan, CA 95652

If you are selected to serve on this committee you will be notified no later than Friday, February 9, 2017, with the first meeting scheduled to occur on Wednesday, February 22, 2017 from 5:30pm - 7:30pm. All meetings will take place at the District Office, 5115 Dudley Blvd. Bay A, McClellan, CA 95652