

State of California



Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

May 21, 1984

Joseph D. Patello
Port Attorney
Port of San Diego
P.O. Box 488
San Diego, CA 92112

Re: Your Request for Advice
Our File No. A-84-096

Dear Mr. Patello:

This letter is sent in response to your request for advice on the Political Reform Act^{1/} on behalf of Maureen O'Connor, Port Commissioner. You are the attorney for the San Diego Unified Port District ("District"), a public agency and tideland trustee organized pursuant to the San Diego Unified Port District Act. The District is governed by a Board of Port Commissioners ("Board") and has jurisdiction over certain San Diego Bay tide and submerged lands which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation.^{2/} The Board is in the process of pursuing the construction of a major convention center facility on filled tidelands of San Diego Bay owned and controlled by the District.

You have informed us that Ms. O'Connor's husband has an ownership interest of more than 10% (valued at over \$10,000) in the Grand Hotel ("Hotel") in Anaheim, California. The Hotel is located approximately two blocks from the Anaheim Convention Center which is approximately 90 miles from the District.

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91014. All statutory references are to the Government Code.

^{2/} A map of the District was included with your letter.

QUESTION

In view of her husband's financial interests may Ms. O'Connor participate in District decisions concerning the Convention Center facility?

DISCUSSION

Section 87100 prohibits public officials from making, participating in making, or in any way attempting to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect on any business entity in which the official or her spouse has an investment of \$1,000 or more, on any source of income to the official or her spouse of \$250 or more, or on any real property in which the official or her spouse has an interest of \$1,000 or more. Section 87103. Accordingly, Ms. O'Connor must refrain from participating in, or attempting to influence, any District decision which could have a material financial effect on any business entities in which she or her husband have an investment, on any sources of income to them, or on any property in which they have an interest.

Ms. O'Connor's request for advice raises two principal issues. The first issue is whether Ms. O'Connor has a financial interest with respect to the Hotel within the meaning of Section 87103, and the second issue is, if she does have a financial interest, whether the effects on her financial interest are foreseeable and material.

1. Financial Interest - "Jurisdiction" Issue

Investments are defined as any type of financial interest in a business entity if that business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business, plans to do business, or has done business at any time during the past two years in the jurisdiction. Section 82034. Interests in real property are deemed to be "within the jurisdiction" with respect to a local government agency such as the District if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the agency. Section 82035.

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We have not been given enough facts about Ms. O'Connor's husband's interest in the Hotel to know if she has an investment or an interest in real property within the meaning of Section 87103. If the Hotel or any business entity which owns or is related to the Hotel, does, plans to do, or has done business in the jurisdiction as defined above, then she must not participate in any decisions which could have a material financial effect on the Hotel, on any related business entity, on any real property owned by the business, or on any sources of income to the business for which her pro rata share is \$250 or more.^{3/} If the Hotel does not do business in the District and is not part of or related to a business entity which does business or owns real property in the District, then Ms. O'Connor does not have a financial interest under Section 87103 which would require disqualification.

2. Effects of the District Decisions

If Ms. O'Connor does have a financial interest as outlined above, then she must refrain from participating in, or attempting to influence, any District decision which could have a material financial effect on the Hotel, on any other part of any business entity which owns or is related to the Hotel, on any real property owned by that business entity, or on any sources of income to the business entity for which her pro rata share is \$250 or more.

With regard to the decisions on the Convention Center facility, the concern has been expressed that, if the center is built, it will affect the amount of activity at the Anaheim Convention Center, which in turn will affect the hotels and other businesses in the vicinity. However, we have not been presented with any facts which either support or refute this claim. While an effect does not have to be certain to be "reasonably foreseeable" within the meaning of Section 87103, there must be a high degree of probability. If there were information showing that the Convention Center in San Diego

^{3/} If an official has a 10% or greater ownership interest in a business entity, income to the business entity will be treated as income to the official based on her ownership interest. Section 82030(a). For example, if an official owns 50% of a business, any customer which provides the business with \$500 is a source of income of \$250 to the individual official, and the official may not participate in any decision which could have a material financial effect on that source of income.

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would divert substantial business from the Anaheim Convention Center and that the Hotel would probably be affected by the loss of business from this source, then the effects of the District decisions regarding the proposed Center on the Hotel would be foreseeable and probably material.

In summary, as we discussed on the telephone, we have not been provided with enough facts to come to a firm conclusion on your client's request. If you are aware of any further facts relating to the questions of jurisdiction and the financial impact of the proposed Convention Center on the Hotel, we will be glad to consider them and see if, on the basis of additional facts, we can issue advice under Section 83114(b). Thus, I would suggest that you review this letter with Ms. O'Connor and consider requesting further advice from this office based on additional facts.

Sincerely,



Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh



Port of San Diego

and Crutcher Field Air Terminal

(619) 291-3700 • P.O. Box 488 San Diego, California 92111

18 April 1984

Fair Political Practices Commission
State of California
Post Office Box 807
Sacramento, California 95804

Attention: Legal Division

Gentlemen:

This is a request for written advice concerning the operation of the San Diego Unified Port District (Port District), a public agency and tideland trustee organized and existing pursuant to the San Diego Unified Port District Act, which has been codified in the California Harbors and Navigation Code, Appendix 1.

The Port District is governed by a Board of Port Commissioners (Board) and has jurisdiction over certain San Diego Bay tide and submerged lands which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation. At the present time the Board is in the process of pursuing the construction of a major Convention Center facility, which is an appropriate use under the trust, and which will be located on filled tidelands of San Diego Bay presently owned and controlled by the Port District. A competition for design of the Convention Center has been held and presently the architects selected from that competition will be negotiating a contract with consultants for the Port District, after which time the contract will be brought before the Board for formal action. This contract will be for preparation of the construction contract documents.

In addition to the architectural contract, the Board will be making decisions regarding other pending matters, such as the construction contract itself, an operating agreement with the City of San Diego, an environmental impact report, and a Master Plan Amendment to the present Port District Master Plan to include the Convention Center as a specific land use. The Port District Master Plan and Amendments thereto are adopted and approved in accordance with the California Coastal Act. Other pending decisions have to do with hotels, one of which is presently constructed and in operation under a lease from the Port District, which contains an option to build another hotel tower, and a further vacant site which will ultimately be leased as a hotel site.

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With the above background and outline of the pending decisions of the Board, Commissioner Maureen O'Connor, upon my recommendation, has asked that I request an advice letter concerning the following financial interest and whether or not she must disqualify herself from participating in the above-noted pending decisions because of that interest.

The financial interest for consideration pertains to the Grand Hotel located in Anaheim, California, approximately two blocks from the Anaheim Convention Center, which is approximately Ninety to One Hundred miles from the jurisdiction of the Port District. Ms. O'Connor's spouse holds an interest in that hotel of more than Ten Per Cent. The interest has a value in excess of Ten Thousand Dollars. I am not aware of any facts which indicate that the Grand Hotel operates or does business in the jurisdiction of the Port District or that the Grand Hotel intends to operate or do business or has in the past ever operated or done business in the jurisdiction of the Port District.

As explained above, the Port District's jurisdiction is limited to the tide and submerged lands of San Diego Bay, which have been conveyed to the Port District and surveyed and mapped by the State Lands Commission. The jurisdiction of the Port District extends landward only to the mean high tide line (except for reporting real property interests within two miles thereof) and includes some filled tidelands such as San Diego International Airport and areas where industrial and commercial buildings and maritime facilities are located. The enclosed map, which depicts the Port District ownership of tidelands, may be of assistance on the subject of jurisdiction and in analyzing this matter. Furthermore, if additional information is deemed necessary as you proceed, please let me know, and I will attempt to provide it for you. In that regard, there is some urgency to this request for written advice and hopefully your decision can be made within three weeks rather than the twenty one working days as provided in Government Code §83114.

I sincerely so request, however, I do understand that your office receives many requests such as this one and that you must have time and personnel constraints.

Sincerely,


JOSEPH D. PATELLO
Port Attorney

JDP:sw

enclosure