

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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

June 5, 1984

P. Lawrence Klose
City Attorney
23 Russell Blvd.
Davis, CA 95616

Re: Advice Letter No. A-84-124

Dear Mr. Klose:

Thank you for your request for advice on behalf of Davis City Councilman Gerald J. Adler.

FACTS

Mr. Adler is a partner in the law firm of Crow, Lytle, Gilwee, Donoghue, Adler and Weninger. Mr. Richard Crow ceased being a partner in the firm on January 1, 1983. However, the firm, at no charge to Mr. Crow, allows him to use an office in the firm and provides him with secretarial support. Mr. Adler feels that the firm benefits by the physical presence and participation of its founding partner. Occasionally, Mr. Crow refers contingent fee cases to the firm and Mr. Crow is paid a referral fee from any award recovered. In addition, Mr. Crow has a 1/7 interest in one of the partnership's cases. He pays a proportionate share of the costs incurred in pursuing the case and he will share in any recovery. All of Mr. Crow's other clients are independent of the partnership and the fees are not shared.

One of Mr. Crow's independent clients is Lloyd Arnold.^{1/} Mr. Arnold was a client of the partnership until January 1, 1983. Mr. Adler's share of the fees from either Mr. Arnold, or his ventures, since that date does not exceed \$250. At the present time, the partnership does not in any way represent Mr. Arnold.

^{1/} Mr. Arnold is a client both as an individual and as part of various harness racing ventures.

Mr. Arnold is involved in a joint venture with Mr. Frank Ramos and others to construct an industrial and residential development outside of Davis on the Mace Ranch. The development will require the City of Davis to annex the property. Mr. Crow does not represent Mr. Arnold concerning this venture. Mr. Adler has been asked to discuss the proposed project with representatives of Mr. Ramos.

QUESTION PRESENTED

Do the conflict of interest provisions of the Political Reform Act permit Mr. Adler to discuss the proposed industrial and residential development with Mr. Ramos' representatives?

CONCLUSION

The Political Reform Act does not prohibit Mr. Adler from discussing the proposed industrial and residential development with Mr. Ramos' representatives.

DISCUSSION

Government Code Section 87100^{2/} prohibits a local public official from making, participating in the making, or using his official position to influence^{3/} a governmental decision in which he knows or has reason to know he has a financial interest. 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 on:

* * *

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made....

(Section 87103)

^{2/} Hereinafter all statutory references are to the Government Code unless otherwise noted.

^{3/} The terms "making," "participating in the making," and "using his official position to influence" are defined in 2 Cal. Adm. Code Section 18700, copy enclosed.

P. Lawrence Klose
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In the present situation, the governmental decision in question is whether to annex the Mace Ranch.^{4/} Mr. Adler must disqualify himself from making, participating in, or using his official position to influence the decision on the annexation if it is reasonably foreseeable that the decision will materially affect a source of income to Mr. Adler. Both Mr. Ramos and Mr. Arnold will be materially affected by the annexation decision because the proposed development, which their joint venture is pursuing, depends upon a favorable annexation decision. However, neither Mr. Ramos, nor Mr. Arnold, is a source of income to Mr. Adler.^{5/}

Mr. Crow may be a source of income to Mr. Adler by virtue of the arrangement that Mr. Crow has with the law firm. However, the issue of whether he is a source of income does not need to be resolved^{6/} because Mr. Crow will not be materially affected by the annexation decision due to the fact that Mr. Crow does not represent Mr. Arnold on the proposed development. Therefore, Mr. Adler is free to discuss the proposed project with Mr. Ramos' representatives and to participate and vote on the annexation decision when it comes before the City Council.

If I can be of any additional help to you, please feel free to contact me at (916) 322-5901.

Very truly yours,

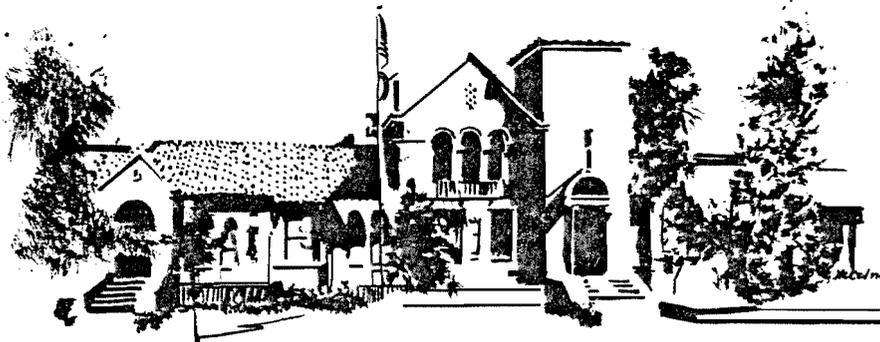
Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosure

^{4/} You did not indicate whether any governmental action has been taken yet on the annexation issue. However, if the project is to go forward, the annexation question will, at some point, be considered by the City of Davis.

^{5/} Although Mr. Arnold has provided Mr. Adler's firm with fees during the last 12 months, Mr. Adler's share amounted to less than \$250.

^{6/} If, at some time in the future, you are confronted with a situation which requires this issue to be resolved, I will be happy to do so for you.



CITY OF DAVIS

23 Russell Blvd., Davis, CA 95616 (916) 756-3740

May 8, 1984

Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

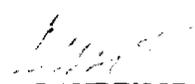
Re: Request for Advice Letter

Dear Commissioner:

Attached is a letter from Gerald J. Adler, a Davis City Council Member, requesting advice relative to a conflict of interest. I believe the letter is self-explanatory and that the relevant facts are clearly expressed.

An advice letter is requested at the earliest opportunity. If further information is needed, please feel free to contact Mr. Adler, at the telephone noted on his letter, or myself.

Very truly yours,


P. LAWRENCE KLOSE
City Attorney

PLK:dk

cc: Gerald J. Adler

Enclosure

RICHARD E. CROW
THOMAS F. LYTTLE
JAMES F. GILWEE
PETER J. DONOGHUE
GERALD J. ADLER
JOSEPH J. WENINGER
ROBERT C. TRONVIG, JR.
RICHARD E. CROW II
DON R. WHITE, JR.
MARC G. MARCUS
KIM REGALADO

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TELEPHONE
(916) 441-2980

RECEIVED
APR 26 1984
April 24, 1984
CITY ATTORNEY

Larry Klose
City Attorney
City of Davis
23 Russell Boulevard
Davis, California 95616

RE: REQUEST FOR CONFLICT OF INTEREST OPINION

Dear Larry:

As I previously told you, I believe that I should have a conflict of interest opinion from you or from the F.P.P.C. concerning the following facts.

I am a partner in the above law firm and have been since 1978. Richard E. Crow was a partner until January 1, 1983. Although his name remains on the letterhead and he retains his office within the firm, he has not been a partner since that date.

Under an agreement effective that date, he may have clients independent from the partnership or alternatively may refer cases to the partnership. Fees generated from his independent clients are not shared with the partnership. Litigation documents related to those independent clients are on partnership pleading paper. Correspondence is on this letterhead.

One of Mr. Crow's clients is Lloyd Arnold, individually and in various harness racing ventures. Mr. Arnold was a client of Mr. Crow's and of the partnership prior to January 1, 1983. My share of the fees generated into the partnership from Mr. Arnold and his ventures since that date have not exceeded \$250.00. At this time the partnership does not represent Mr. Arnold or any of his ventures.

Mr. Arnold is apparently a joint venturer with Mr. Frank Ramos and others concerning a proposed industrial and residential development on the Mace ranch just east of the

Mr. Larry Klose
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April 24, 1984

Davis city limits. Development would require annexation into the city. Mr. Crow does not represent Mr. Arnold concerning that venture.

I have been asked by various people to discuss the potentials of that proposed development with persons representing Mr. Ramos. I have declined to do so pending the requested opinion.

I recognize that although Mr. Crow is not technically a partner within the firm, insofar as the public is concerned he does appear to be a partner. Additionally, the firm and I will continue to benefit from his physical presence and participation as our firm's founding partner.

You have informally stated that this relationship may constitute a remote interest which could preclude me from participating in anything concerning the Ramos development proposal. Please render your formal opinion on the above, or alternatively request an opinion from the F.P.P.C. In the meantime I shall not discuss the Ramos proposal with any of its proponents or their representatives.

Sincerely,

GERALD J. ADLER

GJA/cb

cc: Richard E. Crow