

# 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 14, 1984

John Parker  
Planning Commissioner  
Box 3756  
Clearlake, CA 95442

Re: Your Request for Advice  
Our File No. A-84-136

Dear Mr. Parker:

Thank you for your letter requesting advice concerning your obligations under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

### FACTS

My understanding of the situation is as follows. You were recently appointed to the Planning Commission of the City of Clearlake. You are by profession an archeologist, and a portion of your income is derived from conducting archeological surveys and cultural resource inventories for land owners and developers. You work with Environmental Systems and Service (ES&S), a private company. You basically operate as an independent consultant on projects and use the ES&S staff and facilities to do the paperwork and accounting. ES&S receives 20% of the fees received for each project, and you receive the remaining 80%.

The types of surveys and reports that you do are normally required for a development project to proceed under the provisions of the California Environmental Quality Act (CEQA). However, sometimes the Planning Commission must determine when

---

<sup>1/</sup> Government Code Sections 81000-91014. all statutory references are to the Government Code. A copy of our Guide to the Political Reform Act of 1974 is enclosed.

John Parker  
June 14, 1984  
Page 2

such surveys are required and what forms of mitigations are necessary before construction can be commenced on a project.

In your letter, you gave an example of a matter that came up during your second meeting on the Planning Commission. A development was proposed for an area which had been classified as a highly sensitive archeological region by the State Office of Historic Preservation. Planning staff recommended that the Commission require that an archeological survey be conducted prior to construction of the project. You abstained from participation in this matter based on a potential conflict of interest. However, it was not clear to you if you had a conflict in the situation. Most of your work is conducted outside of Clearlake, and there are two other archeologists in the area which could conduct the necessary studies. Your questions to us basically concern the potential for conflicts of interest in your situation.

#### ANALYSIS

The conflict of interest provisions of the Political Reform Act prohibit a public official from making, or participating in, decisions in which he has a financial interest in the outcome. Section 87100. Section 87103 states that 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 source of income to the official of \$250 or more to the official within the preceding 12 months. Effects on a source of income include direct effects on the amount of an official's income. See 2 Cal. Adm. Code Section 18702(b) (3) (copy enclosed).

Accordingly, there are two possible bases for disqualification in your situation. First, you should not participate in decisions involving archeological surveys and studies on development projects which could foreseeably result in your obtaining a contract to do the archeological surveys and studies. Whether such a result was foreseeable would depend on whether there was a substantial likelihood or probability that you would get the contract. See Thorner Opinion, 1 FPFC Opinions 198 (No. 75-089, December 4, 1975). If as you suggested in your letter, you agree not to work as a contract archeologist for projects within the City of Clearlake, then it would not be foreseeable that you would apply for or obtain the contract, and you could participate fully in the decisions.

The second potential basis for disqualification involves effects on sources of income to you of \$250 or more. If, for

John Parker  
June 14, 1984  
Page 3

example, you did an archeological survey for a developer six months ago for a project (within or outside of Clearlake) and you received more than \$250 for your work, you must refrain from participating in decisions that may have a material financial effect on that developer's projects in Clearlake until 12 months have elapsed. If situations like this arise in the future, you should consult this office or the City Attorney for further and more specific advice.

I hope that this letter answers all of your concerns. If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,



Diane Maura Fishburn  
Staff Counsel  
Legal Division

DMF:plh  
Enclosures

F P P C

MAY 24 8 37 AM '84 REQUEST FOR ADVICE

May 22, 1984

Dear Fair Political Practices Commission,

I have recently been appointed to the Planning Commission for the City of Clearlake. I hope to serve my community to the best of my ability.

Professional Status I am an Archeologist and a portion of my income is derived from conducting archeological surveys and cultural resource inventories for land owners and contractors. These surveys are required by CEQA, however, the Planning Commission often finds itself in the position to determine when such surveys will be required and what forms of mitigation may be deemed necessary before the development project can proceed.

The company with which I work is Environmental Systems and Service (ES&S), PO Box 190, Kelseyville, CA. 95451. I basically operate as a private consultant and utilize the ES&S staff and facilities to do accounting and paperwork. For this service ES&S receives 20% of each project I do.

Potential for Conflict This week (my second meeting on the Commission) we held a public hearing on a Mitigated Negative Declaration (IS-4-84) to allow a development to proceed in an area which had been classified as a highly sensitive archeological region by the State Office of Historic Preservation. Planning staff was recommending that the Negative Declaration be approved and that an archeological survey be conducted prior to project construction. I abstained from the discussion and vote for this project, however, due to my unique knowledge of the law in this area, other planning commissioners wanted some advice on how to proceed with this project. I found myself in an awkward position.

I have discussed this matter with the City Attorney and we have arrived at a possible solution to the potential conflict.

Proposed Solutions One solution would be for me to abstain from all discussion and voting on projects which have the potential for requiring archeological work. The regularity with which such projects are before the Planning Commission (just about every CEQA EIR or NEG. DEC. decision) and the amount of time which I would need to remove myself from the proceedings would create a hardship for the rest of the Commission and significantly slow down the planning process. In fact, as the Commission is currently short one member, my abstinence will frequently cause the commission to be without a quorum. In addition, my special knowledge regarding the laws and procedures in this area could help prevent law suits being filed against the city for miscompliance.

Another possible solution was suggested which may do away with the potential for conflict of interest while allowing me to remain in the discussions and voting during Planning Commission

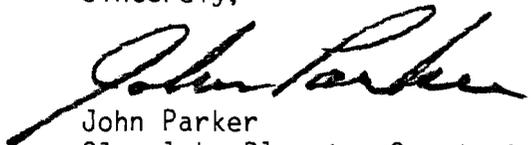
hearings. Would it be possible for Environmental Systems and Service and myself to enter into an agreement (memorandum of agreement) with the City of Clearlake and the FPPC stating that we will not conduct any archeological or cultural resource work within the city limits of Clearlake as long as I am on the Clearlake Planning Commission? Such action would not place a hardship on developers in the area as there are two other archeologists which work in the area which can conduct the necessary studies. In addition such an agreement would not create a hardship on me or my ability to subsist as most of my work is conducted outside the city limits anyway.

An Advice Letter is urgently requested. Please advise us of:

1. Is there the potential for a conflict of interest occurring in this situation?
2. How should I act as a Planning Commissioner in order to avoid a conflict?
3. If I enter into an agreement to discontinue working as a contract archeologist within the city limits, during my term on the Planning Commission, will this allow me to enter into discussion and vote on topics which may require archeological work to be performed (note: there are other contract archeologists in the area who can perform such work)?

Thank you for your time and consideration.

Sincerely,



John Parker  
Clearlake Planning Commission