

# 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

July 18, 1984

R. Peyton Sibley  
Calistoga City Councilmember  
1232 Washington Street  
Calistoga, CA 94515

Re: Advice Letter No. A-84-180

Dear Mr. Sibley:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act.

### FACTS

The Calistoga City Council is considering the adoption of a Mobile Home Park Rent Stabilization Ordinance. You and Councilman Melvin J. Avila are residents of mobile home parks. You are also a licensed mobile home salesperson who works, as an independent contractor, for Napa Holiday Mobile Home Sales.

The purpose of the proposed ordinance is to protect the owners and occupiers of mobile homes from unreasonable rent increases, while allowing mobile home park owners to cover their costs and receive a fair rate of return on their investments. The ordinance provides for the creation of a Mobile Home Park Rent Review Commission which will determine the reasonableness of the rent charged by a park. A Commission hearing will be held upon the filing of a petition by either an owner, or by more than 50% of the residents within a park. The Commission will be able to either maintain or adjust the rent charged. The ordinance also prohibits the owners increasing the rent charged in a park more than once during any 12 month period.

You stated in your letter that the population of Calistoga is approximately 4,046. There are between 850 and 900 individuals living in the four mobile home parks in the City.

QUESTION PRESENTED

Under the Political Reform Act, are you and Councilman Avila prohibited from participating in the decision on the Mobile Home Rent Control Ordinance?

CONCLUSION

The conflict of interests provisions of the Political Reform Act will not prohibit you from participating in the decision on the Mobile Home Rent Control Ordinance.

DISCUSSION

Government Code Section 87100<sup>1/</sup> prohibits a public official from making, participating in the making, or in any way attempting to use his official position to influence 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,<sup>2/</sup> distinguishable from its effect on the public generally, on:

\* \* \*

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

Section 87103.

A. Mobile Home Park Residency:

You and Councilman Avila are both residents of mobile home parks. It is unnecessary to determine whether your interests

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<sup>1/</sup> Hereinafter all statutory references are to the Government Code unless otherwise indicated.

<sup>2/</sup> See the enclosed copy of 2 Cal. Adm. Code Section 18702, which defines the term "material financial effect."

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will be materially affected by the decision on the ordinance, because, even if there is a foreseeable material effect, the "public generally" exception will allow you both to participate in the decision. This exception provides that an official who would otherwise be disqualified from a decision may participate if the decision will affect the official's interest in substantially the same manner as it will affect a significant segment of the public generally. (See the enclosed copy of 2 Cal. Adm. Code Section 18703.) In the present case, the proposed ordinance will affect you and Mr. Avila in the same manner as it will affect all of the other mobile home residents in the City. In Calistoga, there are between 850 and 900 individuals occupying mobile homes. There are approximately 4,046 total residents in the City. Thus, the ordinance will affect your interests in the same manner as it will affect a diverse, large (21% of Calistoga's total population) segment of the population.

**B. Mobile Home Park Sales:**

You are also a licensed mobile home salesman who works as an independent contractor for Napa Holiday Mobile Home Sales. The company provides you with clients and you divide the sales commissions. Your sources of income include Napa Holiday Mobile Home Sales and any clients who have provided you with \$250 or more in income during the last 12 months.

Based upon the facts that you have provided, it does not appear to be foreseeable that the decision on the ordinance will have a material effect on Napa Holiday Mobile Home Sales. While it is possible that the ordinance will encourage mobile home park residency and thereby increase mobile home sales, the financial impact on a particular sales company is too speculative to require your disqualification.

It also does not appear to be foreseeable that any individual client will be materially affected by the decision. The ordinance will create a board which can review rental charges and decide whether to adjust the rate. You did not provide any facts indicating that any particular individual will be significantly harmed or benefited by the passage of the ordinance.

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If you have any questions, please feel free to contact me at  
(916) 322-5901.

Very truly yours,

*Janis Shank McLean*

Janis Shank McLean  
Counsel  
Legal Division

JSM:plh  
Enclosures

# CITY OF CALISTOGA

*In Beautiful*



*Napa Valley*

JUL - 6 1984

1232 WASHINGTON STREET • CALISTOGA, CALIFORNIA 94515 • (707) 942-5188

July 3, 1984

TO: Diane Maura Fishburn  
Staff Counsel, Legal Division  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

FM: R. Peyton Sibley, Councilmember

RE: Request for Advice

ENC: Proposed Rent Review Ordinance

This request is being made at this particular time in order to determine whether or not a conflict of interest may exist on my part as a member of the Calistoga City Council and also on the part of Councilmember Melvin J. Avila, both of us being residents of mobile home parks. I introduced the ordinance several weeks ago with full knowledge that there was potentially a conflict of interest which could constrain me from participating in the voting on the ordinance. Mr. Avila and I, as previously stated, are residents of mobile home parks, different ones however. Prior to introducing this ordinance, I engaged in an in-depth study of possible conflicts using material available to me at City Hall here in Calistoga, as well as a very detailed councilmember's manual obtained from the League of California Cities at a recent conference for newly-elected Councilmen. I was elected in April of this year. Mr. Avila is starting his second term. He has been on the Council for four years. All this time he has been a resident of the same park in which he now lives.

It occurred to me that, since a question of conflict of interest was raised immediately prior to and immediately after the introduction of this ordinance, it would be to the advantage of the City and to Mr. Avila and myself to have a detailed legal determination made of potential conflicts of interest. In this regard I have had our City Attorney, Mr. John Gladstein, check out the probabilities of a conflict of interest as he interprets California Codes on that subject.

Additionally, I felt that your Commission would probably be the final source for making as close a determination as is possible in this matter.

For your reference, the following facts are submitted as applying to this particular matter. First, the population of Calistoga is estimated as being 4046. Of that number, some 710 are of school age which leave us with 3335 adult residents. There are four mobile home parks in Calistoga, three of them quite large, and one small. The total number of mobile homes within the four parks totals 555. These mobile homes house, at this time, between 850 and 900 persons. In addition to being a member of the Council and a resident of a mobile home park, I am also licensed by HCD as a Mobile Home Salesperson. My license is in the office of the organization I represent. We suggest that there is an urgency to this matter, inasmuch as we expect this ordinance to be voted on at our regular meeting of July 17 of this year. In light of these facts we would appreciate your expediting an advice letter as soon as possible.

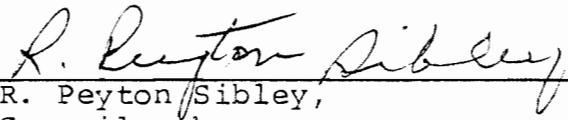
Much of the material which your office furnished City Attorney Gladstein relates to our specific situation but there are elements of difference between the cases which you cited in said material which prompts us to outline our specific facts and differences. In the first place, we live in different mobile home parks. (There was only one in the case of Westlake Village which was cited in your material and both the affected councilmembers lived in that park.) Another difference is that the ordinance we have, which you will note in your reading, does not call for a guaranteed annual maximum increase in space rents. It provides strictly that if, in any one of the parks at the time a rent increase is proposed, 50% plus one of the residents deems such increase to be excessive, a petition may be filed to bring the established rent review commission into action in order to determine the reasonableness of the proposed rent increase. This spells out the major differences between the situation in Calistoga and those two which you very carefully delineated for us.

One other fact which I will draw your attention to again is that of the license which I hold as a Mobile Home Salesperson. In consideration of all these facts we await your decision or advice as to the possibility that there may be conflict of interest, or that there very likely is not.

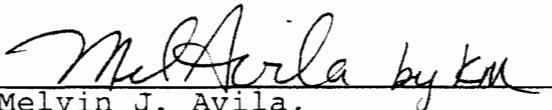
I realize, personally, that it is extremely difficult to make a hard, fast, "locked-in" concrete decision on such a matter as this, but to the best of your ability we would appreciate your coming as close to that as you possible can. We ask also that your opinion be transmitted to us by phone

with a follow-up letter of confirmation.

Yours very truly,

  
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R. Peyton Sibley,  
Councilmember

Concurs in this request:

  
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Melvin J. Avila,  
Councilmember

RPS/km

cc: City Council  
City Administrator/Coordinator  
City Attorney