

State of California



Fair Political Practices Commission

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September 27, 1984

David W. McMurtry
Law Offices of de la Vergne
and McMurtry
901 H Street, Suite 503
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-84-206

Dear Mr. McMurtry:

Thank you for your request for advice on behalf of Sacramento Metropolitan Cable Television Commission ("CTC") concerning the application of Government Code Section 84308.^{1/}

QUESTIONS PRESENTED

1. In quasi-judicial actions relating to the cable television franchise which has been awarded to Cablevision of Sacramento, which entities and individuals will be considered the "applicant" within the meaning of Section 84308 and 2 Cal. Adm. Code Section 18438.3.

2. When the directors, officers and employees of the corporate general partners "lobby in person" or "testify in person" during quasi-judicial actions relating to the cable television franchise, are they acting as "agents" of the individual shareholders or of the corporate general partners within the meaning of Section 84308 and the regulations.

CONCLUSIONS

1. Cablevision of Sacramento is the "applicant" within the meaning of Section 84308 in quasi judicial CTC proceedings.

^{1/} All statutory references are to the Government Code, and all regulatory references are to Title 2 of the California Administrative Code.

2. When the directors, officers and employees of the corporate general partners "lobby in person" or "testify in person" during quasi-judicial CTC proceedings, they are acting as agents of Cablevision and its general partners, but they are not acting as agents of individual shareholders who have less than a 10% interest in a corporate general partner or in Cablevision.

FACTUAL BACKGROUND

On December 22, 1983, a cable television franchise for the Sacramento metropolitan area was awarded to Cablevision of Sacramento. The CTC is charged with the administration of the franchise.^{2/}

Cablevision of Sacramento ("Cablevision") is a general partnership comprised of the following entities and individuals:

1. Managing General Partner: Charles Dolan, an individual, has a 47.5% interest in the partnership.

2. Corporate General Partner: Cablevision Systems Sacramento Corporation ("CSSC"), a California corporation, has a 1% interest in the partnership. This company is wholly owned by Charles Dolan and performs the management role for the Sacramento system. Mr. John Tatta is the President of CSSC.

3. Prime General Partner: Scripps-Howard Cable Co. of Sacramento, Inc., a California corporation, has a 47.5% interest in the partnership. This company is a wholly owned subsidiary of Scripps-Howard Broadcasting Co., which is a subsidiary of E. W. Scripps Co. The majority shareholder of E. W. Scripps Co. is the E. W. Scripps Trust.

4. Special General Partner: River City Cablevision, Inc. ("River City"), a California corporation, owns 5% of the partnership. It has 73 individual shareholders who own equal number of shares in the corporation. All of the shareholders are Sacramento residents.

^{2/} CTC is a joint powers agency created by the cities of Sacramento, Galt and Folsom and the County of Sacramento to administer the Franchise. See my letter to you dated May 15, 1984 (No. A-84-081) for more information on CTC.

None of the corporate partners are a "close corporation" within the meaning of Corporations Code section 158. Each partner has a role in the management of the partnership.

ANALYSIS

Section 84308 (a) contains a prohibition on the soliciting, receiving or directing of contributions of \$250 or more by members of boards or commissions during quasi-judicial proceedings from the applicant in the proceeding or his or her agent. Subsection (b) of 84308 requires disqualification by a board member who has received \$250 or more from an applicant in a proceeding or his or her agent. In addition, the prohibition and disqualification requirements in Section 84308 apply to persons who actively support or oppose a particular decision in a proceeding and their agents.

1. Applicant

The Commission has defined the term "applicant" to mean "[a] person who files an application for, or is the subject of a proceeding involving a license, permit or other entitlement for use...." Section 18438.3(a).

In quasi-judicial proceedings involving the cable television franchise before the CTC, Cablevision is the "applicant" within the meaning of Section 84308. Thus the members of CTC are prohibited from accepting, soliciting or directing a contribution of \$250 or more from Cablevision during the proceeding and for three months following the conclusion of the proceeding. Conversely, Cablevision is prohibited from making such contributions. In addition, if a CTC member has received a contribution of \$250 or more from Cablevision within the 12 months preceding a decision in a proceeding, he or she must disqualify him or herself from participating in the proceeding. As a practical matter, since Cablevision is the subject of almost all of CTC's quasi-judicial proceedings, the prohibition and disqualification requirements operate as a de facto limit of \$250 (including amounts given by agents of Cablevision) on all contributions from Cablevision to CTC members.

2. Persons Who Actively Support or Oppose

A person "actively supports or opposes" within the meaning of Section 84308 if (1) he or she lobbies in person, testifies in person, or otherwise acts to influence members of the board or commission and (2) the person has a financial interest as defined in the conflict of interest provisions of the Act.

These terms have been further defined by the Commission in 2 Cal. Adm. Code Section 18438.4 as follows:

(a) A person "actively supports or opposes" an application for a license, permit, or other entitlement for use if:

(1) He or she lobbies in person, testifies in person before, or otherwise acts to influence the vote of members of the board or commission in the proceeding; and

(2) He or she has a financial interest in the board or commission's decision in the proceeding.

(b) A person "lobbies in person for or against an application" when he or she communicates directly, either in person or in writing, with a member of the board or commission for the purpose of influencing that member's vote on the application.

(c) A person "testifies in person" when he or she testifies or makes an oral statement before a board or commission during a proceeding on a license, permit or other entitlement for use for the purpose of influencing the decision of the board or commission.

(d) A person "otherwise acts to influence" a member of a board or commission when he or she communicates with an employee of the board or commission, or when his or her agent communicates with a member or employee of the board or commission, for the purpose of influencing any member's vote on an application.

(e) A person does not lobby, testify or otherwise act to influence a member of a board or commission by communications made to the public, other than those made in the proceedings before the board or commission.

Accordingly, anyone who has an investment interest in Cablevision of \$1,000 or more or receives income of \$250 or more from Cablevision may have a financial interest in CTC decisions affecting Cablevision with the meaning of Sections 87100 and 87103. If such a person attempts to influence a CTC decision, he or she will be considered a person who actively supports or opposes under Section 84308.

3. Agents

By regulation, the Commission has defined "agent" as follows:

(b) A person is an "agent" of an applicant or of a person who actively supports or opposes an application for a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."

Since Cablevision is a general partnership and all of the partners participate in its management, any general partner who appears (by a director, officer, employee or shareholder) before CTC or communicates directly with CTC members or staff in connection with any quasi-judicial matter involving Cablevision will be deemed to be representing Cablevision, and thus to be its agent for purposes of Section 84308. Thus any such general partner is subject to the same prohibitions and requirements as Cablevision itself, and all contributions from such partners and their representatives must be cumulated together and with those from Cablevision.

I would also note that the Act defines "person" to include "any ... group of persons acting in concert." Section 82047. Thus if two or more individuals or business entities coordinate or plan the giving of a contribution, the contribution is attributed to all of them.

I will discuss the application of these provisions to each partner.

1. Cable Systems Sacramento ("CSSC") and Charles F. Dolan. Since CSSC is wholly owned by Charles Dolan, for the purposes of my analysis, CSSC and Mr. Dolan are one entity. The contributions given by Mr. Dolan will be attributed to CSSC, and vice versa. CSSC will be considered an agent of Cablevision if Mr. Dolan and anyone else who speaks for CSSC communicates directly with staff or members of CTC for the purpose of influencing a CTC decision as defined above. Mr. Dolan and other representatives of CSSC who participate in any direct communication with CTC will also be considered agents of Cablevision.

David W. McMurtry
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In addition, since Dolan and CSSC have an investment of over \$1,000 in Cablevision, they may have a financial interest within the meaning of Sections 87100 and 87103 in a CTC proceeding. If they communicate directly with staff or members of CTC for the purpose of influencing a CTC decision, they will be considered persons who actively support or oppose.

2. Scripps-Howard Cable Co. of Sacramento, Inc., ("Scripps-Howard"). Scripps-Howard and the entities related to it (Scripps-Howard Broadcasting Co., E. W. Scripps Co. and E. W. Scripps Trust) will be considered one entity for the purposes of our analysis based on the ownership interests and will be referred to collectively as "Scripps-Howard." In calculating the \$250 limit, all contributions from Scripps-Howard should be cumulated. Since Scripps-Howard is not actually the "applicant" in CTC proceedings, the prohibitions and disqualification requirements will apply to contributions from Scripps-Howard only if it acts as an agent of Cablevision as discussed above through direct contacts with CTC members or staff or if it makes contributions in concert with Cablevision, with any agent of Cablevision, or with any person who actively supports or opposes, or with the agent of any such person.

3. River City Cablevision, Inc. ("River City"). River City itself and any of its officers, employees or shareholders who appear before CTC or communicate directly with CTC members or staff in connection with any quasi-judicial matter involving Cablevision, will be considered the agents of Cablevision subject to Section 84308. The individual shareholders of River City may also have a financial interest in a CTC proceeding as defined in the Act, and they will be covered by Section 84308 as persons who actively support or oppose if they attempt to influence a CTC decision.

I trust that this discussion has answered all of your concerns. Please feel free to contact me if you would like to discuss this matter further.

Sincerely,



Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh

SACRAMENTO METROPOLITAN



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ROBERT E. SMITH
EXECUTIVE DIRECTOR

August 14, 1984

Barbara A. Millman, General Counsel
Fair Political Practices Commission
State of California
1100 K Street
Sacramento, CA 95814

RE: Sacramento Metropolitan Cable
Television Commission

Dear Ms. Millman:

I am the general counsel for the Sacramento Metropolitan Cable Television Commission ("the Cable Television Commission"). I have been authorized by the Board of Directors of the Cable Television Commission to request an advisory opinion of your office on two matters relating to Government Code Section 84308.

In my letter, dated April 4, 1984, I provided you with a general description of the present structure and duties of the Cable Television Commission, and I will not repeat that information in this letter.

On December 22, 1984, a cable television franchise for the Sacramento Metropolitan Area was awarded to Cablevision of Sacramento. Cablevision of Sacramento is a general partnership consisting of the following entities and individuals:

- (a) Cablevision Systems Sacramento Corporation, a California corporation.
- (b) Scripps - Howard Broadcasting of Sacramento, Inc. Company, a Delaware corporation.
- (c) River City Cablevision, Inc., a California corporation.
- (d) Charles F. Dolan, an individual.

All of the shares of Cablevision Systems Sacramento Corporation are owned by Charles F. Dolan.

All of the shares of Scripps Howard Cable Company of Sacramento are owned by the Scripps - Howard Broadcasting Company, an Ohio corporation. The stock of the Scripps-Howard Broadcasting Company is publicly traded over-the-counter. Its largest and majority shareholder is The E. W. Scripps Co., an Ohio corporation.

River City Cablevision, Inc., is a California corporation. It has 73 individual shareholders who are residents of Sacramento. The stock is not publicly traded. Each shareholder owns an equal number of shares in the corporation.

The partnership agreement of Cablevision of Sacramento allocates the profits or losses of the partnership (following payment of equity debt) as follows:

- (a) Charles F. Dolan - 47.4%
- (b) Cablevision Systems Sacramento Corporation - .1%
- (c) Scripps - Howard Broadcasting of Sacramento, Inc. - 47.5%
- (d) River City Cablevision, Inc. - 5%

I am informed that none of the corporate partners of Cablevision of Sacramento are a "close corporation" as that term is defined by Section 158 of the California Corporations Code. Each partner has a role in the management of the partnership. You may assume that each shareholder of a corporate general partner has an investment in that corporate general partner worth more than \$1,000.

As I indicated in my letter of April 4, 1984, the Board of Directors of the Cable Television Commission will be required at some point in time to undertake certain quasi-judicial actions in connection with its on-going administration of the cable television franchise.

In view of the somewhat intricate ownership structure of Cablevision of Sacramento, as described above, the Board wishes to be advised as to which entities and individuals will be considered the "applicant" (as said term is used in Section 18438.3 of the California Administrative Code) in quasi-judicial actions relating to the cable television franchise which has been awarded to Cablevision of Sacramento. You may assume that such actions directly involve only Cablevision of Sacramento and are not "applications" filed with the Commission by parties having no financial interest in Cablevision of Sacramento.

A second question involves the issue of whether the directors, officers, and employees of the corporate general partners of Cablevision of Sacramento are acting as "agents" of the individual shareholders of these corporations when such

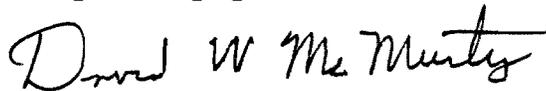
directors, officers and employees either "lobby in person" or "testify in person" in quasi-judicial hearings relating to the cable television franchise. You may assume that such officers, directors and employees are lobbying or testifying on behalf of the corporation or Cablevision of Sacramento and have not been specifically authorized or directed by any individual shareholder of the corporation to act as his or her "agent" in reference to the subject of the hearing.

It would be appreciated if you would send a copy of your reply to this letter to my private office address, which is as follows:

Law Offices of de la VERGNE & McMURTRY
A Professional Corporation
901 H Street, Suite 503
Sacramento, CA 95814

If you have any questions concerning this request, please contact me at (916) 441-1978.

Very truly yours,



DAVID W. McMURTRY,
General Counsel

cc: Robert E. Smith