

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

November 8, 1984

Roger Chinn, Mayor
Foster City
c/o Steven J. Carpol
Aaronson, Dickerson, Cohn,
Larone & Carpol
1564 Laurel Street
P.O. Box 1065
San Carlos, CA 94070

Re: Advice Letter No. A-84-274

Dear Mayor Chinn:

This is in response to your letter of October 25, 1984, in which Stephen J. Carpol requested advice concerning your obligations under the conflict of interest provisions of the Political Reform Act as a City Councilman and the Mayor of Foster City. He has asked that we respond to you.

FACTS

You own a one-fourth interest in a single condominium unit located within Foster City. This condominium is presently being rented. You are receiving an economic benefit from this rental. For purposes of this letter, I assume that your interest in this real property is greater than \$1,000.

You would like to participate in a subcommittee which is preparing recommendations to the City Council regarding adoption of a potential rent control ordinance.

QUESTION PRESENTED

Would it be a conflict of interest for a City Councilman to participate in the decision to adopt a rent control ordinance, when that City Councilman has an interest in rental property within the city?

CONCLUSION

There is no conflict of interest in your participating in the decision to adopt a rent control ordinance. As an owner of a partial interest in a single unit, you will not be affected by the decision in a manner distinguishable from the effect upon a significant segment of the public generally.

DISCUSSION

Government Code Section 87100^{1/} provides that no public official of state or local government shall make or participate in making 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, distinguishable from its effect on the public generally, on:

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

(Section 87103(b).)

You have an interest in real property worth more than \$1,000 which could be affected by the adoption of a rent control ordinance. In the Ferraro Opinion, 4 FPPC Opinions 62 (No. 78-009, November 7, 1978), the Fair Political Practices Commission noted that whether a City Councilman must disqualify himself from participating in the decision to adopt rent control is dependent upon whether the ordinance will foreseeably and materially affect his rental property in a manner different from its effect on the public generally.

Regulation 2 Cal. Adm. Code Section 18703 provides:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

The Ferraro Opinion held that although the residential rental property business constitutes an industry, not all persons participating in that business are members of that industry. Specifically, the owner of a small number of rental units is likely to have only an incidental interest and probably does not

^{1/} All statutory references are to the Government Code unless otherwise indicated.

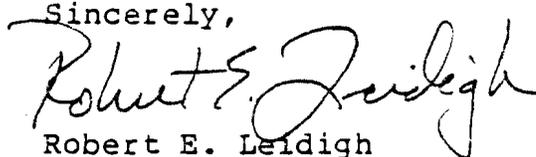
Roger Chinn, Mayor
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rely upon the units as a major source of income. The opinion concluded that persons owning three or fewer units are not part of the rental property industry. Having determined this, the Opinion went on to state that people who invest in rental property of three units or less constitute a significant segment of the general public. This conclusion is based on the realization that small investors are a numerically large and diverse group of citizens containing virtually every occupation and interest group.

The rent control ordinance will affect all owners of three or fewer rental units in much the same manner. Thus, your interest will not be affected in a manner distinguishable from that on the general public.

In summary, you may participate in the decision whether to adopt a rent control ordinance because the general public will be affected much to the same degree as yourself. It should be noted however, that if the subcommittee or the City Council decides that it wants to limit rent control to a specific type of rental unit there could be a potential conflict of interest concerning your real property interest.^{2/}

If I can be of any further assistance, or if you have any additional questions, please feel free to contact me at (916) 322-5901.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:plh

^{2/} For instance, if an ordinance were considered which exempted condominium units from coverage, you should seek our advice anew, because your interest may not be affected in substantially the same manner as those of a significant segment of the general public.

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October 25, 1984

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

re: Determination of Potential
Conflict of Interest

Dear Sirs:

This letter will introduce me to you as the Assistant City Attorney for the City of Foster City.

The Mayor of the City of Foster City has requested an opinion regarding whether or not the Mayor has a conflict of interest in a particular matter that will be before the City.

The facts of the situation are as follows:

1. This request is made on behalf of Roger Chinn, a City Councilman and current Mayor of the City of Foster City.
2. Mayor Chinn would like to participate in a subcommittee to investigate the possibility of the adoption of an ordinance regarding rent controls within the City of Foster City.
3. Mr. Chinn has a one-third interest in a condominium located within the City of Foster City. This condominium is currently being rented and Mr. Chinn is receiving economic benefit therefrom.

For purposes of this opinion the Commission may assume that Mr. Chinn owns a real property interest greater than \$1,000.00 within the City.

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We request an opinion as to whether or not Mayor Chinn may act on a subcommittee preparing recommendations to the City Council regarding adoption of potential rent control measures, and whether or not, as a member of the City Council, Mr. Chinn may participate in the consideration and possible adoption of such an ordinance.

Please direct your opinion to Mr. Chinn, care of this office.

If you have any questions, please do not hesitate to call.

Very sincerely,



STEVEN J. CARPOL

cc: City Attorney, City of Foster City
Mr. Roger Chinn

SJC:ym