

# 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 •• Statements of Economic Interest  
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

March 26, 1985

Glenn M. Thompson  
Mono County Board of Supervisors  
P.O. Box 9  
June Lake, CA 93529

Re: Your Request for Advice  
Our File No. A-85-046

Dear Mr. Thompson:

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

You have requested advice as to your ability to participate in decisions of the Mono County Board of Supervisors which may affect your condominium rental service business and your resort and ski-lodge business. According to your letter, there is currently no specific decision before the Board of Supervisors which might affect these financial interests. The determination of whether a public official has a conflict of interest must be made on a case-by-case basis. Therefore, in this letter I shall provide general advice about your duties under the Political Reform Act, but if, in the future, you are confronted with a specific decision, I will then be happy to advise you regarding the application of the law to the particular case.

Section 87100 prohibits any public official from making, participating in, 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. A public official has a financial interest in a governmental decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

You have indicated that you have an ownership interest in excess of \$1,000 in a condominium rental service business and in a ski resort and lodge business. Accordingly, you must disqualify yourself from any decision before the Mono County Board of Supervisors if you determine that the decision would have a reasonably foreseeable material financial effect on either of these business entities that is distinguishable from the effect on the public generally. In addition, because your ownership interest in these business entities exceeds 10 percent, you would also have a financial interest in any real property owned by these business entities if your pro rata share of the interest in that real property is more than \$1,000. Section 82033. Therefore, you are also required to disqualify yourself from decisions of the Board of Supervisors which would

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have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on those real property interests.

For guidance in determining whether the effect of a governmental decision on your financial interests is reasonably foreseeable, I am enclosing a copy of the Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, December 4, 1975). In this opinion, the Commission stated that an effect is reasonably foreseeable only if there is a substantial likelihood that the effect will occur, as opposed to a mere possibility of its occurrence.

Commission regulation 2 Cal. Adm. Code Section 18702 states that the effect of a decision will be considered material if it is significant. The Commission has adopted the following monetary guidelines for determining whether the effect of a decision on a business entity or on an interest in real property will be considered significant:

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

(A) The annualized gross revenues by the lesser of:

1. One hundred thousand dollars (\$100,000); or

2. One percent if the effect is one thousand dollars (\$1,000) or more; or

(B) Annual net income by the lesser of:

1. Fifty thousand dollars  
(\$50,000); or

2. One half of one percent if the  
effect is one thousand dollars (\$1,000)  
or more; or

(C) Current assets or liabilities by  
the lesser of:

1. One hundred thousand dollars  
(\$100,000); or

2. One half of one percent if the  
effect is one thousand dollars (\$1,000)  
or more.

Current assets are deemed to be  
decreased by the amount of any expenses  
incurred as a result of a governmental  
decision.

(2) Whether, in the case of a direct or  
indirect interest in real property of one thousand  
dollars (\$1,000) or more held by a public  
official, the effect of the decision will be to  
increase or decrease:

(A) The income producing potential of  
the property by the lesser of:

1. One thousand dollars (\$1,000)  
per month; or

2. Five percent per month if the  
effect is fifty dollars (\$50) or more  
per month; or

(B) The fair market value of the  
property by the lesser of:

1. Ten thousand dollars (\$10,000);  
or

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2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

2 Cal. Adm. Code Section  
18702(b)(1) and (2).

Finally, if you determine that a particular governmental decision could have a reasonably foreseeable material financial effect on one of your financial interests, you must also consider whether that effect is distinguishable from the effect on the public generally. A material financial effect of a governmental decision on an official's interests 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. 2 Cal. Adm. Code Section 18703.

If you determine that a particular governmental decision would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on any of your financial interests, you must disqualify yourself from participating in that decision. However, you may appear before your agency or another agency as a member of the general public to represent yourself on matters related solely to your personal interests. 2 Cal. Adm. Code Section 18700(f).

I hope this general advice is helpful to you. If you wish to request additional written advice with respect to a particular decision pending before the Mono County Board of Supervisors, please contact us. My telephone number is (916) 322-5901, and I will be happy to answer any questions you may have about this letter.

Very truly yours,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh  
Enclosure

# State of California



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February 26, 1985

Glenn M. Thompson  
Mono County Supervisor  
P.O. Box 9  
June Lake, CA 93529-0009

Re: A-85-046

Dear Mr. Thompson:

Your letter requesting advice under the Political Reform Act has been referred to Kathryn Donovan, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

  
Barbara A. Milman  
General Counsel

BAM:nwm



Office of the . . . BOARD OF SUPERVISORS

C O U N T Y O F M O N O

COURTHOUSE BRIDGEPORT · CALIFORNIA · 93517

February 19, 1985

GLENN M. THOMPSON  
Third Supervisorial District  
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JUNE LAKE, CA 93529-0009

Office (619) 932-7911, Ext. 208  
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Legal Division  
California Fair Political Practices Commission  
Post Office Box 807  
Sacramento, CA 95804

Gentlemen:

There is currently a controversy in the town of Mammoth Lakes regarding the use of condominium units as rental residences for periods of less than thirty days. The controversy was begun by the manager of an old-fashioned ski lodge claiming that he was put at a disadvantage as the result of the practice within Mono County and other resort areas of renting condominiums in very much the same fashion as motel units and lodges. There are several operations within the town of Mammoth legally licensed and operating as condominium rental agencies.

It is anticipated that in the near future, the controversy will move beyond the town of Mammoth Lakes and be presented to the Mono County Board of Supervisors. Within the county unincorporated area there is only one company licensed and operating a condominium rental service. I am a fifty-percent partner and founder of that organization. I am also the owner of the old-style resort and ski-lodge type of business. In that I am the only operator of such a business in the unincorporated area of Mono County, I assume that the rule applying to general county-wide laws still does not excuse me from a conflict.

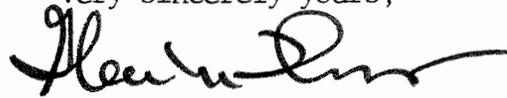
What I would like your Legal Division to do is to provide advice to me as to the limits of my participation in the discussions and decisions made surrounding the rental of condominium properties when it reaches the Board of Supervisors. Additionally, although I know it is not within the realm of responsibility of your Commission's staff, there seems to be a legal issue here regarding the State of California's pre-emption in the field of real estate, sales, use and descriptions that may preclude both the town of Mammoth Lakes and the County of Mono from taking any action which could be deemed a restriction of real-estate property rights beyond those restrictions currently existing in California Real Estate law.

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Your guidance and recommendations along those lines would also be appreciated. If you require additional information in order to advise me regarding my abilities to participate in these discussions, please let me know and I will be happy to provide whatever information is necessary.

I look forward to your advice, and thank you in advance for your consideration of this information request.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "Glenn M. Thompson". The signature is written in a cursive style with a long, sweeping underline.

Glenn M. Thompson  
Supervisor, District #3  
Mono County

GMT:p