

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

May 22, 1985

David M. Kennedy
City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901

Re: Your Request for Advice
Our File No. A-85-090

Dear Mr. Kennedy:

Thank you for your letter requesting advice on behalf of three City Planning Commissioners concerning their obligations under the conflict of interest provisions of the Political Reform Act.^{1/}

The decisions coming before the Planning Commission involve a comprehensive update of the City's General Plan. The City is proposing to hire a consultant who will prepare an update of the General Plan which will then be submitted to the Planning Commission for its review and approval. According to the scope of work provisions for the consultant attached to your letter, the proposed update will be broad and will address all facets of the General Plan.

One of the City's planning commissioners is an architect; one is the president of a water company; the third planning commissioner is a real estate broker. You posited in your letter that, upon adoption of the updated General Plan, any or all of these planning commissioners could conceivably be benefitted. Since it is unknown at this time exactly what the content of the proposed General Plan update will include, and

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code.

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since I do not have detailed information concerning the officials' financial interests, I can only give you general guidance and information.

As you know, a public official must disqualify him or herself from making or participating in a governmental decision if the official has a financial interest in the decision. Section 87100. An official has a financial interest in the decision if it is reasonably foreseeable that the decision will have a material financial 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.

Accordingly, if the adoption of the General Plan will foreseeably have a material financial effect on any of the businesses or properties of, or sources of income to, a planning commissioner, the planning commissioner may have to disqualify himself or herself from deliberations and decisions on the Plan. If the decision on the Plan is

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actually a series of decisions on specific changes, each decision should be analyzed separately.

Since the General Plan is comprehensive and involves many planning issues, the principal issues for analysis will be foreseeability and "public generally." It is likely that, with respect to most decisions, either there will be no foreseeable effects on the officials' interests or the effects on the officials will be the same as the effects on the public generally, and the officials will be able to participate. However, whether an official will have to disqualify himself or herself on a particular decision must be determined on a case-by-case basis. To assist you in advising the planning commissioners, I will briefly discuss the foreseeability and public generally issues.

The first question is whether any of the revisions to the General Plan will foreseeably affect any of the planning commissioner's economic interests. The foreseeability question asks whether there is a substantial likelihood that the decision will have an identifiable effect on the official's economic interest. See Opinion requested by Tom Thorner, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975) (copy enclosed). In Thorner, one decision involved the lifting of a moratorium by a water district on new water connections. One of the board members had a substantial interest in a family-owned building supply company. The Commission noted that the lifting of the moratorium would definitely increase building activity in the district which would provide significant opportunities for the board member's company to increase its sales in the area. In the Salinas situation, all three of the planning commissioners' economic interests are of the type which could be affected by revisions to the General Plan.^{2/} Therefore, you and the planning commissioners must analyze the potential decisions on the General Plan to determine whether these decisions will affect the officials' economic interests.

The second and related issue involves the question of the effect of the decision on the public generally; i.e., if the effects of the decision on the officials will have

^{2/} I was given limited facts on the actual economic interests of the planning commissioners. If the architect, for example, practices only in San Francisco, then his interest would not be affected by the Salinas General Plan.

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the same or similar effect on all of the other residents of the City or a significant segment of the City population, then the officials may participate in the decision. By regulation, the Commission has provided that the "public generally" does not include a single industry, trade or profession. 2 Cal. Adm. Code Section 18703. In the Thorner opinion, supra, the Commission found, on the question of the moratorium, that the "public generally" did not apply to the board member who owned the building supply business and reasoned as follows:

Generally, the decision on lifting the moratorium will have a financial effect upon a host of interests within the MMWD in the sense that most business entities, investments in real property, and thus sources of income, will be affected. The financial effect, however, of the decision upon McPhail's, and, therefore, upon the financial interest of Director MacPhail, are distinguishable from the financial effect of the decision on business entities, investments in real property and sources of income within the district in general.

Presently, McPhail's supplies approximately 33-1/3 percent of all ready-mix concrete, approximately 25 percent of all building materials, approximately 20 percent of all major appliances, and over 50 percent of the bottled gas marketed within the MMWD. Thus, it is clear that the foreseeable financial impact upon McPhail's, Inc. of a decision to permit, in effect, an increase in building activity within the county differs demonstrably from the decision's financial impact upon virtually all other business entities and persons within the MMWD. Business entities and persons in the district may benefit in a general way since some property values may increase, retail sales may increase or employment and investment opportunities may increase. McPhail's, Inc., however, is in a position to realize immediate, substantial and specific financial gains as a result of renewed building activity.

In summary, the three planning commissioners may have to disqualify themselves on a decision to recommend a revision to the General Plan if:

1. It is likely that the revisions to the General Plan will affect the officials' economic interests; and

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2. The effect on the officials' interest will be distinguishable from the effects of the public generally.

I have enclosed a few advice letters to assist you further in your analysis.

If I can be of further assistance as the update process progresses and the decisions become clearer, please feel free to contact me.

Sincerely,

Diane Maura Fishburn
by Billy

Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh

Enclosures: A-81-507
A-81-508
A-83-046
A-83-204

State of California



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April 17, 1985

David M. Kennedy
Salinas City Attorney
200 Lincoln Avenue
Salinas, CA 93901

Re: A-85-090

Dear Mr. Kennedy:

Your letter requesting advice under the Political Reform Act has been referred to Diane Fishburn, 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
Barbara A. Milman
General Counsel

BAM:plh

- Examine the City's role with the area's school districts in planning for and providing school facilities and develop appropriate policies and guidelines.
- Address the City's library and cultural needs, develop policies and standards, and define the specific means for implementing such policies and standards.
- Address the City's park and open space needs, develop policies and standards, and define the specific means for implementing such policies and standards.
- Quantify the community noise environment for both near and long-term levels of growth and traffic activity and develop exposure guidelines to achieve compatible land uses.
- Develop broad public involvement and consensus emphasizing the identification of community goals, intergovernmental coordination, education, and the opportunity to evaluate and select alternatives recognizing that past general interest involvement has been limited.
- Emphasize how the plan's policies, guidelines and standards will be implemented: examine existing ordinances, regulations and procedures and determine appropriate changes, deletions and additions necessary to implement the plan.
- Prepare a document that can be easily revised and reprinted, is abundantly illustrated, and is easily understood by diverse public interests.
- Complete the project on schedule.

VI. City Resources: Staffing and Data Availability

The Department of Community Development will make available a senior staff planner to assist in providing in-kind services and to act as chief liaison between the City and Consultant.

Resource documents and data available to the Consultant include:

- Nine area plans covering about 70% of the City.
- An economic base study completed in February, 1985.
- Salinas marketing brochure (1985).
- Detailed housing inventory dating to 1975.
- Vacant land inventories and maps (current).
- Historical resources survey (in progress).

V. Scope of Work

The City is preparing a general plan to provide a solid basis from which day-to-day planning decisions can be made. Detail will be stressed, not vague generalities. Ideally, a group of people reading the plan or any of its policies, guidelines and standards, will arrive at the same general conclusion as to their meaning. This plan will be an explicit statement of the City's growth and development, social, cultural, economic and environmental policies.

To complete this project, the Consultant will be expected to do the following:

- Develop strategic plans to meet the City's housing needs emphasizing availability; affordability, mix and housing quality.
- Determine the appropriate direction, location and extent of City growth patterns with consideration to surrounding highly productive agricultural land and regional growth management policies.
- Integrate a Master Environmental Assessment and Master EIR into the General Plan as provided for in the CEQA Guidelines.
- Develop policies, guidelines and standards to implement the general plan which clearly convey to the community the City's interest in regulating new and existing development.
- Integrate the City's strategic efforts to promote economic development into the General Plan.
- Examine and make specific provisions for improving the character, appearance and overall image of the City's residential, commercial, industrial and public places.
- Provide a firm and clear planning policy basis upon which subsequent planning efforts and implementation efforts can build.
- Address circulation and traffic problems as a major public issue and in a manner which provides a basis for evaluation of specific development proposals.
- Assess the adequacy of Salinas' existing infrastructure and facilities, e.g., streets, sewers, parks, and recreational facilities, police, library, fire, to meet present and future needs emphasizing when such infrastructure and facilities need to be provided and how they will be financed.



City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

APR 16 3 01 AM '85

April 11, 1985

FPPC
1100 K Street
Sacramento, CA 95814

Re: Request For Advice Letter

The City of Salinas is proposing to employ a consultant for a comprehensive update of the City's General Plan. As required by law, the proposed update must be submitted to the Planning Commission for approval.

Included on the City's Planning Commission is an architect, a president of a water company and a real estate broker. Upon adoption of the General Plan by the City Council, any or all of these persons could be benefited ie, the architect could gain employment to design a structure, the water company could gain new water hook-ups and the real estate broker could gain real estate sales.

Please advise whether any or all of the three Planning Commissioners are disqualified from participating in the review and approval of the General Plan update.

It is my preliminary judgment that each are not disqualified as any financial benefit would be remote and speculative. As stated in Selby Realty Company v. City of San Buenaventura 10 Cal 3d 110, 118, "The plan (general plan) is by its very nature merely tentative and subject to change". On page 120 the court stated "Furthermore, the plan is subject to alteration, modification or ultimate abandonment, so that there is no assurance that any public use will eventually be made of plaintiff's property".

It is also possible that the affect on the public generally exception may be applicable.

A copy of the proposed Scope of Work provisions for the consultant is attached.

Very truly yours,

DAVID M. KENNEDY
City Attorney

DMK:jb

cc: Chief of Planning
Tom Adcock
Fred Christensen
Ralph Portuondo