

# 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 20, 1985

William R. Galstan  
City Attorney  
City of Antioch  
P.O. Box 130  
Antioch, CA 94529-0504

Re: Your Request for Written  
Advice  
Our No. A-85-093

Dear Mr. Galstan:

This is in response to your two requests for general guidance under the Political Reform Act on behalf of Antioch City Councilman Leo Fontana, who is also a member of the Antioch Development Agency, a California redevelopment agency. The facts which you have provided are as follows:

### FACTS

A new bank is being proposed to occupy a leased building which is located in the redevelopment project area. Mr. Fontana has been invited to be a member of the Board of Directors of the bank, and he also would desire to purchase stock in the bank worth more than \$1,000.

It is anticipated that persons may solicit loans from the bank for projects which may require the eventual approval of the city and/or the redevelopment agency. Mr. Fontana would not be a member of the bank's loan committee, and in the normal course of events, he would not make any decision as a member of the Board of Directors regarding loan applications made to the bank.

In addition, city funds may be deposited or invested in the proposed bank. All decisions as to where to invest city funds are made by the elected city treasurer with no participation by the City Council or redevelopment agency.

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### QUESTIONS

In your two letters, you have posed a series of questions based upon the foregoing fact situation, they are as follows:

(1) Would Mr. Fontana be prohibited from voting as a redevelopment agency member on any redevelopment projects that occur within the project area?

(2) If the answer to question one is in the affirmative, does abstaining from voting as a Council/Agency member cure the conflict, assuming that he also does not in any way attempt to influence the governmental decision?

(3) Could the city deposit funds in the bank under the described factual circumstances?

(4) Must Mr. Fontana abstain from approving any public improvements to be constructed in the immediate vicinity of the leased bank building?

(5) If the answer to question four is in the affirmative, is there a measurable criteria for "immediate vicinity"?

(6) May Mr. Fontana act on zoning/land use decisions for applicants who have received construction financing from the bank?

### GENERAL GUIDANCE

Initially, it should be pointed out that the guidance provided in this letter is general in nature and only considers the application of the Political Reform Act (the "Act"), 1/ it does not consider the provisions of the redevelopment law or any other law.

In response to your questions, our general guidance is as follows:

(1) Mr. Fontana very well may be required to disqualify himself as to certain decisions on projects proposed for the redevelopment project area. Any analysis would have to be done on a case-by-case basis, with specific facts provided.

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1/ Government Code Sections 81000-91015. All statutory references are to the Government Code.

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(2) Under the Act, if Mr. Fontana disqualifies himself in appropriate situations and in no way makes, participates in making, or uses his official position to influence the making of decisions in which he has a financial interest (Section 87100) he will have "cured the conflict" by complying with the law's requirements.

(3) Under the Act, the city could deposit funds in Mr. Fontana's bank so long as he is in no way involved in the decisionmaking process, as per the discussion under number two, above.

(4) As with question number one, Mr. Fontana may be required to disqualify himself from participation in decisions involving public improvements in the immediate vicinity of the bank; however, this would require a specific analysis of specific facts, which have not been provided at this time.

(5) At present there is no measure for determining the "immediate vicinity" issue. However, the Commission is working toward promulgation of a regulation which will respond more fully to both this question and to questions one and four. The Commission has established a subcommittee to work with the staff on this matter and it is expected that a regulation will be before the Commission for its consideration by this fall.

(6) Mr. Fontana's participation in actions regarding the bank's customers would depend on several factors. First, will his anticipated investment cause him to have a 10 percent or greater ownership interest in the bank? If so, customers of the bank may become sources of income to him (Gov. Code Section 82030(a)); in which case, he would be required to disqualify himself as to any decision having a reasonably foreseeable material financial effect on the bank or on the bank's customer (Gov. Code Sections 87100 and 87103).

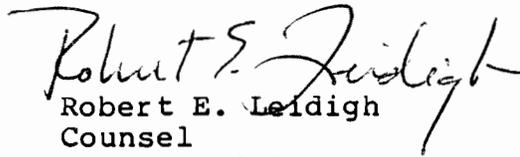
If Mr. Fontana owns less than 10 percent, his only economic interest would be in the bank and the analysis would be confined to the decision's anticipated effects upon the bank itself. Certainly, it is conceivable that a decision denying a zoning change could cause a developer to default on a construction loan from the bank. Such a default could have a material financial effect upon the bank. Consequently, there could be occasions where disqualification would be required, even if he owns less than 10 percent of the bank.

I hope that the foregoing general guidance has answered most of the questions which you have at this time. As matters

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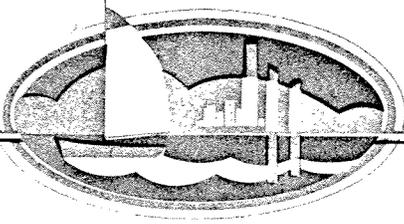
move forward, if specific decisions arise about which you or Mr. Fontana have concerns, please contact us for further, specific advice. If you have questions or comments regarding the prospective regulation on redevelopment decisions, you should contact Ms. Diane Fishburn at (916) 322-5901; I may be reached at the same number.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:plh



ANTIOCH CA

94509-0504 415/778-3502

CITY HALL THIRD AND H PO 130

WILLIAM R. GALSTAN  
City Attorney

April 17, 1985

Robert E. Leidigh  
Counsel, Legal Division  
State of California  
Fair Political Practices Commission

Re: My request for an Opinion  
Your No. 0-85-002

Dear Mr. Leidigh:

This is a follow-up to your letter of April 11, 1985, responding to mine of April 2, 1985.

First, I would appreciate your general guidance under the Political Reform Act, as offered in your letter.

Secondly, I will attempt to make my request more specific, as follows:

(a) must Mr. Fontana abstain, as a redevelopment agency director, from approving any public improvements to be constructed in the immediate vicinity of the leased bank building?

(b) is there a measureable criteria for "immediate vicinity" if the foregoing response is affirmative?

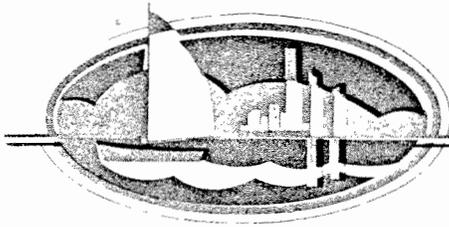
(c) under the facts stated in my April 2 letter, may Mr. Fontana, as a City Council member, act on zoning/land use decisions for applicants who have received construction financing from the bank?

Your assistance in offering either general guidance or an opinion will be very helpful and appreciated.

Very truly yours,

*William R. Galstan*  
WILLIAM R. GALSTAN  
City Attorney

WRG:fl  
cc: Council Member Fontana  
David Gaber



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CITY HALL THIRD AND H PO 130

WILLIAM R. GALSTAN  
City Attorney

April 2, 1985

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

Re: Request for opinion

Dear Sir or Madam:

Antioch City Council member Leo Fontana is also a member of the Antioch Development Agency, a California redevelopment agency.

A new bank is being proposed to occupy a leased building which is located in the redevelopment project area. Mr. Fontana has been invited to be a member of the Board of Directors of the bank, and he also would desire to purchase stock in the bank worth more than \$1,000.00.

Mr. Fontana inquires as to the types of conflicts, if any, these proposed activities may raise. For example, would he be prohibited from voting as a redevelopment agency member on any redevelopment projects that occur within the project area? If so, does abstaining from voting as a Council/Agency member cure the conflict, assuming that he also does not in any way attempt to influence the governmental decision?

Secondly, as applied to the bank operations, we conceive that persons may solicit loans from the bank for projects which may require the eventual approval of the city or the redevelopment agency. I am informed that Mr. Fontana would not be a member of the bank's loan committee, and in the normal course of events, he would not make any decision as a member of the Board of Directors regarding loan applications made to the bank.

Finally, city funds may be deposited or invested in the proposed bank. All decisions as to where to invest city

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funds are made by the elected city treasurer with no participation by the City Council or redevelopment agency. Under these conditions, could the city in fact deposit funds in the bank?

I understand that pursuant to Government Code §83114, you will respond within 14 days. Thank you for your assistance.

Very Truly Yours,



WILLIAM R. GALSTAN  
City Attorney

WRG:me  
cc: Leo Fontana  
David Gaber