

State of California



Fair Political Practices Commission

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June 12, 1985

Margaret O'Donnell
Breon, Galgani, Godino & O'Donnell
The Shell Building, 22nd Floor
100 Bush Street
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-85-101

Dear Ms. O'Donnell:

Thank you for your letter requesting advice on behalf of S. Joseph Simitian, President of the Board of Education of the Palo Alto Unified School District, regarding his duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

The Palo Alto Unified School has been involved for approximately nine years in a desegregation lawsuit, Tinsley, et al. v. Palo Alto Unified School District, et al. (Sup. Ct. San Mateo Co., No. 207010), which basically alleges that the Ravenswood School District (with a majority of black students) and its surrounding school districts (with a majority of white students) are racially segregated and that an interdistrict desegregation remedy should be ordered to integrate the districts. Such a remedy could provide that students from the Ravenswood School District may attend school in the Palo Alto Unified School District and students from the Palo Alto School District may attend school in the Ravenswood School District. Petitioners are currently requesting that settlement discussions take place which could result in the student interdistrict attendance remedy previously described.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Margaret O'Donnell
June 12, 1985
Page 2

Mr. Simitian is employed by TRI Development Company (TRI). His firm has an option to purchase an approved condominium conversion within the boundaries of the Ravenswood School District. It is anticipated that the option will be exercised on or about June 5, 1985. At that time TRI will undertake a program of conversion leading to the eventual sale of individual condominium units. The terms of Mr. Simitian's employment agreement with TRI provide that he will receive compensation based on the profits derived from the sale of that project. In effect, Mr. Simitian will receive a commission for his services.

The condominium conversion project in question consists of a total of 222 units, 72 of which are 2-bedroom units, 12 of which are 2-bedroom townhouses, and 138 of which are single bedroom units. Mr. Simitian has informed you that, due to the great demand for residential property in the Palo Alto area, TRI expects the units to sell quickly.

QUESTION

Is Mr. Simitian required to disqualify himself from participating in the Board's decisions regarding the Tinsley case?

CONCLUSION

Mr. Simitian is not required to disqualify himself from participating in the Board's decisions regarding the Tinsley case unless the decisions would have a reasonably foreseeable material financial effect on either TRI or the amount of commission income Mr. Simitian would receive from the sale of the condominium units, as discussed in the following analysis.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence any 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 decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on, among other interests, any source of income aggregating \$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(c).

Margaret O'Donnell
June 12, 1985
Page 3

Mr. Simitian has received at least \$250 in the last 12 months from TRI, therefore, TRI is a source of income to Mr. Simitian for purposes of Section 87103(C). If the Board of Education is confronted with a decision which would have a reasonably foreseeable material financial effect on TRI, Mr. Simitian must disqualify himself from participating in that decision.

In general, the effect of a decision is material if it is a "significant" one. 2 Cal. Adm. Code Section 18702(a). The Commission has adopted regulations 2 Cal. Adm. Code Sections 18702 and 18702.2 (copies enclosed), which contain monetary guidelines for determining whether the effect of a decision will be considered material. Two of the tests for determining materiality apply to Mr. Simitian's situation. The first is provided in 2 Cal. Adm. Code Section 18702.2(g), which requires an examination of the effect of the decision on TRI.^{2/} Accordingly, if it is reasonably foreseeable that the decision facing the Board of Education would affect TRI in any of the following ways, the effect of the decision will be considered material:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

2 Cal. Adm. Code Section
18702.2(g).

Therefore, applying the above test, if the Board of Education's decision regarding the Tinsley case could result in

^{2/} Based on information provided by Dan Fritz at your law firm, it appears that 2 Cal. Adm. Code Section 18702.2(g) is the appropriate test to apply to TRI. However, if you obtain additional information about TRI which indicates that a different standard in 2 Cal. Adm. Code Section 18702.2 is appropriate, you should apply that standard.

Margaret O'Donnell
June 12, 1985
Page 4

an increase or decrease in the average selling price of at least \$46 per unit in the 222-unit condominium conversion project, there would be an effect on TRI's fiscal year gross revenues of \$10,000 or more, and the effect would be considered material. If such an effect is reasonably foreseeable, Mr. Simitian must disqualify himself from participating in the Board's decision.

The second test which applies to Mr. Simitian's situation is contained in 2 Cal. Adm. Code Section 18702(b)(3)(A), which provides that the effect of a decision will be considered material if it will directly increase or decrease the amount of income to be received by the official in an amount of \$100 or more. You have informed us that Mr. Simitian will receive a commission equal to approximately 20 percent of the profits realized from the condominium conversion project. Therefore, any decision of the Board of Education which would result in an increase or decrease in the selling price of the condominium units would also affect the commission on sales Mr. Simitian will receive from TRI. If the effect of the decision could result in an increase or decrease of \$100 or more in Mr. Simitian's commission income, he must disqualify himself from participating in the Board's decision.

From the information we have received about the condominium conversion project and the Tinsley case, it is not possible for us to determine whether the Board's decision would affect the value of condominium units. There is no question that the quality of the public schools which serve a residential area is an important factor for many people considering the purchase of a home in that area.^{3/} However, we have been informed that real estate appraisers do not have a method of quantifying the effect of public school quality on residential property values. You and Mr. Simitian are in a better position than we are to obtain information about the relative quality of the schools in question and the impact of an interdistrict attendance remedy on residential property values in the Palo Alto area, which will assist you in determining how the Board's actions could affect the property in question. Accordingly, we leave you with the

^{3/} A comparison of the 1984-85 fiscal year revenue limits for the Palo Alto Unified School District and the Ravenswood School District indicates that Palo Alto receives \$3,086 per unit of average daily attendance and Ravenswood receives \$2,023 per unit of average daily attendance. This difference in funding may indicate a difference in the quality of educational opportunities in the two school districts. See, Serrano v. Priest (1976), 18 Cal. 3d 728, 747-748, cert. denied 432 U.S. 907, supplemented 20 Cal. 3d 25.

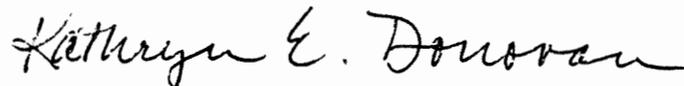
Margaret O'Donnell
June 12, 1985
Page 5

responsibility of applying the above tests and determining whether Mr. Simitian must disqualify himself from the Board's decisions in the Tinsley case.

In the event that Mr. Simitian is required to disqualify himself from participating in the Board's decision on the Tinsley case, Mr. Simitian may not vote on any of the Board's decisions on that matter. 2 Cal. Adm. Code Section 18700(b)(1) (copy enclosed). He would be required to refrain from participating in any way in the Board's discussions during open session (he may not ask questions, state his opinion, etc.), although he would not be required to leave the room or step down from his seat with the other Board members. Mr. Simitian would be prohibited from attending closed sessions of the Board while discussion or action takes place with respect to the Tinsley case, and he would also be prohibited from discussing the status of the Tinsley case at any time with other Board members or staff for the purpose of influencing the Board's decision with respect to the Tinsley case. 2 Cal. Adm. Code Sections 18700(e) and 18700.1(a).^{4/} However, Mr. Simitian would not be required to refrain from making public comments on the Tinsley case if questioned by members of the press or public. 2 Cal. Adm. Code Section 18700.1(b)(2).

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosures

^{4/} At its June 5, 1985 meeting, the Commission adopted amendments to 2 Cal. Adm. Code Section 18700 and approved the adoption of 2 Cal. Adm. Code Section 18700.1, which would clarify the meaning of "using one's official position to influence" a decision. I have enclosed a copy of these provisions, which will become effective in early September.

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April 30, 1985

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REPLY TO: _____

Barbara Milman
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Conflict Of Interest Opinion Request/S. Joseph
Simitian, Palo Alto Unified School District

Dear Ms. Milman:

On behalf of the Board of Education of the Palo Alto Unified School District and its President, S. Joseph Simitian, I wish to request an opinion letter concerning a potential conflict of interest under the Political Reform Act, Government Code sections 81000 et seq.

The Palo Alto Unified School has been involved for approximately nine years in a desegregation lawsuit, Tinsley, et al. v. Palo Alto Unified School District, et al., (Sup. Ct. San Mateo Co., No. 206010) which basically alleges that the Ravenswood School District (with a majority of black students) and its surrounding school districts (with a majority of white students) are racially segregated and that an interdistrict desegregation remedy should be ordered to integrate the districts. Such a remedy could provide that students from the Ravenswood School District may attend school in the Palo Alto Unified School District and students from the Palo Alto School District may attend school in the Ravenswood School District.

Barbara Milman
April 30, 1985
Page Two

While the case had made its way over the past nine years through several levels of the judicial appeals process, petitioners are currently requesting that settlement discussions take place which could result in the student interdistrict attendance remedy previously described.

Mr. Simitian is employed by TRI Development Company. His firm has an option to purchase an approved condominium conversion within the boundaries of the Ravenswood School District. It is anticipated that the option will be exercised on or about June 5, 1985. At that time TRI Development Company will undertake a program of conversion leading to the eventual sale of individual condominium units. The terms of Mr. Simitian's employment agreement with TRI Development Company specifically provide that he will receive a percentage of the profits derived from the sale of that project.

The opinion requested is whether Mr. Simitian would have a conflict of interest under the Political Reform Act because of his interest in the development project if he participated in decisions in the Tinsley case? Specifically, would it be improper for him to:

- a) vote on matters affecting the District's position regarding the Tinsley case;
- b) confer in closed session with Board members and district staff regarding the District's position on the Tinsley case;
- c) remain present in the board room during open session or closed session while discussion and/or action takes place with respect to the Tinsley case;
- d) discuss the status of the Tinsley case with Board members or staff outside a formally noticed meeting;
- e) comment publicly on the Tinsley case if questioned by members of the press or public.

The case is presently set for Motions on Summary Adjudication of Issues on May 17, 1985 and a Pre-Arbitration, Settlement and Trial Setting Conference on July 16, 1985. Thus,

Barbara Milman
April 30, 1985
Page Three

it is important that the Palo Alto Board of Education fully be able to instruct its attorneys soon as to its position on settlement as well as litigation of the case.

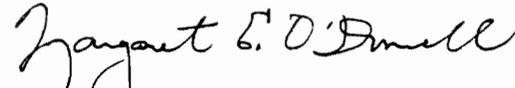
We would appreciate an oral opinion as soon as it would be possible followed by a written opinion. We apologize for the urgency of our request but both the Tinsley case and Mr. Simitian's project have moved more quickly than anticipated.

Both Mr. Simitian and I would be glad to furnish you additional information, if needed.

Thank you for your time and assistance in this matter.

Very truly yours,

BREON, GALGANI, GODINO & O'DONNELL



Margaret E. O'Donnell

MEO/ctb
cc: S. Joseph Simitian

Memorandum

To : File No. A-85-101

Date : July 15, 1985

From : FAIR POLITICAL PRACTICES COMMISSION

Kathy Donovan *kd*

Subject : Deadline Extension

On May 17, 1985, I received additional information from Dan Fritz, on behalf of Margaret O'Donnell, about this request for advice. I explained that he could expect written advice within 21 working days after the receipt of this information, and that I hoped to be able to send the letter before that time.