

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

June 4, 1985

Zoe Lofgren, Supervisor
Board of Supervisors
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Your Request for Advice
Our No. A-85-108

Dear Supervisor Lofgren:

You have requested our advice regarding your participation in an anticipated upcoming decision by the Airport Land Use Commission (ALUC), on which you serve as a member, regarding a permanent use permit for a heliport at the San Jose Health Center. There are two areas of possible financial interest for you in such a decision. One of those is a lawsuit brought by your spouse, John Marshall Collins, on behalf of John Smothers, a neighbor of the health center. In that lawsuit your husband is requesting that the court award attorneys fees pursuant to provisions of the Political Reform Act.^{1/}

The second possible financial interest in the decision would arise from a possible impact on the value of your personal residence which is located a few blocks from the health center and proposed heliport. Mr. Smothers' home is a little closer to and situated on the opposite side of the heliport from your house.

In a very recent advice letter to you, No. A-85-103, we have analyzed the question of whether Mr. Smothers, the plaintiff in the lawsuit, has become a source of income to you as a result of the preliminary injunction which your husband obtained on his behalf.

^{1/} The Act is found at Government Code Sections 81000-91015. The attorneys fees provisions are found at 91003(a) and 91012.

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If the upcoming ALUC decision will have a reasonably foreseeable material financial effect upon a source of income to you, you will be required to disqualify yourself from participation in that decision. In the pleadings which you have supplied from Case No. 560370 (specifically in the Petition for Writ of Mandate, etc., filed in October 1984 by your husband), the plaintiff, John Smothers, has alleged that his property "will decrease in value by reason of the issuance of the Permit" (p.3, para. 13). Other negative effects upon Mr. Smothers are detailed on page 6, paragraphs 19, 20 and 21, and he again claims that he and other neighbors will suffer a "diminishment of property values" at page 7, paragraph 24.

While the procedural posture of the upcoming permit decision will be somewhat different than the previous temporary permit decision, the substantive issue will remain the same, to wit: whether or not the San Jose Health Center should be permitted to operate a heliport. Therefore, we would presume that the decision would involve the potential for decrease in the value of Mr. Smothers' real property. Such an effect is "significant" within the meaning of the applicable Commission regulation (2 Cal. Adm. Code Section 18702(b)(3)(D)), because Mr. Smothers obviously feels that it is important enough to file suit over.

Consequently, if Mr. Smothers is a source of income, pursuant to the discussion in our letter No. A-85-103, you should disqualify yourself from making, participating in making, or using your official position to influence the decision of the ALUC^{2/} on the question of the permit to operate the heliport.

Because of our foregoing advice, we need not now address the issue of the second possible basis for a requirement of disqualification.^{3/} However, if it is your determination that Mr. Smothers is not a source of income to you pursuant to our letter No. A-85-103, you should advise us at once so that we may promptly resolve this other issue and provide you with timely advice.

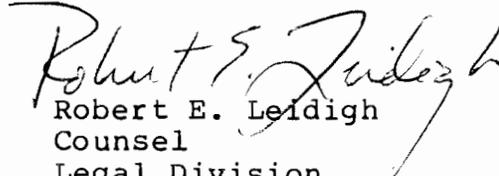
^{2/} This would also apply to your role on the Board of Supervisors, for that matter, if the question somehow came into the Board's purview.

^{3/} This is the possible effect on the value of your own home as a result of the heliport's operation.

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If you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Donald Clark



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BOARD OF SUPERVISORS
COUNTY OF SANTA CLARA
COUNTY GOVERNMENT CENTER, EAST WING
70 WEST HEDDING ST. / SAN JOSE, CALIFORNIA 95110 / 299-2323

ZOE LOFGREN
SUPERVISOR SECOND DISTRICT

May 1, 1985

Mr. Robert Leidigh
Legal Division
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Dear Mr. Leidigh:

Enclosed is some background information relative to the San Jose Hospital heliport issue we discussed on the telephone recently.

I have enclosed several maps of the heliport and surrounding vicinity. I have marked my home in green and the plaintiff's home in red. As you can see, the plaintiff's home is located within the noise notification zone and my home is not. Further, the plaintiff's home is closer to the heliport and in the same direction as the helicopter approach path, whereas my home is in the other direction from the approach path.

By the way, the notation on some of the maps ("proposed heliport") is misleading. In fact, San Jose Hospital went ahead and built the heliport without obtaining the necessary permits or inspections from the City of San Jose. I found out about it from constituents who called and wanted to know what San Jose Hospital was doing. By the time the vote was taken at the San Jose Planning Commission, the heliport was completely constructed.

As I mentioned to you on the phone and, as I believe our County Counsel Don Clark told you, he advised me that I was able to vote on the Airport Land Use Commission (ALUC) proceedings relative to this matter. There was a vote on October 4, 1984. The lawsuit was filed after the vote. The Airport Land Use Commission approved the six month trial period for San Jose Hospital's heliport on a 6 to 1 vote. I voted in opposition. I understand that the matter will be before the Airport Land Use Commission for a vote on the permanent use of the heliport in the near future.

As I also mentioned to you, I have not heard the takeoffs or landings from the hospital heliport, nor have I seen any helicopters taking off or landing there. I don't feel that the heliport has had or will have an impact on my home.

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I do feel, however, that it has the potential to adversely impact some of my constituents who reside near the heliport and whose homes and businesses are under the flight approach path coming from the east down Santa Clara street. Mr. Smothers, the plaintiff, is one of these constituents but certainly not the only constituent who will be adversely impacted.

Frankly, since there are hospital heliports already in existence less than a minute's flight time from San Jose Hospital, I cannot see any reason for San Jose Hospital to establish a heliport in the most densely populated area in the county -- downtown San Jose.

I have also enclosed a copy of a letter dated April 18 and accompanying material I recently received from my spouse, John Marshall Collins. I hope you will not be offended by his comments (expressed in paragraph 2, page 2). If I agreed with him, I wouldn't be seeking your opinion.

Since you expressed some confusion as to the role of the body I serve on as compared to the body where Planning Commissioner Claire Benson serves, I wanted to let you know that I am the Board of Supervisors' representative on the Airport Land Use Commission. Ms. Benson is a member of the San Jose Planning Commission. They approved a negative declaration to allow six months of helicopter operations on a 4-3 vote. The San Jose Planning Commission made the determining vote on the matter as these issues are not sent to or appealable to the San Jose City Council.

The Airport Land Use Commission's role in matters such as this is more minimal than that of the Planning Commission. The ALUC reviews airport expansions and development for consistency with a city's approved general plan and airport plans. If the ALUC finds that a proposed use is inconsistent with a city's plan, their advisory vote can be overridden by a vote of the City Council of the jurisdiction. As a practical matter, the ALUC defers greatly to cities on all issues. I am the only member of the ALUC who is not a member of a city council. It is my feeling that the city of San Jose has run roughshod over people under the flight path - a very low income community that may not even have received adequate notice of the proceedings because of limited English language skills.

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I intend to abstain from votes in ALUC until I hear from you, although I believe that I should be able to vote. You may be interested to know that I don't think there's any chance that my vote will make a difference on the ALUC, but I've never minded being in the minority when I thought I was right. I look forward to hearing from you so I can go ahead and cast my "protest" vote.

As I mentioned to you on the phone, I was not aware that my spouse had sought attorney's fees under the private attorney general theory until the day before I spoke to you. As you can see from his letter, he makes the case that the statutory provisions that would allow such an award of fees preclude viewing them as income from San Jose Hospital so as to prohibit me from voting on the matter. I imagine that is why he failed to notify me of the matter. In any case, the vote taken on October 4th preceeded the law suit so the issue seems pertinent for me prospectively only, if at all.

I enjoyed talking on the phone with you about this and look forward to hearing from you. Please don't hesitate to contact me at (408)299-2040, if I can provide any additional information that you may need.

Sincerely,



ZOE LOFGREN
Supervisor, Second District

Enclosures:

1. Maps
2.
 - a. April 18, 1985 letter to Zoe Lofgren from John Marshall Collins
 - b. April 12, 1985 letter to John Keplinger from John Marshall Collins,
Declaration of Claire Benson and attached evidentiary material
3. Points and Authorities, Smothers vs. City of San Jose et al
In Support Of Order To Show Cause Temporary Restraining Order
And Preliminary Injunction
4. Petition For Writ Of Mandate And Complaint For Injunction And
Declaratory Relief, Smothers vs. City of San Jose, City Council
et al

ZL/sm

State of California



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May 10, 1985

Zoe Lofgren
Santa Clara County
Board of Supervisors
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110 299-2323

Re: A-85-108

Dear Ms. Lofgren:

Your letter requesting advice under the Political Reform Act has been referred to Robert Leidigh, 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,

A handwritten signature in cursive script that reads "Barbara A. Milman".

Barbara A. Milman
General Counsel

BAM:plh