

# 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

July 2, 1985

Axel E. Christiansen  
City Attorney  
123 East 4th Street  
Madera, CA 93638

Re: Your Request for Advice  
Our File No. A-85-113

Dear Mr. Christiansen:

Thank you for your letter requesting advice on behalf of four Madera City Councilmembers, Edward J. Boyle, Roy Ben Lyon, Margaret Medellin and Ralph Larsen, regarding their duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

### FACTS

The Madera City Council is considering whether to enter into an agreement with the Madera Unified School District, the County of Madera, and a group of developers. The agreement would provide that the City would not authorize the issuance of development entitlements in connection with single- and multi-family residential units (approval of tentative maps, conditional use permits, building permits, etc.) unless the applicant agrees to pay certain fees for construction of additional school facilities.

Councilmember Boyle is a licensed electrical contractor who owns 10 percent or more of an electrical contracting business. From time to time he performs subcontract work for developers of residential projects.

Councilmember Lyon is a licensed general contractor, but is inactive in the business except for repair work on rental properties he owns and remodeling or repair work for individuals

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

who may request his services. He was active in residential development, but has not been for several years and currently has no plans for development projects which would be subject to the proposed development fees for school facilities. Councilmember Lyon also owns real property which would be suitable for residential development, but, at this time, he has no plans to develop that property.

Councilmember Medellin's spouse is employed as an Audio/Visual Aids Coordinator for the Madera Unified School District.

Councilmember Larsen's spouse is employed by the Madera Unified School District as the secretary for a school learning coordinator and vice principal.

#### QUESTION

Does any of these four councilmembers have a conflict of interest which prohibits him or her from participating in decisions concerning the proposed development fees for school facilities?

#### CONCLUSION

Councilmembers Medellin and Larsen may participate in the decisions concerning the proposed fees.

Whether Councilmembers Boyle and Lyon may participate in the decisions concerning the proposed fees depends on the reasonably foreseeable effect of the fees on their business or property interests, as discussed in the following analysis.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in, or 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 decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from the 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(a)-(e)

Councilmembers Medellin and Larsen

Both Councilmember Medellin and Councilmember Larsen have a community property interest in the income their spouses receive. Section 82030. However, for purposes of the Political Reform Act, salary from a state, local, or federal government agency is excluded from the definition of "income." Section 82030(b)(2). Therefore, the Madera Unified School District is not considered a source of income to Councilmember Medellin or Councilmember Larsen, and neither Councilmember is required to disqualify himself or herself from participating in the City Council's decision on the proposed development fees.

Councilmember Boyle

According to his Statement of Economic Interests, Councilmember Boyle has an investment of \$1,000 or more in his electrical business, and he owns 10 percent or more of that business. Due to his investment in the business, we must examine whether the proposed development fees would have a reasonably foreseeable material financial effect on Councilmember Boyle's electrical business. In addition, due to

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his percentage ownership of the business, Councilmember Boyle's pro rata share of income to his business is also considered income to Councilmember Boyle. Section 82030(a). Therefore, it is necessary to consider the effect of the proposed development fees on any of Councilmember Boyle's customers who provided sufficient income to the business that Councilmember Boyle's pro rata share of the income received from or promised by the customer was \$250 or more in the 12 month period preceding the City Council's decision.

The Commission has adopted regulations which define when a reasonably foreseeable financial effect will be considered material. In general, an effect is material if it is "significant." 2 Cal. Adm. Code Section 18702(a). The Commission has also adopted monetary guidelines for determining whether an effect on a source of income or a business entity will be considered material. Currently, these guidelines appear in 2 Cal. Adm. Code Sections 18702(b) (3) (C) and 18702.2 (copies enclosed).<sup>2/</sup>

With regard to the effect of the decision on Councilmember Boyle's electrical business, the standard set forth in 2 Cal. Adm. Code Section 18702.2(g) is the appropriate standard to apply. Accordingly, the effect of the decision regarding the proposed development fees for school facilities would be considered to have a material effect on Councilmember Boyle's electrical business if it is reasonably foreseeable that any of the following could occur:

(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

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<sup>2/</sup> The Commission has also proposed to adopt regulation 2 Cal. Adm. Code Section 18702.1 (copy enclosed). This regulation would set forth additional specific circumstances under which the effect of a decision would be presumed to be material.

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(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)

Due to the fact that the proposed development fees would not be imposed on subcontractors such as Councilmember Boyle, but rather on the developer/general contractor, I cannot foresee a material financial effect on Councilmember Boyle's electrical business as a result of the proposed development fees.

In contrast, the proposed development fees could have a foreseeable effect on the developers for whom Councilmember Boyle has performed subcontract work. The tests contained in 2 Cal. Adm. Code Section 18702.2 must be applied to any developer who would be affected by the fees (all residential developers doing business in, or planning to do business in, the area served by the Madera Unified School District) and who has paid or promised to pay to Councilmember Boyle's electrical business, during the 12 months preceding the decision, an amount sufficient to make Councilmember Boyle's pro rata share of that amount at least \$250, based on his percentage ownership of the business. Regulation 2 Cal. Adm. Code Section 18702.2 contains several different monetary guidelines for determining whether the effect of a decision on a business entity will be considered material. These guidelines are based on the size of the business entity involved and whether it is publicly traded. We do not have sufficient information about the developers for whom Councilmember Boyle has performed subcontract work to know which test applies.

#### Councilmember Lyon

Councilmember Lyon is a general contractor, but, according to your letter, he is not currently involved in the residential development business and does not plan to become involved in that business. Based on these facts, the proposed development fees would have no foreseeable effect on Councilmember Lyon's general contracting business.

It is also necessary to consider the effect of the proposed development fees on the value of Councilmember Lyon's real property interests. Commission regulation 2 Cal. Adm. Code Section 18702(b)(2) sets forth the following guidelines for determining whether the effect of a decision on real property interests will be considered material:

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(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:...

(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

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

If it is reasonably foreseeable that Councilmember Lyon's property would be so affected by the decision to impose the development fees, Councilmember Lyon must disqualify himself from participating in that decision.

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

Very truly yours,



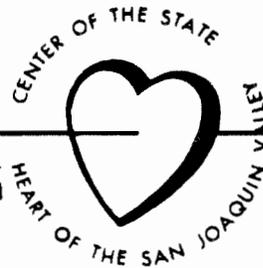
Kathryn E. Donovan  
Counsel  
Legal Division

KED:nwm  
Enclosure

# City of Madera

CITY HALL  
203 WEST 4TH STREET • MADERA, CALIF. 93637

May 9, 1985



DEPARTMENT Legal  
123 East 4th Street  
Madera, CA. 93638

State of California  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

Attn: Barbara Milman  
General Counsel

Re: Potential Conflict of Interest Issue

Gentlemen:

The City of Madera is a general law city, all of which is included within the Madera Unified School District.

Pursuant to Government Code §65970 et seq, on March 27, 1984, the Madera Unified School District adopted its resolution making certain findings and determinations relating to overcrowding in the District and thereafter asked the Madera County Board of Supervisors and the City Council of the City of Madera to concur in their findings and adopt implementing legislation or action to require collection of school impact fees to meet the issues of overcrowding. Neither the Madera County Board of Supervisors nor the City Council concurred in those findings, and the matter remained an issue of discussion before both bodies and was of concern to developers of property in the areas involved.

In an effort to resolve the issue, a group of developers collectively known as the "Building Industry Association - Madera Chapter" entered into discussions with the School District to try to arrive at an acceptable solution, and on or about April 1, 1985, an agreement was prepared to include the School District, the developers, the County of Madera and the City of Madera, which agreement in substance provides that neither the City nor the County would authorize the issuance of "development entitlements" (approval of tentative maps, conditional use permits, building permits, etc.) unless and until the applicant became a

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party to the agreement with the parties above mentioned, to pay certain development fees for single and multi-family residential units. This agreement was before the City Council for consideration at its meeting of May 6, 1985, and triggered the raising of the issues of potential conflicts of interest.

Questions were raised regarding the propriety of four members of the Council voting on this particular issue. The spouses of two members of the City Council are both employees of the Madera Unified School District, one being the Audio/Visual Aides Coordinator and the other being the secretary of the learning coordinator and vice-principal at one of the schools; it is assumed that the vice-principal may be involved in policy making decisions, or at least policy making recommendations. The other two councilmen are both licensed contractors, one being a licensed electrical contractor who does subcontracting work for developers on occasion, and the last councilmember being a licensed general contractor.

With regard to the councilmembers whose spouses are employed by the School District, it does not appear that a conflict exists, it being assumed that the only possible conflict that could arise would be as a result of the production or depletion of income of the particular spouse involved. However, since this type of income is specifically excluded from the definition of income in Government Code §82030, such affect, if any, that the Council's action may take, does not appear to be pertinent. It would be appreciated that if correct, this conclusion be confirmed, or, if in error, the issue clarified and/or corrected.

The councilmember who is a licensed electrical contractor has his own electrical shop and, as stated, sometimes performs work for developers under subcontracts in the development of residences, commercial buildings, etc. This councilmember does not have any land of his own for development, has never done it, and does not contemplate doing it in the foreseeable future. He does, however, possibly own property which he may at a later date choose to sell or exchange with an agreeable purchaser who in turn may well in fact develop such properties and be subject to any fees. There are, however, no immediate plans for any such sales or exchanges.

The licensed general contractor is 67 years of age

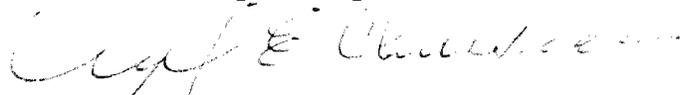
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and relatively inactive at this time. The most recent project completed by him within the past two years is a personal residence for his daughter and son-in-law. He is drawing Social Security benefits and as stated is inactive in the general contracting field, other than being engaged in repair work on his own rental properties and possibly remodeling or repair work for individuals who may request his services. He has not been active in the construction of any multiple units since 1977, and no single family development for sale purposes for at least four years. He does not now contemplate, nor does he contemplate in the foreseeable future, development of any properties that could or might be affected by any such fees, and any such property that he may own that could be used for such purposes, in all probability would be sold or exchanged to third parties who would independently develop the properties and be subjected to any and all appropriate fees required at the time of such development. He does have a son who is also a licensed general contractor, but whose operations are completely independent from his councilmember father.

It is hoped that with the foregoing information you will be able to advise whether or not there is, or under what circumstances there may be, a conflict of interest among any or all of the four members of the City Council identified in connection with this particular issue.

If there are any other pertinent facts that you may feel necessary in order to arrive at the appropriate conclusion kindly contact the undersigned and I will respond as soon as possible, although it is respectfully submitted that all pertinent material facts to the issues raised have been presented.

Yours very truly,



AXEL E. CHRISTIANSEN  
City Attorney

AEC:dg

cc: All Councilmembers

# City of Madera

CITY HALL • MADERA, CALIFORNIA

May 29, 1985



DEPARTMENT Legal  
123 East 4th Street  
Madera, CA. 93638

Jeanette E. Turvill  
Legal Assistant  
Legal Division  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

Re: Your Advice No. A-85-113

Dear Ms. Turvill:

Thank you for your letter of May 17, 1985, in response to the recent inquiry sent to the Commission on May 9, 1985. I was specifically authorized by the City Council to submit the letter of May 9th to the Commission for the opinion requested, but in accordance with your letter of May 17, 1985, please be advised that I have now been specifically orally authorized by the individual members to seek the information and the City Council, as a body, has also reiterated the directive to me to submit the request.

The names, addresses, and occupations of the particular councilmembers concerned are as follows:

1. Edward J. Boyle, 1614 Jennings, Madera, California. Mr. Boyle is a licensed electrical contractor.
2. Roy Ben Lyon, 217 High Street, Madera, California. Mr. Lyon is a licensed general contractor.

If you will refer to paragraphs three and four, set forth on pages two and three of my letter to you of May 9, 1985, I believe you will find all of the material facts relative to the issue at hand. With regard to your specific request as to whether or not Mr. Boyle, as an electrical contractor, has any sources of income who may be effected by his decision, such as contractors or developers, the answer is that it is probably unknown. It is certainly conceivable that in the event the council made a decision to impose such fees, any

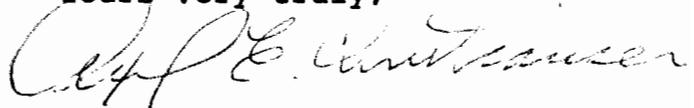
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contractor or developer impacted by imposition of such fees could conceivably ask Mr. Boyle to bid on electrical work for a specific project, or any other project being handled by the contractor or developer. This, of course, could happen in connection with a project that is presently pending, or again it might not happen until three or four or more years away. Also, it might not happen at all. It appears to the undersigned that the crux of the problem is possibly an interpretation of the meaning of the term "reasonably foreseeable" insofar as Mr. Boyle is concerned.

As to Councilmember Lyon, the licensed general contractor, it is again unknown whether he might in the future have any sources of income that might be effected by any decision he would make unless he became active again in the field of contracting, which at this point in time he does not intend to do.

I hope that with the information set forth herein, our previous letter can be assigned to a member of your staff for review and response. If any additional factual information pertinent to the issues is necessary, kindly advise and I will provide the same to the best of my ability.

Yours very truly,



AXEL E. CHRISTIANSEN

AEC:dg

cc: All Councilmembers