

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) 322-3662 322-5660 322-5901 322-6441

June 17, 1985

Linda Rigler, Law Clerk to
William G. Priest, Jr.
The Priest Law Offices
28 North First Street, Suite 100
San Jose, CA 95113

Re: Your Request for Advice on
Behalf of Claire Benson
Our File No. A-85-118

Dear Ms. Rigler:

You have requested advice on behalf of your client, Ms. Claire Benson, member of the San Jose Planning Commission. You have succinctly stated the facts and the question as follows.

Ms. Benson is currently a member of the San Jose Planning Commission. In February 1984 Ms. Benson received \$427.50 from the San Jose Health Center, Inc. owner of San Jose Hospital, as payment for consulting services regarding a study on parking facilities at one of its proposed clinics.

Seven months later Ms. Benson voted on an appeal of a Negative Declaration issued by the San Jose Planning Director in connection with the San Jose Hospital's application for a 6-month conditional use permit to operate a helipad on its premises. The Negative Declaration was upheld, and litigation was soon brought by a neighboring homeowner who objected to the helipad.

On May 3, 1985 a superior court judge ruled that Ms. Benson's receipt of the \$427.50 exceeded the statutory limit of \$250.00; was within 12 months preceding her participation in the vote, and that the subject matter of the vote could have a material financial impact on the hospital. Because Ms. Benson was considered to have improperly voted on the appeal affecting the conditional use permit, an injunction

was granted against the City of San Jose and the helipad was closed. The homeowner's attorney has since filed a complaint with the FPPC alleging that Ms. Benson has violated the conflict of interest rules.

More than one year has elapsed since Ms. Benson received her fee, and she has had no further dealings with the hospital. The conditional use permit will expire in June, and the San Jose Hospital has already submitted a draft Environmental Impact Report in connection with its application for a permanent use permit. Hearings are scheduled before the Planning Commission and City Council at a yet undetermined date.

The Commission's decision on the Negative Declaration appeal in September 1984 and the upcoming Commission vote on the permanent use permit application seem to be two separate and distinguishable actions. In one, the planning commission members voted on the propriety of the Director's issuing the Negative Declaration; in the other, the commission members will be voting on a permit application where the applicant has already submitted an environmental impact report.

If these two acts are sufficiently distinct, then in view of the more than one-year lapse since Ms. Benson last dealt with the hospital, would it still be considered a conflict of interest for her to participate in the upcoming decision for a permanent use permit?

ANALYSIS

Initially, we must state that we cannot in any way comment upon Ms. Benson's past activities or upon the merits of the pending litigation. We shall address only the prospective decision which may face Ms. Benson. If Ms. Benson, in fact, has received no income from the Hospital since February 1984 (more than 12 months ago), then the hospital would not be a source of income to her within the preceding 12 months (Government Code Section 87103(c)) and disqualification would not be required on that basis.

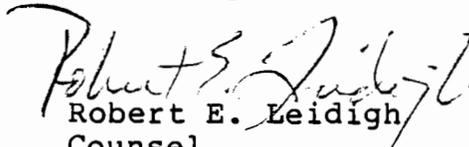
However, Section 87103(c) also includes as a source of income anyone who has promised income within the preceding 12 months (income is defined in Section 82030(a) to include any "payment," etc.). We have noted that in his pleadings, the

Linda Rigler, Law Clerk
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neighboring homeowner has alleged that Ms. Benson may also have been promised additional income by the Hospital in the form of ongoing consulting business. If there was in fact such a promise within the last 12 months (or a continuing promise) there would be a need to disqualify. On the other hand, if Ms. Benson's work for the Hospital was one finite project which has been completed and was fully paid for in February 1984, no disqualification would be required.

We trust that this letter has been responsive to your advice request. Should you have any questions, please do not hesitate to contact me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

cc: Claire Benson
Robert Logan, San Jose City Attorney
John Marshall Collins

THE PRIEST LAW OFFICES

WILLIAM G. PRIEST, JR.
JEFFRY P. TONE
MICHAEL PRIEST
OF COUNSEL

28 NORTH FIRST STREET - SUITE 100
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 279-3450

FRANCINE R. ORMSBY
ADMINISTRATOR/
PARALEGAL ASSISTANT

May 17, 1985

Chairman of the
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Claire Benson, member of the San Jose Planning Commission
Our File No. 3170
Request for Issuance of Advisory Opinion

Dear Sir or Madam:

Pursuant to Section 83114 of the Political Reform Act of 1974, we are requesting that the Commission issue an Advisory Opinion on the eligibility of our client, Claire Benson, to vote on an upcoming permit application hearing before the San Jose Planning Commission.

Ms. Benson is currently a member of the San Jose Planning Commission. In February 1984 Ms. Benson received \$427.50 from the San Jose Health Center, Inc. owner of San Jose Hospital, as payment for consulting services regarding a study on parking facilities at one of its proposed clinics.

Seven months later Ms. Benson voted on an appeal of a Negative Declaration issued by the San Jose Planning Director in connection with the San Jose Hospital's application for a 6-month conditional use permit to operate a helipad on its premises. The Negative Declaration was upheld, and litigation was soon brought by a neighboring homeowner who objected to the helipad.

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More than one year has elapsed since Ms. Benson received her fee, and she has had no further dealings with the hospital. The conditional use permit will expire in June, and the San Jose Hospital has already submitted a draft Environmental Impact

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The Commission's decision on the Negative Declaration appeal in September 1984 and the upcoming Commission vote on the permanent use permit application seem to be two separate and distinguishable actions. In one, the planning commission members voted on the propriety of the Director's issuing the Negative Declaration; in the other, the commission members will be voting on a permit application where the applicant has already submitted an environmental impact report.

If these two acts are sufficiently distinct, then in view of the more than one-year lapse since Ms. Benson last dealt with the hospital, would it still be considered a conflict of interest for her to participate in the upcoming decision for a permanent use permit?

The Planning Commission has already received considerable local media publicity and it is hoped that your opinion will clear things up on this matter. We look forward to hearing from you.

Very truly yours,

THE PRIEST LAW OFFICES



Linda Rigler, Law Clerk to
William G. Priest, Jr.

LR:lhg
cc: Claire Benson

3170-161

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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(916) 322-5662 322-5660 322-5901 322-6441

May 30, 1985

Linda Rigler
Law Clerk
The Priest Law Offices
28 North First Street, Suite 100
San Jose, CA 95113

Re: A-85-118

Dear Ms. Rigler:

Your letter, received on May 20, 1985, 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,

Barbara A. Milman

Barbara A. Milman
General Counsel

BAM:plh