

# 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 24, 1985

Eric Lauterer  
City Attorney  
City of Garden Grove  
P.O. Box 3070  
Garden Grove, CA 92640

Re: Your Request for Advice  
Our File No. A-85-124

Dear Mr. Lauterer:

Thank you for your request for advice on behalf of Councilmember Walter Donovan concerning his obligations under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

### QUESTION

May Councilmember Donovan participate in City Council decisions concerning lighting assessment districts which are established pursuant to the Landscaping and Lighting Act of 1972<sup>2/</sup> in view of his employment by, and investment in, Southern California Edison Company?

### CONCLUSION

Councilmember Donovan may participate in these decisions subject to the discussion below.

### DISCUSSION

My understanding of the facts are as follows.  
Councilmember Donovan has been employed by Southern California

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

<sup>2/</sup> Calif. Streets and Highways Code Section 22500, et seq.

Eric Lauterer  
June 24, 1985  
Page 2

Edison Company ("Edison"), a public utility, for over 30 years. He is currently the Manager of an Edison office in a city in Orange County (not Garden Grove). In connection with his employment, he has received stock and stock options in Edison.

The questions you raised involve decisions on certain public lighting facilities, and you described these decisions in your letter as follows:

From time to time in the City of Garden Grove and pursuant to state law, the City has created lighting assessment districts which annually require action of the City Council to levy assessments to cover the costs in connection with installation, maintenance and servicing of certain public lighting facilities on city streets and places in the City of Garden Grove. This takes place pursuant to authority granted by the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500 et seq.) and has taken place pursuant to other street lighting acts.

In connection therewith a number of actions are taken by the City Council. These include receiving petitions to have districts established, establishing the districts, approving energizing reports related thereto, and setting protest hearings where individuals who oppose the establishment of a district have an opportunity to be heard. At the protest hearing regarding the establishment of a District, the City Council hears testimony as to concerns, both for and against the establishment of a district. If a district, in fact, is established, the Council would normally proceed to use the City Engineer's report as to the type of improvements and areas to be served as a basis for establishing assessments. Following hearing on the issues raised by the creation of the district or the assessment of fees related thereto, pursuant to state law the Council passes a resolution if protests are not made by owners of more than one-half of the area of the property to be assessed for the improvements proposed. As a part of the final resolution, the City Council determines who it believes, by contact, is to furnish the energy or electricity and historically, it has been Southern California Edison Company in the City of Garden Grove. The City of Garden Grove does not have an electric power utility and relies on Southern California Edison Company for its sole source of electricity.

Eric Lauterer  
June 24, 1985  
Page 3

As you know, a public official is prohibited from making, participating in, or using his or her official position to influence a governmental decision in which the official has a financial interest in the outcome. Section 87100. An official has a financial interest in the outcome of a decision if it is reasonably foreseeable that the decision will have a material financial effect on:

(a) Any business entity in which the public official has a direct or indirect investment 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.

#### Section 87103.

Since Councilmember Donovan is employed by, and has an investment in, Edison, he may not make or participate in any City Council decision where it is reasonably foreseeable that the decision will have a material financial effect on Edison. Under the Commission's recently revised monetary guidelines (2 Cal. Adm. Code Section 18702.2) for determining materiality, a \$1 million effect on Edison's annualized gross revenues, or a \$500,000 effect on Edison's assets or liabilities, would be considered material.

In the circumstances you described in your letters of May 16, 1985 and June 7, 1985, Edison plays no role with respect to the City Council decisions on the assessment districts; it does not appear as a party or otherwise have input into the decisions. Nor is Edison required to make any capital outlay in the form of substations, transmission lines, etc., when an assessment district is established; it only provides additional electricity.

Eric Lauterer  
June 24, 1985  
Page 4

Accordingly, it appears that the only potential effect of the decisions to establish lighting assessment districts and to name Edison as the source of the electricity<sup>3/</sup> is to increase Edison's sales of electricity by an unascertained amount. However, the Commission was advised by the Public Utilities Commission ("PUC") during the rulemaking proceedings for 2 Cal. Adm. Code Section 18702.2 that special tariffs on the major regulated public utilities eliminate any effects on annualized gross revenues resulting from increases in sales. There are special "balancing accounts" set up by the PUC for each major electric utility including Edison which are designed so utilities will not be affected by changes in sales resulting from more customers.

We were provided the information concerning the tariffs in the context of new residential subdivisions and their potential effects on the utilities' revenues. Accordingly, you should verify with either the PUC or Edison that these tariffs apply to increased sales resulting from lighting assessment districts; assuming that this is the case, the additional sales of electricity will not have any effect on Edison and Councilmember Donovan may participate fully in the Council decisions on these issues. If the tariffs do not apply, the \$1 million test for annualized gross revenues contained in 2 Cal. Adm. Code Section 18702.2 should be used to determine whether Councilmember Donovan has a disqualifying financial interest.

If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,



Diane Maura Fishburn  
Counsel  
Legal Division

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<sup>3/</sup> As noted in your recitation of the facts, Edison is the only provider of electricity in Garden Grove.



# CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, GARDEN GROVE, CALIFORNIA 92640

MAILING ADDRESS: P.O. BOX 3070, GARDEN GROVE, CALIFORNIA 92642

OFFICE OF THE CITY ATTORNEY

(714) 638-6881

June 7, 1985

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

RE: Opinion Request  
Your No. A-85-124

Dear Ms. Fishburn:

In accordance with an earlier request to your office regarding the above-captioned matter, I am providing the following information:

QUESTION 1: Does the City have any other choice as to the source of electricity for these newly-created lighting assessment districts?

ANSWER: No

QUESTION 2: Does Southern California Edison Company appear as a party to these proceedings or otherwise "lobby" or have input directly into the decisional process?

ANSWER: No

QUESTION 3: Does one of these districts involve capital outlay on the part of Southern California Edison Company, or only the provision of additional electricity?

ANSWER: Only additional electricity.

QUESTION 4: If capital outlay in the form of substations or transmission lines, etc., is involved, what is the approximate costs of such capital improvements required to service a new district?

ANSWER: n/a

6/7/85

QUESTION 5: Please amplify on what is involved in your question number (3).  
What role does the City pay in collecting monies and paying Southern California Edison Company?

ANSWER: When a new area petitions to be included into the City Lighting District, City staff estimates a cost to join based on the type of poles desired and a projected energy cost. This data is based on cost factors supplied by the Edison Co. When the petitioning area receives Council approval to be incorporated into the Lighting District, staff transmits the estimated cost for fixtures, poles and energy to the County Tax Collector who in turn incorporates this charge in the individual property owners tax assessment. These funds are collected by the County and distributed to the City at certain intervals during the tax year. The Edison Co. bills the City for necessary work to provide street lights after the work has been completed. They also bill the City at certain intervals for the cost of electricity. The City then reimburses the Edison Co. for these expenditures utilizing funds collected by the County Tax Collector.

Should you need any further clarification, please let me know.

Respectfully,

A handwritten signature in black ink, appearing to read "Eric Lauterer", written in a cursive style.

ERIC LAUTERER  
City Attorney

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# CITY OF GARDEN GROVE, CALIFORNIA

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MAILING ADDRESS: P.O. BOX 3070, GARDEN GROVE, CALIFORNIA 92642

OFFICE OF THE CITY ATTORNEY

(714) 638-6881

May 16, 1985

Conflict of Interest Section  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804

RE: Request for Opinion

Gentlemen:

BACKGROUND: Presently Walter Donovan is a member of the Garden Grove City Council, having been elected on November 26, 1984. The City Council is also the City's Redevelopment Agency and, therefore, Mr. Donovan also serves as a member thereof. For over thirty years, Mr. Donovan has been employed by the Southern California Edison Company and is presently Manager of one of its offices in a City in Orange County, not the City of Garden Grove. In connection with that employment, he has received stock or stock options in connection with the Edison Company's holdings based on his employment with the Company.

From time to time in the City of Garden Grove and pursuant to state law, the City has created lighting assessment districts which annually require action of the City Council to levy assessments to cover the costs in connection with installation, maintenance and servicing of certain public lighting facilities on city streets and places in the City of Garden Grove. This takes place pursuant to authority granted by the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22500 et seq.) and has taken place pursuant to other street lighting acts.

In connection therewith a number of actions are taken by the City Council. These include receiving petitions to have districts established, establishing the districts, approving energizing reports related thereto, and setting protest hearings where individuals who oppose the establishment of a district have an opportunity to be heard. At the protest hearing regarding the establishment of a District, the City Council hears testimony as to concerns, both for and against the establishment of a district. If a district, in fact, is established, the Council would normally proceed to use the City Engineer's report as to the type of improvements and areas to be served as a basis for establishing assessments. Following hearing

5/16/85

on the issues raised by the creation of the district or the assessment of fees related thereto, pursuant to state law the Council passes a resolution if protests are not made by owners of more than one-half of the area of the property to be assessed for the improvements proposed. As a part of the final resolution, the City Council determines who it believes, by contract, is to furnish the energy or electricity and historically, it has been Southern California Edison Company in the City of Garden Grove. The City of Garden Grove does not have an electric power utility and relies on Southern California Edison Company for its sole source of electricity.

QUESTION: Is Councilman Donovan, by virtue of his employment with Southern California Edison Company and his ownership in stock of said Company and options to acquire further stock in the future, disqualified from participating in any of the actions or steps relevant to (1) establishing assessment district; (2) levying assessments on a new assessment district; and (3) levying assessments on assessment districts to cover annual costs of maintenance and operation, including the supplying of energy through Southern California Edison Company?

Respectfully,

A handwritten signature in black ink, appearing to read "Eric Lauterer". The signature is fluid and cursive, with a large initial "E".

ERIC LAUTERER  
City Attorney

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