

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 22, 1985

J. Steven Lempel, City Attorney
City of Sanger
c/o J. Steven Lempel Law Corp.
907 Santa Fe Avenue, Suite 101
Fresno, CA 93721

Re: Your Request for Advice on
Behalf of Sanger City
Councilmember Mark Johnson
Our Advice No. A-85-145

Dear Mr. Lempel:

Because of the somewhat general nature of the question which you have posed, we will only be able to provide you with generalized advice at this time. As matters develop in the future, you or Mr. Johnson may wish to contact us again for more detailed advice. Your advice letter presents the following facts and questions for our consideration.

FACTS

... Mr. Johnson is an attorney practicing in the State of California. He has been requested to become legal counsel and to invest as a shareholder and potential member of the Board of Directors of a new corporation whose business would be to broker the sale of California Agricultural Products in Japan. Such corporation would not have any business requiring review before the Council of the City of Sanger or the Redevelopment Agency of the City of Sanger on which Mr. Johnson sits as a Member of the Board of Directors.

Other shareholders, officers and board members of the corporation, however, are engaged in various other business endeavors in the City of Sanger, both as individuals, partners and as shareholders, officers, and board members of different corporations which do have matters that come before the Sanger City Council and Redevelopment Agency. Thus, Mr. Johnson would be considering matters which directly impact individuals who are fellow shareholders, board members, and

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officers with him in the Agricultural Products Corporation, although such matters would not directly impact the corporation in which Mr. Johnson would be interested.

In a subsequent telephone conversation, you have provided the following additional facts: Mr. Johnson's initial investment will be made by way of providing legal services in lieu of cash. His initial investment will have a value of approximately \$3,000 to \$5,000 which will equate to 5% to 10% ownership of the company's stock. As more stock is issued and sold in the future, his percentage of ownership will decrease unless he acquires more stock. The largest single holding of the company's stock by anyone will probably be no more than 15%, but will certainly be much less than 50%. Future legal work performed by Mr. Johnson as attorney for the corporation will be paid in money or possibly in additional shares. It is now anticipated that Mr. Johnson will serve as a director of the corporation in addition to providing legal counsel.

QUESTION

The question is whether this relationship is prohibited under the Fair Political Practices Act of the State of California such that Mr. Johnson would have to disqualify himself from consideration of any matter pertaining to a corporation, partnership or individual who was a fellow shareholder, officer, or board member in the Agricultural Products Corporation. In this respect, a number of the individuals who may become shareholders, officer, and/or directors of the Agricultural Products Corporation are shareholders, officers, and/or directors of corporations and businesses located in the Downtown Redevelopment Project Area of the City of Sanger.

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that no public official shall make, participate in making or use his or her official position to influence the making of any governmental decision in which he or she has a financial interest. Section 87100. This includes decisions which will

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

affect an official's own pocketbook as well as those decisions which will have a material financial effect upon one of the economic interests enumerated in Section 87103, as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its 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.

* * *

When the corporation is started up, Mr. Johnson will have an investment worth \$1,000 or more in the company. Section 87103(a). He will also have a position as a director and employee with the company (Section 87103(d)) and the company will be a source of income to him of \$250 or more during the preceding 12 month period (Section 87103(c)) and will likely continue to be a source of income in the future. Consequently, as a public official (city councilmember) Mr. Johnson will need to disqualify himself from any participation in any decisions which will have a reasonably foreseeable material financial

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effect upon the company which is distinguishable from the decision's effect upon the public generally. Enclosed is a copy of the Commission's recently-adopted regulation, 2 Cal. Adm. Code Section 18702.2, giving new guidelines as to materiality with respect to business entities.

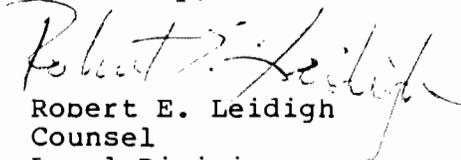
With respect to decisions affecting businesses or persons other than the corporation, the following analysis should be applied when determining whether or not disqualification is required. If Mr. Johnson owns 10% or more of the company, during that time any source of income to the company is also a source of income to him on a pro rata basis. Section 82030(a). If anyone or any business entity is a source of income of at least \$2,500 during any 12-month period while he owns 10% or more, it would be a source of income to him of \$250 or more and he would be required to disqualify himself with respect to any decision which will have a reasonably foreseeable material financial effect on any such source of income. This would include any investor in the company who invests \$2,500 or more in a year's time. (If he owns more than 10%, a lesser sum is necessary for his pro rata share to equal or exceed \$250.)

Once Mr. Johnson's ownership interest falls below 10%, persons or businesses who are sources of income to the company will no longer be pro rata sources of income to Mr. Johnson. (Section 82030(a).) Once 12 months has passed from the last income of \$250 or more pro rata to him, no disqualification would be required.

There would be no disqualification otherwise required vis a vis his fellow investors in the corporation since none of them will own a controlling interest as defined by the Commission's regulation 2 Cal. Adm. Code Section 18236 and the Commission's Nord Opinion, 8 FPPC Opinions 6, No. 83-004, October 4, 1983. (Copies enclosed.)

If you or Mr. Johnson have further questions on this matter, please call me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosures
cc: Mark Johnson

J. STEVEN LEMPEL
ATTORNEY AT LAW

JUN 24 6 26 AM '85 STEVEN LEMPEL LAW CORPORATION
907 SANTA FE AVENUE, SUITE 101
FRESNO, CALIFORNIA 93721
(209) 268-4074

June 19, 1985

Ms. Barbara Milman, General Counsel
Fair Political Practices Commission,
State of California
P. O. Box 807
Sacramento, California 95804

Re: Formal Advice Letter

Dear Ms. Milman:

I have been authorized to request this advice letter by Mark Johnson, Member of the Sanger City Council. Mr. Johnson is an attorney practicing in the State of California. He has been requested to become legal counsel and to invest as a shareholder and potential member of the Board of Directors of a new corporation whose business would be to broker the sale of California Agricultural Products in Japan. Such corporation would not have any business requiring review before the Council of the City of Sanger or the Redevelopment Agency of the City of Sanger on which Mr. Johnson sits as a Member of the Board of Directors.

Other shareholders, officers and board members of the corporation, however, are engaged in various other business endeavors in the City of Sanger, both as individuals, partners and as shareholders, officers, and board members of different corporations which do have matters that come before the Sanger City Council and Redevelopment Agency. Thus, Mr. Johnson would be considering matters which directly impact individuals who are fellow shareholders, board members, and officers with him in the Agricultural Products Corporation, although such matters would not directly impact the corporation in which Mr. Johnson would be interested.

The question is whether this relationship is prohibited under the Fair Political Practices Act of the State of California such that Mr. Johnson would have to disqualify himself from consideration of any matter pertaining to a corporation, partnership or individual who was a fellow shareholder, officer, or board member in the Agricultural Products Corporation. In this respect, a number of the individuals who may become shareholders, officers, and/or directors of the Agricultural Products Corporation are shareholders,

Ms. Barbara Milman, General Counsel
Fair Political Practices Commission
Sacramento, California 95804

Re: Formal Advice Letter

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June 19, 1985

officers, and/or directors of corporations and businesses
located in the Downtown Redevelopment Project Area of the
City of Sanger.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Steven Lempel".

J. STEVEN LEMPEL
City Attorney, City of Sanger
and Sanger Redevelopment Agency

JSL:ek

cc: Mr. Mark Johnson

J. STEVEN LEMPEL
ATTORNEY AT LAW

J. STEVEN LEMPEL LAW CORPORATION

907 SANTA FE AVENUE, SUITE 101
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July 5, 1985

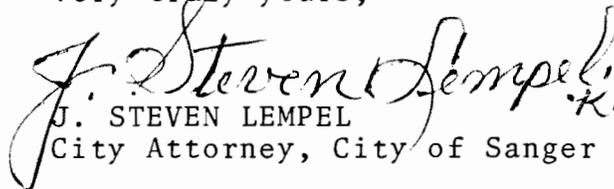
Ms. Jeanette E. Turvill,
Legal Assistant, Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Our Request for Advice
Your No. Advice No. A-85-145

Dear Ms. Turvill:

In response to your request dated July 1, 1985, please be advised that Councilmember Mark Johnson's address is 1700 Seventh Street, Sanger, California 93657. Such address is Mr. Johnson's mailing address at the Sanger City Hall.

Very truly yours,


J. STEVEN LEMPEL
City Attorney, City of Sanger

JSL:ek