

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

August 29, 1985

John M. Powers
City Attorney
City of Vallejo
P.O. Box 3068
Vallejo, CA 94590

Re: Your Request for Advice
Our File No. A-85-170

Dear Mr. Powers:

You have written to request advice on behalf of Vallejo City Councilmember Hal G. Pierce, Jr. You have presented the following facts for our consideration.

FACTS

... Marine World/Africa USA announced in September 1984 that it wanted to move its land and marine animal theme park operations from Redwood City to Vallejo. In order to accomplish the relocation, the park would be built on City-owned land using a financial package, the major portion of which would consist of the City of Vallejo or its Redevelopment Agency issuing tax-exempt bonds (known as certificates of participation). In addition, the project required environmental and zoning clearances from the City. Final approval for the project was given by the City Council on March 26, 1985, and construction started shortly thereafter with a completion date projected for May 1986.

After the project was approved and construction started, Hal Pierce Electric Co., Inc., a California Corporation, installed temporary electrical wiring and fixtures on the marine World site. This work was performed for the general contractor, Amoroso Construction Company of Foster City, California, on a time and materials basis, and Mr. Pierce tells me that approximately \$10,000 was charged for the work. Further, in May 1985, Hal Pierce Electric bid on a competitive basis the electrical work for the whale holding tank facility being constructed on the Marine

John M. Powers
August 29, 1985
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World site. Mr. Pierce advised that their bid was in the approximate sum of \$41,000. Recently, I was advised by Mr. Pierce that another bidder was awarded the work.

Mr. Pierce is Vice-President of Hal Pierce Electric. The company is an electrical contracting firm, family owned and operated, which has been in business in the Vallejo area for more than 40 years. Mr. Pierce is a salaried employee of the company, and does not own any of the corporate stock. The company is not authorized to sell its stock to the public under Corporations Code, Section 25110.

* * *

Beyond what has already happened, there are several future actions required of the City Council and Redevelopment Agency that affect the financing and other elements of the project. In Vallejo, the City Council is the governing body of the Redevelopment Agency, and hence Mr. Pierce is a member of the Agency's governing body.

Mr. Pierce has also told me that Hal Pierce Electric plans to continue submitting bids for electrical work as construction progresses on the Marine World site. In fact, Mr. Pierce informs me that Hal Pierce Electric bid the backwash facility in early June for approximately \$28,000 but was not awarded the work. More recently, they have bid the animal barns for approximately \$186,000, the whale/dolphin stadium and sea lion stadium (a combined project) for \$107,400, and plan to bid the site work in the near future. All of these projects are being bid competitively, and (with the exception of the site work) are currently pending decision as to award of contracts for the work.

QUESTION

Mr. Pierce wishes to know whether he must disqualify himself from decisions which may affect the Marine World Project.

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that public officials may not make, participate in making, or in any way 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. An official has a financial interest in a decision if it will affect his own pocketbook or if it meets the criteria established in Section 87103, excerpted below:

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:

* * *

(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.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code. Because there is some form of City financing in this case and contracts are involved, you may wish to consider whether or not Section 1090, as to which we have no jurisdiction, is applicable, particularly in light of the Supreme Court's recent decision, Thompson v. Call.

Mr. Pierce has an economic interest in Hal Pierce Electric Co. because it is both a source of income to him and he is an officer and an employee. Consequently, Mr. Pierce must disqualify himself as to any decisions which will have a reasonably foreseeable material financial effect upon Hal Pierce Electric Co. However, because he is not a 10% or greater owner, he has no economic interest in Amoroso Construction Company or Marine World/Africa USA, which are sources of income to the company, but not to him. (See Section 82030(a).)

In determining whether a decision will have a reasonably foreseeable financial effect upon Hal Pierce Electric Co., the Commission's Thorner Opinion^{2/} is instrumental.

In Thorner, the Commission considered whether a director of a municipal water district, holding interests in a business entity which may be affected by the district's decisions on requests for variances from a moratorium on new water connections, may participate in the decisions on those requests. One of the circumstances which the Commission considered was where the business entity in which the director had a financial interest was preparing or had made a bid to supply one or more of its products to a project seeking a variance, but where no award had been made. In concluding that it was reasonably foreseeable the decision would have a financial effect on the director's financial interests the Commission stated:

As a general rule, however, when the bid is made with a serious hope that the contract will be awarded to McPhail's, we think a financial effect on McPhail's is reasonably foreseeable even if there is substantial competition. The statute requires foreseeability, not certainty. Furthermore, the fact that a seriously competitive bid on the project is being prepared or has been made is likely to focus the attention of the Director on the fact that he may benefit if a variance is granted.

In Councilmember Pierce's situation, only those decisions that could result in an increase or decrease in the amount of electrical work required by the Marine World project would have

^{2/} Opinion requested by Tom Thorner, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975).

a reasonably foreseeable financial effect on the Hal Pierce Electric Co.

Once it is determined that a decision will have a reasonably foreseeable financial effect on the Hal Pierce Electric Co., it must be determined whether the financial effect is material. Because the Hal Pierce Electric Co. is not authorized to sell its stock to the public and meets none of the other criteria in 2 Cal. Adm. Code Section 18702.2, subsection (g) of the regulation will apply. Under that provision, the effect of a decision will be measured as follows:

(g) For business entities which are not covered by (c), (d), (e) or (f) the effect of a decision will be material if:

(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

(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).

Disqualification would not be required, however, if the financial effect of the governmental decision on the Hal Pierce Electric Co. is not distinguishable from its effect on the public generally. However, under facts similar to these, the Commission stated:

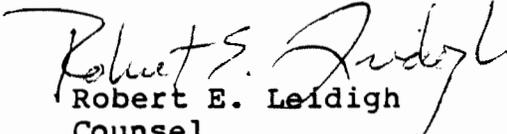
Although there may be many suppliers to a particular building project, they cannot constitute a large enough group to qualify as the "public generally," or even a significant segment of the public generally.

Thorner, supra, fn. 2.

John M. Powers
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I hope that these general guidelines regarding the application of the Political Reform Act to Councilmember Pierce's situation is helpful. Should Councilmember Pierce require specific advice regarding a specific decision, please feel free to contact me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh
cc: Hal Pierce, Jr.



CITY OF VALLEJO

JOHN M. POWERS
CITY ATTORNEY

F P P O
AUG 23 8 58 AM '85

August 19, 1985

Robert E. Leidigh, Esq.
Counsel, Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Advice on Behalf of Hal G.
Pierce, Jr.; Your File No. A-85-170

Dear Mr. Leidigh:

This will acknowledge receipt of your August 5 letter in reference to the above-captioned matter.

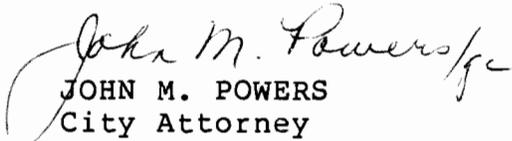
So that you might have an idea of the nature and magnitude of the Marine World transaction, I am enclosing herewith certified copies of Resolution No. 85-596 N.C. and Resolution No. 85-29 adopted by the City Council and the Redevelopment Agency, respectively, on August 6, 1985. You will note that Mr. Pierce abstained from voting on each resolution. These resolutions approved the financing package and the leasing arrangements for the Marine World Project.

It is difficult for me to predict at this point how many additional actions will have to be taken by the City Council and/or Redevelopment Agency before construction of the Project is completed. Because of the magnitude of the Project, I would anticipate that various additional items will be coming before the public bodies at periodic intervals for action.

On your other inquiry, I am informed by Mr. Richard Slaton, Marine World's Project Manager, that five electrical contractors (other than Hal Pierce Electric) have been bidding the different phases of the electrical work.

I trust this provides you with the information you were seeking. If there are any further questions, or need for additional information, please feel free to contact this office.

Very truly yours,


JOHN M. POWERS
City Attorney

JMP:gjc
encl.
cc: Hal G. Pierce

Leidigh



CITY OF VALLEJO

JOHN M. POWERS
CITY ATTORNEY

F P P C
AUG 2 1 07 PM '85

July 31, 1985

Barbara Milman, Esq.
General Counsel
Fair Political Practices Commission
1100 "K" Street
Sacramento, CA 95814

RE: Request For Formal Written Advice

Dear Ms. Milman:

I have been authorized by and on behalf of Councilman Hal G. Pierce, Jr., of the City of Vallejo, to request formal written advice concerning his duties and responsibilities under the Political Reform Act and the Commission's implementing regulations.

This request, therefore, is made pursuant to Gov't. Code, §83114(b) and 2 Cal. Adm. Code, §18329(b). I understand that under this procedure you will write Mr. Pierce acknowledging receipt of this letter and that he can expect a response within 21 working days. Also, I understand that with certain limited exceptions, the request for advice and the formal written advice offered are public records, and that a summary of the advice provided may be published in the Commission's Bulletin newsletter. Mr. Pierce has been made aware of these features of the process.

The facts and circumstances surrounding this request are as follows. Marine World/Africa USA announced in September 1984 that it wanted to move its land and marine animal theme park operations from Redwood City to Vallejo. In order to accomplish the relocation, the park would be built on City-owned land using a financial package, the major portion of which would consist of the City of Vallejo or its Redevelopment Agency issuing tax-exempt bonds (known as certificates of participation). In addition, the project required environmental and zoning clearances from the City. Final approval for the project was given by the City Council on March 26, 1985, and construction started shortly thereafter with a completion date projected for May 1986.

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Hal Pierce Electric bid on a competitive basis the electrical work for the whale holding tank facility being constructed on the Marine World site. Mr. Pierce advised that their bid was in the approximate sum of \$41,000. Recently, I was advised by Mr. Pierce that another bidder was awarded the work.

Mr. Pierce is Vice-President of Hal Pierce Electric. The company is an electrical contracting firm, family owned and operated, which has been in business in the Vallejo area for more than 40 years. Mr. Pierce is a salaried employee of the company, and does not own any of the corporate stock. The company is not authorized to sell its stock to the public under Corporations Code, §25110.

When Mr. Pierce informed me that Hal Pierce Electric had done work on the Marine World site and asked whether this created a conflict of interest that would require him to refrain from voting on future Council actions involving the Marine World project, I contacted Cathy Donovan of your staff and reviewed the matter with her. Based on our discussions, I advised Mr. Pierce that a potential conflict of interest existed, and that he would have to declare his interest and refrain from voting on future items involving the project. I concluded that Council decisions on the Marine World project would have a reasonably foreseeable effect of a material nature on Hal Pierce Electric in which Councilman Pierce had a economic interest. This conclusion was premised on the criteria established in 2 Cal. Adm. Code, §18702.2 and the Commission's Thorner decision.

This advice was communicated to Mr. Pierce and made public at the council's meeting of May 28 when Marine World was again on the agenda. As a result of this advice, Mr. Pierce declared his interest and abstained from voting on the items affecting Marine World.

Beyond what has already happened, there are several future actions required of the City Council and Redevelopment Agency that affect the financing and other elements of the project. In Vallejo, the City Council is the governing body of the Redevelopment Agency, and hence Mr. Pierce is a member of the Agency's governing body.

Mr. Pierce has also told me that Hal Pierce Electric plans to continue submitting bids for electrical work as construction progresses on the Marine World site. In fact, Mr. Pierce informs me that Hal Pierce Electric bid the backwash facility in early June for approximately \$28,000 but was not awarded the work. More recently, they have bid the animal barns for approximately \$186,000, the whale/dolphin stadium and sea lion stadium (a combined project) for \$107,400, and plan to bid the site work in the near future. All of these projects are being bid competitively, and (with the exception of the site work) are currently pending decision as to award of contracts for the work.

Subject: Request for Formal Written Advice

Pg. 3.

Thus, this request for advice does not relate solely to past conduct, but Mr. Pierce's future conduct as well.

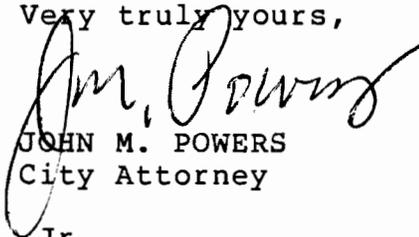
In view of the future actions that are contemplated on the Marine World project, and the interest expressed by other Council members as to their duties and responsibilities under the Act, it was thought best if we could obtain formal written advice from the Commission on this issue.

Mr. Pierce's mailing address is:

Hal G. Pierce, Jr.
Hal Pierce Electric Co., Inc.
510 Broadway
Vallejo, CA 94590

Your kind consideration of this request is greatly appreciated. If you have any questions, or need additional information, please feel free to contact this office.

Very truly yours,



JOHN M. POWERS
City Attorney

JMP/bls

cc: Councilman Hal G. Pierce, Jr.

State of California



Fair Political Practices Commission

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August 5, 1985

John M. Powers
City Attorney
City of Vallejo
P.O. Box 3068
Vallejo, CA 94590

Re: Your Request for Advice on
Behalf of Hal G. Pierce, Jr.
Our File No. A-85-170

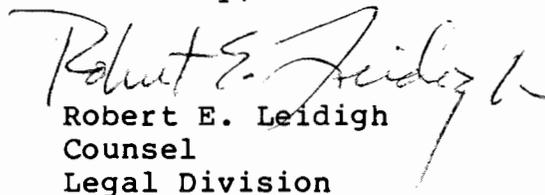
Dear Mr. Powers:

We are in receipt of your letter requesting advice on behalf of Councilman Hal. G. Pierce, Jr. You are to be complimented on the fact that your letter fully adheres to the requirements of the Commission's new regulation, 2 Cal. Adm. Code Section 18329.

Before I can provide you and Mr. Pierce with the advice requested, I need a further clarification as to the nature and magnitude of the remaining government decisions relating to the new Marine World. It would also be helpful to know how many other electrical contractors are bidding for the different subcontracts.

Your prompt response will greatly facilitate me in providing timely advice. If you have any questions, I may be reached at (916) 32-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Hal G. Pierce, Jr.