



# California Fair Political Practices Commission

October 28, 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-85-210

Dear Mr. Powers:

This is in response to your letter dated October 7, 1985, seeking more definitive advice regarding the duties and responsibilities of Vallejo Councilman Hal G. Pierce, Jr., under the Political Reform Act.<sup>1/</sup>

## FACTS

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.

Hal Pierce Electric has been awarded two contracts on the Marine World/Africa USA project, a project which the City has

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. As you indicated in our phone conversation you are aware of the provisions of Government Code Section 1090, et seq., and have advised Mr. Pierce accordingly. The Commission does not render advice with respect to Section 1090.

helped fund. One contract, in the amount of \$15,492, is for the temporary power installation in the whale/dolphin training and medical tank. This work is nearly completed. The other contract is for the installation of electrical services in the seal cove and otter compound. The amount of this contract is estimated to be in the sum of \$12,000. Additionally, Hal Pierce Electric has been hired to install heaters and do other electrical work at the Solano County Fairgrounds which is being rented by Marine World until their permanent facilities are completed. The estimated value of this work is \$5,500.

Within the next 30-45 days the Vallejo City Council will vote on a sale of land to Marine World which is necessary to satisfy a term of the Settlement Agreement between Marine World and the Concerned Taxpayers of Vallejo. If the sale is not approved, Marine World will not be able to comply with the Settlement Agreement and Concerned Taxpayers will resume their lawsuits challenging the project. You have classified this as a "stop or go decision."

#### QUESTIONS

1. Mr. Pierce wishes to know whether he must disqualify himself from the Marine World land sale decision.
2. Under what other circumstances would Mr. Pierce have to disqualify himself due to his employment with Hal Pierce Electric.

#### ANALYSIS

As I explained in my advice letter to you dated August 29, 1985 (A-85-170), Mr. Pierce has an economic interest in Hal Pierce Electric because it is both a source of income to him and he is an officer and an employee. Section 87103(c) and (d). Accordingly, Mr. Pierce must disqualify himself as to any decisions which will have a reasonably foreseeable material financial effect upon Hal Pierce Electric which is distinguishable from its effect on the public generally (see Sections 87100 and 87103).

Because the Marine World land sale decision will have an effect on whether that project will go forward or not, and because the electrical work Hal Pierce Electric has contracted to do will be affected by whether the project goes forward or not, it is reasonably foreseeable that the land sale decision will affect Hal Pierce Electric.

In determining whether this effect is material we must look to the criteria set forth in 2 Cal. Adm. Code Section 18702.2. Because Hal Pierce Electric is not authorized to sell its stock to the public, and it is not of sufficient size to meet the alternative criteria, the criteria in 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)

If the City Council decided against selling the land to Marine World it is reasonably foreseeable that Hal Pierce Electric would be prevented from performing the contract for the installation of electrical services in the seal cove and the otter compound. This alone would result in a decrease of revenues estimated at \$12,000. Additionally, should the project be prevented from going forward it is reasonable to assume that the work at the Solano County Fairgrounds would be halted and that Hal Pierce Electric would experience another decrease in revenues estimated at \$5,500.

Clearly a decision not to sell the land to Marine World could result in a decrease of more than \$10,000 in the gross revenues of Hal Pierce Electric and, therefore, the effect of that decision would be material.

As I indicated in my previous letter, the Thorner Opinion<sup>2/</sup> holds that the subcontractors on a particular project would not

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<sup>2/</sup> Opinion requested by Tom Thorner, 3 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975).

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constitute a large enough group to qualify as the "public generally." Furthermore, 2 Cal. Adm. Code Section 18703 states that "an industry, trade or profession does not constitute a significant segment of the general public" unless certain criteria are satisfied, which are not present in this circumstance. Consequently, the financial effect of the land sale decision would be distinguishable from the effect on the public generally.

With respect to decisions involving other projects (i.e., subdivisions and other commercial development projects) which Hal Pierce Electric may bid on in the future, I have indicated that the Thorner Opinion, supra, is instrumental.

In Thorner, the Commission concluded that once a bid is made on a project it is reasonably foreseeable that a decision affecting that project will have a financial effect on the bidder.

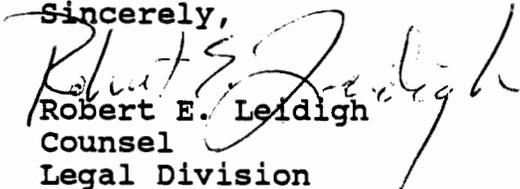
#### CONCLUSION

Councilman Pierce must disqualify himself from participating in the Marine World land sale decision.

Mr. Pierce should also disqualify himself from participating in any decision affecting a project in which Hal Pierce Electric has submitted a bid and where the financial effect of that decision on Hal Pierce Electric exceeds the standards set forth in 2 Cal. Adm. Code Section 18702.2(g), previously cited in this letter; i.e., where the bid is \$10,000 or more.

I hope this advice clarifies this matter. Please do not hesitate to contact us if you need guidance regarding any specific situation which may confront Councilman Pierce in the future.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh



## CITY OF VALLEJO

JOHN M. POWERS  
CITY ATTORNEY

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October 7, 1985

Cathy Donovan, 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 #A-85-170

Dear Ms. Donovan:

As discussed during our phone conversation of September 25, the following information is being supplied in order that Councilman Pierce can obtain more definitive advice on his duties and responsibilities under the Fair Political Practices Act.

As you know, Mr. Leidigh's letter of August 29, 1985 offered general guidelines, but not specific advice on what Mr. Pierce ought to have done under the circumstances. Mr. Pierce would like to obtain a more definitive ruling not only with respect to the advice I had given him about the Marine World project, but also his future conduct in view of the nature of his electrical contracting business. In particular, must he abstain on a project coming before the City Council if his firm has bid electrical work in the project (i.e. subdivision or commercial development)?

Returning to the Marine World project, Mr. Pierce advises that his firm has successfully bid two jobs. Hal Pierce Electric has been awarded a contract in the amount of \$15,492 to make the temporary power installation for the whale/dolphin training and medical tank (Facility 65). This work is scheduled to be finished by the end of this week.

Hal Pierce Electric has also been awarded a contract in the sum of \$12,000 (estimated) to install electrical services for the seal cove and the otter compound (Facility 16 and 38). The exact contract price has not been determined because final details of the work are still being resolved.

Beyond this, Hal Pierce Electric has been hired to install heaters and do other electrical work at the Solano County Fairgrounds which is being rented until Marine World's permanent facilities are completed. The estimated value of this work is \$5,500.

Cathy Donovan, Esq.

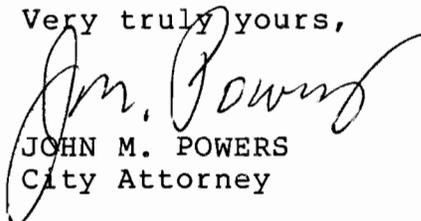
Re: Request for Advice on Behalf of Hal G. Pierce, Jr.

As mentioned during our phone conversation, the City Council must approve the sale of land to Marine World in order to satisfy a term of the Settlement Agreement with the Concerned Taxpayers of Vallejo. Concerned Taxpayers had filed two lawsuits challenging the project. When the Settlement Agreement had been negotiated and signed, they dismissed the lawsuits and withdrew their opposition to the bond validation action. I anticipate this transaction will come before the City Council within the next 30-45 days. The land will be sold to Marine World and in turn transferred to the abutting homeowners on the south boundary of the project. It is essential to consummate this sale in order to be in compliance with the Settlement Agreement.

As further mentioned, Councilman Pierce has been assigned the duty of reviewing the claims register that comes before the City Council each week. About three or four weeks ago, the claims register included an item to reimburse Marine World on overpayment of a permit fee. Because of the nature of the transaction, I advised Mr. Pierce that he would not have to abstain in voting on this item.

I trust this will provide you with sufficient additional information so that the requested written advice can be prepared and sent to Mr. Pierce. If there remain any questions, or I can be of further assistance, please feel free to contact this office.

Very truly yours,



JOHN M. POWERS  
City Attorney

JMP:gjc

cc: Hal G. Pierce, Jr.

Donovan