



# California Fair Political Practices Commission

October 31, 1985

Bart Schenone  
Sabraw, Fudenna, Schenone & Peck  
1290 B Street, Suite 218  
Hayward, CA 94541

Re: Your Request for Advice  
Our File No. A-85-217

Dear Mr. Schenone:

Thank you for your letter requesting advice on behalf of Susanne M. Wilburn, Trustee of the Hayward Unified School District, concerning her duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

## FACTS

The Trustees of the Board of Education of Hayward Unified School District have voted to change the grade level configuration of the schools in the District. The school reconfiguration plan will require the closure of one high school and two elementary schools, and the addition of six middle schools. One of the elementary schools which may be closed is Fairview School. Hayward High School is one of the District's four high schools which could be closed.

Mrs. Wilburn's husband owns a 45 percent interest in Orlando Homes, Inc., a real estate development business. Both Mrs. Wilburn and her husband are employed by and receive income from Orlando Homes.

Orlando Homes is currently constructing a single-family home development project known as Pickford Place. Pickford Place will consist of 18 single-family homes ranging in size from 900 to 1,188 square feet, and priced from \$119,000 to

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

\$145,000. Orlando Homes is also a limited partner in Shannon Ridge Properties, single-family residential development currently under construction, located in the same general vicinity as Pickford Place. Shannon Ridge will consist of 74 single family homes to be priced from \$145,000 to \$170,000.<sup>2/</sup>

Both Pickford Place and Shannon Ridge are served by Fairview School and Hayward High School. Fairview School is approximately one-half block from Pickford Place and three blocks from Shannon Ridge. If Fairview School is closed, the pupils would probably be sent to either East Avenue School or Markham School. Using Fairview School as a convenient point of reference, East Avenue School is 0.7 miles, and Markham School is 1.4 miles, from Fairview. If Hayward High School is closed, the pupils would probably attend Sunset High School. Hayward High School is approximately 1.5 miles from Fairview School, while Sunset High School is approximately 2.7 miles from Fairview School.

#### QUESTION

May Mrs. Wilburn participate in the decision concerning which schools will be closed?

#### CONCLUSION

Mrs. Wilburn may participate in the decision concerning which schools will be closed unless that decision would have a reasonably foreseeable material financial effect on Orlando Homes or Shannon Ridge Properties, as discussed in the following analysis.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use her official position to influence a governmental decision in which she knows or has reason to know she has a financial interest. A public official

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<sup>2/</sup> Residents of the District have advised us that Mrs. Wilburn's Statement of Economic Interests, as amended October 14, 1985, may not disclose all of her interests in real property. If her amended Statement of Economic Interests is not accurate, it should be further amended. You and Mrs. Wilburn should note that the advice in this letter is based on the facts provided. If Mrs. Wilburn has other interests which could be affected by the Trustees' decision, you should request additional advice.

has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from the 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.

\* \* \*

(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 officials 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(a), (c) and (d).

Mrs. Wilburn is an employee of Orlando Homes and receives income in excess of \$250 per year from that company. Mrs. Wilburn has an investment interest in Orlando Homes worth \$1,000 or more due to her husband's 45 percent ownership interest in the company. Section 82034. Because her husband has a 45 percent interest in Orlando Homes, and Orlando Homes has an investment interest in Shannon Ridge Properties, Mrs. Wilburn also has an investment interest in Shannon Ridge Properties equal to her husband's pro rata share of the interest held by Orlando Homes. Therefore, if the decision confronting the Trustees of the Hayward Unified School District would have a reasonably foreseeable material financial effect on either Orlando Homes or Shannon Ridge Properties, Mrs. Wilburn must disqualify herself from participating in that decision.

In general, the effect of a decision is material if it is a "significant" one. 2 Cal. Adm. Code Section 18702(a). The Commission has adopted regulation 2 Cal. Adm. Code Section 18702.2 (copy enclosed) which contains monetary guidelines for determining whether the effect of a decision on a business entity in which an official has an economic interest will be considered material.

Based on the information you have provided about Orlando Homes and Shannon Ridge Properties, the test contained in 2 Cal. Adm. Code Section 18702.2(g) is the appropriate test to apply to both business entities. This test requires an examination of the effect of the decision concerning school closure on Orlando Homes and Shannon Ridge Properties. If it is reasonably foreseeable that the decision facing the Trustees would affect either Orlando Homes or Shannon Ridge Properties in any of the following ways, the effect of the decision will be considered material:

(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).

Applying the above test, if the Trustees' decision regarding school closure could result in an increase or decrease in the average selling price of at least \$555 per unit in Pickford Place, there would be an effect on Orlando Homes' fiscal year gross revenues of \$10,000 or more, and the effect would be considered material. If the decision could result in an increase or decrease in the average selling price of at least \$135 per unit in the Shannon Ridge development, there would be an effect on Shannon Ridge Properties' fiscal year gross revenues of \$10,000 or more, and the effect would be considered material. In each case, if such an effect is reasonably foreseeable,<sup>3/</sup> Mrs. Wilburn must disqualify herself from participating in the Trustees decision.

We have received conflicting opinions about whether it is reasonably foreseeable that the Trustees' decision about school closure would have a material financial effect on either

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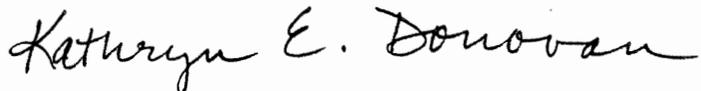
<sup>3/</sup> The analysis assumes that the homes will be built and sold in a single fiscal year. If not, the amount should be adjusted to reflect the fiscal year test of 18702.2(g)(1) and (2).

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Orlando Homes or Shannon Ridge Properties. You have advised us that the Superintendent of the District has stated that there is no significant difference in the quality of the elementary schools being considered for closure, or in the quality of the District's four high schools. However, we have received letters and telephone calls from residents of the District, and at least one Trustee, whose opinions on that subject clearly differ from the opinion of the District Superintendent. We also recognize that it is difficult to quantify the effect of this type of decision on residential property values. There is no question that the quality and proximity of the public schools which serve a residential area are important factors for many people considering the purchase of a home in that area. However, it is likely that potential buyers will consider numerous other factors when purchasing a home, and that the degree to which the quality and proximity of schools may affect property values will vary with each area and with each potential buyer. You and Mrs. Wilburn are in a better position than we are to obtain information about the impact of the school closure decision on residential property values in the Hayward Unified School District, and on the particular properties in question. Accordingly, you should examine the particular facts of the situation carefully in applying the above tests in order to determine whether Mrs. Wilburn must disqualify herself from participating in the Trustees' decision regarding school closure.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh  
Enclosure  
cc: Tom Fier

BART J. SCHENONE  
OF COUNSEL:  
JOSEPH A. SCHENONE

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RONALD M. SABRAW  
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October 17, 1985

Fair Political Practices Commission  
Legal Division  
P.O. Box 807  
Sacramento, CA 95804

RE: Request for Advice Concerning Conflict of Interest  
of Mrs. Susanne M. Wilburn, Trustee of the Board of  
Education of the Hayward Unified School District.

Ladies and Gentlemen,

As attorney for Mrs. Susanne M. Wilburn, I should like to  
request an advice letter concerning a conflict of interest issue  
with regard to her participation in matters concerning closure of  
schools of the Hayward Unified School District.

Mrs. Wilburn is a duly-elected Trustee of the Board of  
Education of the Hayward Unified School District.

At the present time the Board of Education is confronted  
with questions related to school closure. These questions are as  
follows:

1. Which elementary schools should be closed by the  
Board of Education;
2. Which high school should be closed by the Board of  
Education?

Certain parents of children within the Hayward Unified  
School District have raised the question whether Mrs. Wilburn is  
subject to a conflict of interest which should prevent her from  
participation in the matters concerning school closure.

Mrs. Wilburn's husband, James Wilburn, is in the home  
construction business. He is employed with Orlando Homes, Inc.  
Mr. Wilburn also owns 45% of the common stock of Orlando Homes,  
Inc., as his separate property. He is also the Vice-President  
and C.E.O. for the corporation.

Mrs. Wilburn is the executive secretary and office manager  
for Orlando Homes, Inc. As stated in her last filed Form 730,  
income greater than \$10,000 per year is received by Mr. and Mrs.  
Wilburn from Orlando Homes, Inc.

Orlando Homes, Inc. owns real property at 23181 Maud Avenue,  
Hayward, which is within the boundaries of the Hayward Unified

School District. This property, known as "Pickford Place," is approximately one-half block from Fairview School, an elementary school. The project is presently being constructed and will consist of eighteen single family homes ranging in size from 900 - 1,188 square feet and in price from \$119-145,000. The units will be sold by the corporation, the intent of which is to primarily market these units to single persons, couples without children, or couples with very young children. The corporation has received a construction loan in excess of \$10,000 pro-rata from a lender outside the jurisdiction of the school district.

In addition, Orlando Homes owns a limited partnership interest in a partnership known as Shannon Ridge Properties which owns property at 3177 Kelly Street, Hayward. It also owns a beneficial interest in a deed of trust securing a loan from the partnership to the corporation. Shannon Ridge Properties, which is also being constructed, will consist of 74 single family homes to be marketed from \$145,000 to \$170,000.

Fairview School is the nearest elementary school. As cited above, it is one-half block from Pickford Place and approximately three blocks from Shannon Ridge Properties.

With respect to the issue of closure of an elementary school, in the event Fairview School were closed, the pupils would be most likely sent to either East Avenue School or Markham School. East Avenue is 0.7 mile from Fairview (used as a convenient point of reference). Markham school is 1.4 miles from Fairview.

Presently high school pupils from the general area in controversy attend Hayward High School, which is approximately 1.5 miles from Fairview.

With respect to the issue of closure of a high school, in the event Hayward High School were closed, the pupils would be most likely to attend Sunset High School, approximately 2.7 miles from Fairview School.

Although there may be some opinion as to whether a school is better as to quality, it is generally perceived there is no material difference in quality between Fairview, Markham, or East Avenue. The same statement is correct concerning the school districts' four high schools.

It is the opinion of Mr. and Mrs. Wilburn that there would be no difference in the value of any units at either Shannon Ridge Properties or Pickford Place should Fairview School and/or Hayward High School be closed or open.

The opinion of Mr. and Mrs. Wilburn is shared by others who are directly concerned with the financial integrity of the project under consideration and/or who are knowledgeable concerning real estate in the area of controversy. The general consensus of these individuals is that the absence or presence of Fairview

School or Hayward High School as a site for education is not a factor which will materially affect the value or the marketing of the homes for sale.

While I understand that it is difficult, if not impossible, for the Fair Political Practices Commission staff to resolve an issue of fact, I must list for my clients' interest these individuals. Understanding the role of the staff I do not submit any written statement, but I do indicate that the following named individuals are available for consultation and will corroborate the opinion of the Wilburns. Therefore, I list the following:

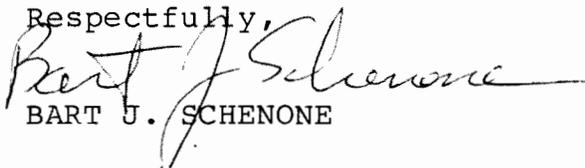
1. James Wilburn, Sr., President of Orlando Homes, Inc., (415) 581-5402;
2. Harlan Nobis, President and C.E.O. of Commercial Bank of Fremont, (415) 794-7700;
3. G.E. Stevens and Associate, Craig Conrad, appraiser, (415) 465-5320;
4. Bill Glass; Gallus, Inc., real estate marketing and sales, (415) 895-1790.

There is no question that the pertinent issue is whether a closure of Fairview School or Hayward High School will have "a reasonably foreseeable material financial effect" on Orlando Homes, Inc. or Shannon Ridge Properties, James Wilburn and Susanne M. Wilburn as defined under Government Code section 87103 and 2 Cal. Adm. Code section 18702. While the issue may be an issue of fact, I would hope that advice can be provided whether or not Mrs. Wilburn should not participate in the consideration of the school closure issues.

I am also cognizant of the heavy workload of the staff of the Fair Political Practices Commission. If it is reasonably possible, Mrs. Wilburn, the Board of Education and the Hayward Unified School District would be most appreciative of a response before November 4, 1985, the date the school issues arise next on the agenda of the Board of Education.

In any event, Mrs. Wilburn and I are appreciative of your careful consideration of the issues and your response. Should you have any further question, please do not hesitate to contact me.

Respectfully,

  
BART J. SCHENONE

cc: Sue Wilburn