



California Fair Political Practices Commission

December 5, 1985

Joseph F. Zellmer
Law Offices of Lerner & Veit
425 California Street, Third Floor
San Francisco, CA 94104

Re: Your Request for Advice,
Our File No. A-85-249

Dear Mr. Zellmer:

This letter is sent in response to your request for an opinion pursuant to Government Code Section 83114(a)^{1/} on behalf of a citizens' committee of the community of Alamo in Contra Costa County ("Alamo Citizens to Incorporate our Neighborhoods" or "ACTION"). Your request concerned the applicability of Section 84308 to certain incorporation and sphere-of-influence proceedings before a Local Agency Formation Commission ("LAFCO"). We have had several conversations concerning this matter, and you graciously agreed to extend our time within which to respond to your request for an opinion. As I explained to you in our last conversation, the Executive Director has decided to deny your request based on his authority under Commission Regulation, 2 Cal. Adm. Code Section 18320(d) (copy enclosed). The denial of your request is based on subsections (2), (3), (4), (5) and (6) of 2 Cal. Adm. Code Section 18320(f). You have the right to appeal this denial to the Commission pursuant to 2 Cal. Adm. Code Section Code Section 18321 (copy enclosed). If you plan to appeal, please let us know as soon as possible so we may place the item on the Commission's agenda for its next meeting.

Section 84308 applies to proceedings involving licenses, permits or other entitlements for use. As you know, Section 84308 does not specifically refer to LAFCO proceedings

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

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involving annexations, incorporations, or sphere-of-influence determinations. The Commission regulations do not refer to them either. In an Opinion requested by Robert Curiel, the Commission concluded that, although LAFCOs were not exempt from Section 84308, LAFCO proceedings were not covered by Section 84308 since they were "quasi-legislative" and not "quasi-judicial" under all judicial precedent. 8 FPFC Opinions 1 (No. 83-003).

After the Curiel Opinion, the Commission sponsored legislation to remove the term "quasi-judicial" from Section 84308, and the law now applies to all proceedings involving a license, permit or other entitlement for use. In a staff advice letter earlier this year (A-85-050), we concluded that, based on case law, a LAFCO annexation proceeding involved an entitlement for use and was thus covered by Section 84308. However, we also concluded that incorporations and sphere-of-influence proceedings were not covered by Section 84308 based on the diverse political and financial interests normally at stake in these proceedings. It seemed to us that this distinction between annexations and incorporations served the purposes of Section 84308 both as a matter of policy and for purposes of clarity in administration. Before this advice was given, it was brought to the Commission's attention for their review and approval. I would like to note that the advice was general and not given with respect to a particular LAFCO proceeding. Thus it may be that there are LAFCO proceedings which combine aspects of both annexation and incorporation proceedings; we have not rendered advice on this.

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

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:nwm
Enclosures