



# California Fair Political Practices Commission

January 17, 1986

J. David Horspool  
Lawson & Hartwell  
25757 Redlands Blvd.  
Redlands, CA 92373-7799

Re: Your Request for Advice  
Our File No. A-86-023

Dear Mr. Horspool:

You have requested our Formal Written Advice as to your duties and obligations, as a member of the Moreno Valley City Council, under the provisions of the Political Reform Act (the "Act").<sup>1/</sup> The facts, as stated in your letter, are as follows.

## FACTS

Duane R. Roberts is proposing to build a commercial office building center in the City of Moreno Valley. He is purchasing or has purchased several parcels of land from different individuals, on which he will build the center. The several parcels are all contiguous.

One of the owners of one of the purchased parcels was CW Investments, a California General Partnership. CW Investments was made up of the directors and some officers of Cal-West National Bank. Cal-West Bank was going to put a branch on that parcel. Apparently that will not happen now, at least not as originally planned.

I am a 33% shareholder in Lawson & Hartnell, a Professional Law Corporation. One of my clients is Albert C. Sykes, who is also a director of Cal-West National Bank. He asked me to prepare a partnership

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

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agreement for CW Investments which I did. I also prepared and filed a Statement of Partnership. All of this took place between the months of May 31, 1984 and December, 1984. Mr. Sykes has been a client since 1982, which was shortly after I began practicing law.

The law corporation received a total of \$527.50 for my work on CW Investments. Of that, \$302.50 was paid by Duane R. Roberts after he purchased the property from CW Investments. That was received in December, 1985.

If Mr. Roberts proceeds with his plans to build a commercial center, he will be seeking approvals from the City Council (of which I am a member) and will also be looking for city help in obtaining low-cost financing. A question has been raised as to whether or not my legal work for CW Investments would prevent me from participating in and voting on questions which will come before the City Council if Mr. Roberts pursues his project.

Mr. Roberts was one of eleven partners in CW Investments. Neither I nor anyone in my firm have done any work directly for Mr. Roberts, and, except for the one payment, have never received any compensation from him.

I personally do not own any stock in Cal-West National Bank, nor do I have an indirect ownership interest in the Bank. I have an automobile loan with them; the balance is less than \$6,000 and it is not in default and the payments are always early. My political committee also maintains its bank account there.

. . .

I have one additional question; my law firm has recently begun doing collection work for Cal-West National Bank. It is anticipated that income to the firm will exceed \$750 in any one year from Cal-West National Bank.

. . .

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QUESTION

I would appreciate it if you would give me a written opinion as to whether or not I would be prevented from voting or participating in discussions with respect to any issue Mr. Roberts may bring before the City Council with his proposed commercial center.

. . .

Under what circumstances would I be prevented from voting on or participating in discussions involving Cal-West National Bank?

ANALYSIS

Question 1 - CW Investments/Duane Roberts

The Act requires disqualification of any public official whenever he or she knows or has reason to know he or she has a financial interest in a government decision. Section 87100. A financial interest exists within the meaning of Section 87100 whenever it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from the effect upon 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.

Section 87103(c).

A source of income to a business entity is also a source of income, on a pro rata basis, to any official who directly or indirectly owns 10 percent or more of that business entity. Section 82030(a). You own 33 percent of your law firm. Consequently, your pro rata share of the firm's gross receipts is one-third. Thus, any client of the firm who has paid \$750 or more during the preceding 12-month period would be a "source of income" under Section 87103(c). As a result, the client would become the potential basis for disqualification provided

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that the other requisite factors in Section 87103 are present.  
(See enclosed advice letter No. A-84-144.)

In the instant case, neither CW Investments, nor Duane Roberts, nor both combined, paid \$750 or more to your firm during the last 12 months (or any other time period). Consequently, there is no basis for any requirement of disqualification stemming from the legal services performed by you for them.

Question 2 - Cal-West National Bank

Your relationship with Cal-West National Bank as a borrower (auto loan of less than \$6,000) and depositor (campaign committee account) does not give you any financial interest in the Bank. As can be seen from Section 87103(c), quoted above, a loan from a bank (which, under certain circumstances is "income," Section 82030(a)) obtained on terms available to the general public without regard to the borrower's status as a public official, is not a basis for disqualification. Furthermore, under Section 82030(b)(10), the loan (which is less than \$10,000 and, presumably part of a retail installment transaction, etc.) is not even considered "income" within the meaning of the Act. Likewise, deposits in a commercial lending institution and interest received thereon are neither investments in the bank (Section 82034) nor income from the bank (Section 82030(b)(4)), respectively. Therefore, none of these relationships gives rise to any possible basis for requiring disqualification.

However, your firm's collection work for the Bank, which will exceed \$750 in gross receipts for any 12-month period, will, once the initial \$750 has been earned or promised, create a basis for possible disqualification. The Bank will (or perhaps already has) become a "source of income" to you within the meaning of Section 87103(c). Consequently, whenever a decision will have a reasonably foreseeable material financial effect upon Cal-West National Bank, which is distinguishable from the decision's effect upon the public generally, you must disqualify yourself. (See, Advice Letter to Marshall C. Scott, No. A-85-234, copy enclosed; the advice to him regarding possible effects on the Bank applies to your circumstances as well.)

Because you have not asked our advice with respect to any specific, pending decision, I can only provide you with general

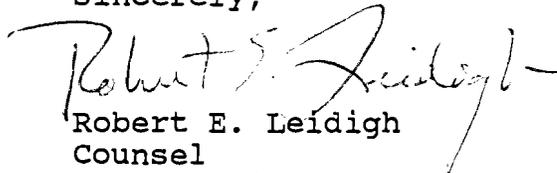
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guidance at this time. I enclose a copy of the Commission's regulations, 2 Cal. Adm. Code Sections 18702.1 and 18702.2 to provide you with assistance in determining when a decision will have a material financial effect upon the Bank. I enclose for your benefit copies of some past advice letters involving the question of effects of decisions upon banks in which officials have one or more of the financial interests specified in Section 87103. (See enclosed copies of letters A-77-117; A-77-213; and A-82-039.)

I hope that this letter has helped to clarify your understanding of the Act's provisions as they relate to your situation. Should you have further questions when specific decisions arise, please feel free to contact this office. For questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh  
Enclosures

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Lawson & Hartnell  
A Professional Law Corporation

25757 REDLANDS BOULEVARD, REDLANDS, CALIFORNIA 92373-7799  
TELEPHONE: (714) 796-6881

JAN 6 4 06 PM '86

BRYAN C. HARTNELL  
J. DAVID HORSPOOL  
RAYMOND HAYNES

CARROLL M. LAWSON  
of counsel

January 2, 1986

State of California  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95804

ATTENTION: Robert E. Leidigh  
Counsel, Legal Division

Dear Mr. Leidigh:

Several weeks ago, you were contacted by Marshall Scott, Mayor of Moreno Valley, regarding a possible conflict of interest with a proposed project by a business associate of his. A brief review of the facts follows.

Duane R. Roberts is proposing to build a commercial office building center in the City of Moreno Valley. He is purchasing or has purchased several parcels of land from different individuals, on which he will build the center. The several parcels are all contiguous.

One of the owners of one of the purchased parcels was CW Investments, a California General Partnership. CW Investments was made up of the directors and some officers of Cal-West National Bank. Cal-West Bank was going to put a branch on that parcel. Apparently that will not happen now, at least not as originally planned.

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Mr. Robert E. Leidigh  
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The law corporation received a total of \$527.50 for my work on CW Investments. Of that, \$302.50 was paid by Duane R. Roberts after he purchased the property from CW Investments. That was received in December, 1985.

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I have one additional question; my law firm has recently begun doing collection work for Cal-West National Bank. It is anticipated that income to the firm will exceed \$750 in any one year from Cal-West National Bank.

Under what circumstances would I be prevented from voting on or participating in discussions involving Cal-West National Bank? A newspaper reporter who is a practitioner in the art of yellow journalism expressed his conclusion that if a developer had, or was planning on obtaining a loan from Cal-West, I would be prevented from voting on the project because of the potential increase in Cal-West's assets. I

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don't know what he is talking about, and I think he doesn't  
know what he is talking about. Do you?

Thank you for your kind and helpful assistance.

Very truly yours,

  
J. David Horspool

JDH/sls



# California Fair Political Practices Commission

January 7, 1986

J. David Horspool  
Lawson & Hartnell  
25757 Redlands Boulevard  
Redlands, CA 92373-7799

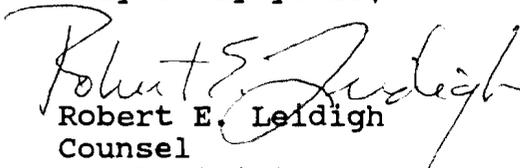
Re: 86-023

Dear Mr. Horspool:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh