



# California Fair Political Practices Commission

March 11, 1986

William M. Bonnell  
Senior Assistant City Attorney  
City of Richmond  
P.O. Box 4046  
Richmond, CA 94804

Re: Your Request for Advice  
Our File No. I-86-068

Dear Mr. Bonnell:

This is in response to your letter, dated February 14, 1986, requesting advice on behalf of Thomas K. Butt, the Chairman of the City's Economic Development Commission (EDC). You have stated the facts as follows.

## FACTS

Mr. Butt is President of Interactive Resources, Inc., a corporation offering architectural and engineering services. Interactive Resources, Inc., has existing contracts with the City of Richmond involving architectural and planning services for the City. These contracts were entered into before Mr. Butt was appointed to the EDC and none of the contracts were reviewed or acted upon by the EDC.

## QUESTIONS

(1) Mr. Butt wishes to know whether the contracts that Interactive Resources, Inc., has with the City raise a conflict of interest issue under the Political Reform Act (the "Act").<sup>1/</sup>

(2) What course of action should Mr. Butt follow if an item involving Interactive Resources, Inc., is referred to the EDC for review or consideration?

## CONCLUSION

(1) No conflict of interest arises under the Act solely because Interactive Resources, Inc., has existing contracts with the City of Richmond. However, Section 1090, which

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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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prohibits public officials from being financially interested in any contract made by a body or board of which the public official is a member, might apply if the EDC is involved with the contracts. As the Commission is not authorized to give advice concerning issues arising under Section 1090, we must suggest that you contact the Attorney General's Office if you want advice concerning this potential Section 1090 issue.

(2) Mr. Butt should disqualify himself from participating in any decision where:

(a) there could be a material financial effect on Interactive Resources, Inc.; or

(b) where Interactive Resources, Inc., is appearing before the EDC.

#### ANALYSIS

The Act prohibits a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which he or she has a financial interest. Section 87100.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest 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 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.

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(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

As President of Interactive Resources, Inc., Mr. Butt is an officer of the business entity (Section 87103(d)) and it is a source of income (Section 87103(c)) to him as well. Consequently, Mr. Butt is prohibited from participating in any governmental decisions which could have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on Interactive Resources, Inc.

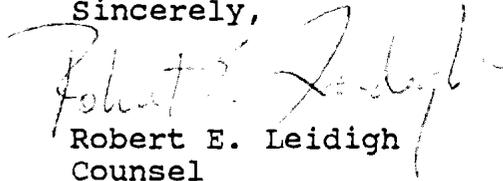
The financial effect of a decision on Interactive Resources, Inc., would be material if it met the criteria set forth in 2 Cal. Adm. Code Section 18702.2 (copy enclosed).

If it is reasonably foreseeable that a decision being considered by the EDC could have a material financial effect on Interactive Resources, Inc., then Mr. Butt should disqualify himself from participating in that decision, unless the effect of that decision is not distinguishable from its effect on the public generally. (See, 2 Cal. Adm. Code Section 18703, copy enclosed.) Furthermore, Mr. Butt should not attempt to use his official position to influence that decision.

If Interactive Resources, Inc., appears as a party before the EDC with respect to any matter being considered by the EDC (such as a contract), Mr. Butt is required to disqualify himself. (See, 2 Cal. Adm. Code Section 18702.1, copy enclosed).

I hope these general guidelines are helpful. Should Mr. Butt require advice concerning a specific situation, please do not hesitate to contact us again.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:JG:plh  
Enclosures

OFFICE OF THE CITY ATTORNEY  
CITY OF RICHMOND

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P. O. BOX 4046  
RICHMOND, CALIFORNIA 94804

(415) 620-6509

MALCOLM HUNTER  
CITY ATTORNEY

February 14, 1986

Mr. Dan Stanford, Chairman  
Fair Political Practices Commission  
1100 K Street Building  
Sacramento, California 95814

Dear Mr. Stanford:

Subject: Request for "Advice Letter"

I would like to take this opportunity to request an "Advice Letter" from you concerning the application of the Political Reform Act to the situation involving a local member of a City of Richmond Commission.

The Facts:

Mr. Thomas K. Butt, AIA, is the President of Interactive Resources, Inc., a California corporation offering architectural and engineering services whose principal place of business is in Richmond, California. Mr. Butt has recently been appointed to the City of Richmond's Economic Development Commission ("EDC"). I am attaching a copy of Chapter 3.14 of the Richmond Municipal Code which sets forth the regulations which create and govern the EDC. The Commission members have selected Mr. Butt to be their Chairman.

Interactive Resources, Inc., has existing contracts with the City of Richmond, entered into before Mr. Butt was appointed to the EDC, involving architectural and planning services for the City. None of these contracts was reviewed or in any way acted upon by the EDC.

Questions:

1. Are there any conflicts of interest or other improprieties under the Political Reform Act stemming from Mr. Butt's membership on the EDC caused by the fact that Interactive Resources, Inc., has existing contracts with the City of Richmond?

Mr. Dan Stanford, Chairman  
Fair Political Practices Commission  
RE: Request for "Advice Letter"  
February 14, 1986

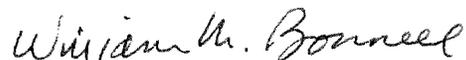
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2. What course of action should Mr. Butt follow should an item involving Interactive Resources, Inc., be referred to the EDC for review or consideration within the powers of the EDC?

If you need any more information, please let me know.

Thank you very much for your helpful assistance in this matter.

Very truly yours,



William M. Bonnell  
Senior Assistant City Attorney

WMB:ss

cc: Thomas K. Butt

ECONOMIC DEVELOPMENT COMMISSION 3.14.010-3.14.050

3.14.090 Powers and duties.

3.14.010 Creation of commission. There is created an economic development commission.

3.14.020 Commission purpose and operation. The purpose of this commission is to advise the city council and city officials on proposed activities for development of the city's port and for other overall economic development of the city. The commission shall work with the city manager and the city planning director on projects which substantially affect overall economic development in the city. The port director, or his representative nominated by him, shall attend all regular and special meetings of the commission and shall advise the commission on any matter before it, but shall not vote on any such matter.

3.14.030 Appointment and qualifications of members. From September 16, 1974, inclusive, the commission shall consist of fifteen commissioners who shall not be officers or employees of the city and who shall be appointed by the mayor with the approval of the city council and shall serve without compensation. Any vacancies on the commission shall be filled by appointment by the mayor with the approval of the city council for the unexpired portion of the term of the appointee's predecessor. Each individual considered for appointment to the commission shall either reside or work in the city and shall have a background which provides the commission with expertise in a field related to economic development of the city.

(Amended by Ord. 44-74 N.S.)

3.14.040 Terms of office of members. The term of each member of the commission shall be for three years; provided, however, that of the members first appointed after the effective date of this section, five shall serve for a term of one year, five shall serve for a term of two years, and five shall serve for a term of three years. The number of years that the members first appointed shall serve shall be determined by those members by lot at the first meeting at which they are all assembled. Each member shall continue to serve in such capacity until the member's successor has been duly appointed and is acting.

(Amended by Ordinance No. 44-74 N.S. and 34-82 N.S.)

3.14.050 Absence from meetings. The absence of any member of the commission from more than three regularly scheduled meetings of the commission within any twelve-consecutive-month period shall constitute an automatic resignation from the commission. Such a resignation shall not, however, disqualify an individual from subsequently being appointed to the same or any other city commission or board. The provisions of this section

### 3.14.060-3.14.090      BOARDS AND COMMISSIONS

shall operate prospectively so as to apply only to absences which occur after December 30, 1974. Any and all absences of members occurring prior to that date which did not result in resignations are excused. In the event of any such resignation, the vacancy shall be filled by appointment for the unexpired portion of term of the appointee's predecessor in the manner prescribed in Section 3.14.030 hereof.

(Amended by Ordinance No. 56-74 N.S.)

**3.14.060 Officers.** The commission shall elect from among their own number a chairman and vice-chairman who shall serve in such capacity for one year. In the case of a vacancy in the position of chairman or vice-chairman, the commission shall elect a successor who shall serve for the balance of the predecessor's term. The commission shall appoint a secretary who may be, but need not be, a member of said commission.

**3.14.070 Meetings.** The commission shall hold its first meeting within thirty days after all of its members have been appointed. At such meeting, the commission shall fix the time and place of regular meetings of the commission which shall not be less frequent than once each month. All meetings of the commission shall be open to the public.

**3.14.080 Rules and records.** The commission shall adopt rules for the transaction of the business of the commission, which rules shall, among other things, include the term of the secretary of the commission, the manner of calling and giving notices of special meetings and hearings, and the appointment and powers of standing committees. The commission shall keep records which shall be open to the public of its resolutions, transactions, motions, orders, findings and determinations.

**3.14.090 Powers and duties.** The specific powers and duties of the commission are as follows:

(a) Assist city officials, develop, compile and coordinate information regarding available areas suitable for economic development in the city of Richmond by reviewing staff work and providing appropriate feedback;

(b) Upon request of the city council, review proposed agreements for the lease, sale or use of city-owned land and properties for economic development and make recommendations to the city council;

(c) Work with the port director on matters relating to the economic development of the port of Richmond;

(d) Review appropriate zoning ordinances and make recommendations to the planning director to encourage proper zoning and orderly development of areas suitable for economic development;

(e) Work with state and local agencies, governing bodies, public and private organizations as appropriate to encourage economic development of the city;

ECONOMIC DEVELOPMENT COMMISSION 3.14.090

(f) Promote the interests of commercial and industrial development in metropolitan Richmond;

(g) Perform other tasks related to the city's economic development as requested by the city manager or the city council.

(Source: Ordinance No. 25-74 N.S.)



# California Fair Political Practices Commission

February 26, 1986

William M. Bonnell  
Senior Assistant City Attorney  
P.O. Box 4046  
Richmond, CA 94804

Re: I-86-068

Dear Mr. Bonnell:

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,

A handwritten signature in cursive script, appearing to read "Robert E. Leidigh".

Robert E. Leidigh  
Counsel  
Legal Division

REL:plh