



# California Fair Political Practices Commission

March 24, 1986

Gary Mello, Councilmember  
City of Fremont  
135 Morrison Canyon Road  
Fremont, CA 94538

Re: Your Request for Advice  
Our File No. I-86-084

Dear Mr. Mello:

This is in response to your request for additional guidance regarding your duties under the Political Reform Act (the "Act").<sup>1/</sup>

Due to the hypothetical nature of your questions, this response is in the form of informal assistance, which pursuant to 2 Cal. Adm. Code Section 18329 (copy enclosed) does not carry with it the immunity set forth in Section 83114(a) or (b).

The Act prohibits public officials from participating in any decision that could have a reasonably foreseeable material financial effect on their financial interests. Sections 87100 and 87103.

As I explained in our December 31, 1985, advice letter (A-85-259), Bissell & Karn, Inc. (B&K), is a financial interest to you due to your status as an employee and manager. Should you terminate this relationship but still receive income in excess of \$250 annually from B&K as a private consulting engineer, B&K would still be a financial interest to you as a source of income under Section 87103(c). Consequently, whether you remain as an employee of B&K or merely perform services for B&K as a private consultant, you would be required to disqualify yourself from participating in any decision which could have a reasonably foreseeable material financial effect on B&K.

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

Gary Mello, Councilmember  
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Thus, in each hypothetical question you posed, the threshold inquiry is whether it is reasonably foreseeable that the decision could have a financial effect on B&K (or any other source of income to you). If the answer to that question is yes, then it must be determined whether the financial effect of that decision on B&K will be material.

As explained in my previous letter, a decision's effect on B&K will be material if it satisfies the monetary criteria established in 2 Cal. Adm. Code Section 18702.2(g) (copy enclosed).

Once it is determined that a governmental decision will have a material effect on B&K, then you must disqualify yourself unless it can be shown that the decision's effect on B&K is not distinguishable from its effect on the public generally. Such would be the case if the City Council were considering a tax on all businesses in Fremont.

With respect to your hypothetical questions:

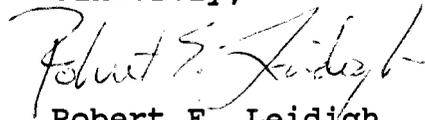
(1) Since there is no reasonably foreseeable effect on B&K, you would not be required to disqualify yourself.

(2) Since the party appearing before the City Council is not a client of B&K, the City Council's decision cannot have a reasonably foreseeable financial effect on B&K. The situation would be different if B&K intended to do additional work on the property for the new owner.

(3) B&K becomes a source of income to you for purposes of Section 87103(c) when \$250 or more is received from or promised to you by B&K within 12 months prior to the time when the decision is made.

I hope this general discussion of the Act answers some of your questions. In the future, should you require formal written advice concerning a specific factual situation, please do not hesitate to contact us again.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:JG:plh  
Enclosures



# California Fair Political Practices Commission

March 12, 1986

Gary J. Mello  
Fremont City Councilmember  
135 Morrison Canyon Road  
Fremont, CA 94536

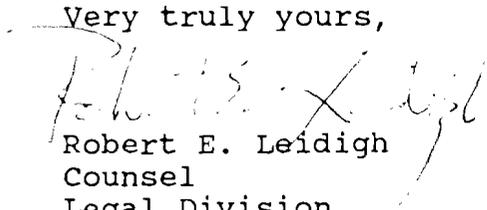
Re: A-86-084

Dear Mr. Mello:

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  
cc: Merle Hall, Councilmember