



# California Fair Political Practices Commission

May 23, 1986

Douglas C. Holland, City Attorney  
City of Burbank  
P.O. Box 6459  
Burbank, CA 91510

Re: Your Request for Formal  
Written Advice on Behalf  
of Burbank-Pasadena-Glendale  
Airport Commissioner Margie A.  
Gee; Our File No. A-86-092

Dear Mr. Holland:

You have written on behalf of Commissioner Margie A. Gee to request Formal Written Advice regarding her participation in various decisions of the Burbank-Pasadena-Glendale Airport Authority (hereinafter "BPGAA"). Your request is based upon your several letters, the numerous materials submitted therewith, the voluminous materials submitted by Commissioner Gee, her attorneys, and the attorneys for BPGAA, the firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi.

The most recent correspondence was providing material facts received on April 24, 1986, from Thomas E. Greer, Director, Airport Services, BPGAA. Thus, this letter is rendered within the applicable 21 working-day period. However, it should also be noted that you and I met on-site, May 17, 1986, while I was at the Burbank Airport on personal business, at which time you presented me with some additional maps and an aerial photograph and we mutually observed commercial aircraft take-offs from the North/South runway.

## FACTS

Having reviewed the voluminous documents submitted by the various interested parties, the material facts as stated in your letters, are as follows.

Background Information

The Burbank-Pasadena-Glendale Airport Authority is a joint powers authority organized pursuant to a written agreement between the Councils of the cities of Burbank, Glendale, and Pasadena as authorized under the provisions of Chapter 5, Division 7, Title 1 of the Government Code (§6500 et seq.). [Additional legislative authority relevant to the Airport Authority is contained in Section 6546.1 of the Government Code.] The primary purpose of the Airport Authority is to operate the Burbank-Pasadena-Glendale Airport. Pursuant to the Joint Powers Agreement between the three cities, the Authority is governed by a Commission consisting of nine members, three members appointed by the Councils of each of the three cities. Margie Gee is a member of the Airport Authority, appointed by the Council of the City of Burbank and has served on the Authority since approximately May 1, 1985.

The Airport is located in the south eastern quadrant of the San Fernando Valley. Although the real property immediately adjacent to the Airport is primarily industrial in character, several thousand persons reside within the 65 CNEL noise impact area, as established under state law. [See attached Exhibits A & B].

Margie Gee and her husband own and reside in a single-family home approximately 1-1/4 miles south of the north/south runway of the Burbank-Pasadena-Glendale Airport. Approximately 95% of all commercial flight operations originating at the Airport use this runway. Takeoffs from this runway are directed to the south. Mrs. Gee and the members of her immediate family, together with several other persons, have initiated a lawsuit against the Burbank-Pasadena-Glendale Airport Authority alleging causes of action for inverse condemnation and nuisance. [A copy of the complaint is attached to this request for your information.] The essential theories advanced in this legal proceeding are as follows:

- (a) The commencement of commercial flight operations under the jurisdiction of the Authority constituted the taking of an easement for noise,

smoke, and vibration for a public use over the affected real property.

- (b) The Authority's operation of the Airport in allowing commercial air flights constituted a continuing nuisance affecting the quiet enjoyment of real property for certain specified periods of time prior to the date of the trial on the issue. It is my understanding that a trial date on this matter has not yet been scheduled.

A recent California Supreme Court decision is relevant to this discussion. The Supreme Court, in the case of Baker v. Burbank-Pasadena-Glendale Airport Authority [(1985) 39 Cal.3d 866], held as follows:

- (a) The Airport Authority, although it lacks the power of eminent domain, could be held liable in inverse condemnation; and
- (b) An affected property owner or resident may elect to treat commercial airport noise and vibrations as a continuing, rather than a permanent, nuisance.

As indicated above, the Authority, through the Commission, is charged with the operation of the Airport. As the owner and operator of the Airport, the Authority exercises all proprietary rights to the Airport permitted or enjoyed under federal, state, and local laws. Pursuant to such authority, the Authority has adopted noise abatement rules which are designed to control and abate aircraft noise at the airport. [A copy of the Airport Authority Noise Abatement Rules are attached to this request for your information.]

Of particular interest is the implementation of Rule No. 7. This rule essentially provides that a commercial air carrier cannot commence operations or increase operations in the sense that such operations would produce higher noise levels without first having obtained the written approval of the Commission.

It should also be noted that the Airport Authority is considering the relocation of the

existing air terminal. Although a final determination has not been made, it has been argued that the location of a new air terminal could have an impact on noise generated by flight operations occurring at the Airport. The general argument is that a new terminal location could conceivably affect the desirability of using the existing east/west runway, thereby reducing the number of flights directed to the south. Thus, it is conceivable that a new location for the air terminal could have the effect of maintaining or reducing the number of flights that are directed to the south.

\* \* \*

The jurisdiction of the Burbank-Pasadena-Glendale Airport Authority is limited to the acquisition, operation, repair, maintenance, and administration of the airport facility. Thus, the jurisdiction of the Authority is limited to the actual physical boundaries of the airport.

The total number of single family residences within a 2-mile radius of the airport is 51,290, with a total population estimated at approximately 245,000. In this regard, I would also like to bring a few other matters to your attention. In the documents relating to the creation of the joint powers authority, the regional setting of the airport was described as "a continuous metropolitan area. ... [containing] the cities of Burbank and Glendale and the Los Angeles City communities of Sun Valley, Pacoima and North Hollywood, Van Nuys, and Studio City." The population of this area is estimated to be in excess of a half million people. In addition, at the time the Airport Authority was organized, a service area for the Airport was identified. This service area is graphically depicted in Exhibit "A" attached to this letter. The entire population of the service area is estimated to exceed 3-1/2 million people.

... [A]pplicable state regulations relating to airport noise. ...can be found in Title 21, California Administrative Code, Chapter 2.5, Subchapter 6. Of particular interest is a portion of Section 5005 which provides:

"The level of noise acceptable to a reasonable person residing in the vicinity of an airport is established as a community noise equivalent level (CNEL) value of 65 dB for purposes of these regulations. This criterion level has been chosen for reasonable persons residing in an urban residential area where houses are of typical California construction and may have windows partially opened. It has been selected with reference to speech, sleep and community reaction."

Mrs. Gee resides within the 65 CNEL noise contour of the Burbank-Pasadena-Glendale Airport. The total number of single family residences in the 65 CNEL contour is 2,920, with a total population of 8,176. A copy of the current CNEL noise contours is attached as Exhibit "B".

Pursuant to the state regulations, this 65 CNEL contour is considered a noise impact boundary and all residential properties within such a boundary are deemed as noncompatible land uses. One of the purposes of the state regulations is to minimize such incompatible land uses. Such can be obtained either by changing the land use designations of the properties or by modifying operations at an airport so that the size or shape of the noise impact boundary is either reduced or modified to exclude incompatible land uses.

It should be emphasized that this noise impact boundary is a shifting line that can change as a result of changes in operations at the airport. An increase or decrease in flight operations would have a dramatic impact on the size or the shape of this boundary. For example, the vast majority of all flights out of the airport are in a southerly direction on the north/south runway. It is for that reason that the noise boundary has a bulge to the south of the airport. If a number of these flights were to decrease and more flights took off in an easterly direction on the east/west runway, the bulge to the south would decrease and the bulge to the east of the airport would increase.

The noise abatement rules of the Burbank-Pasadena-Glendale Airport Authority can have a significant impact on these boundaries. For example,

the Airport Authority requires that all new service into the airport is limited to Stage 3 aircraft. This kind of aircraft is significantly quieter than Stage 1 or Stage 2 aircraft. The net effect of this rule has been to increase the total number of operations at the airport but decrease the size of the noise impact boundary. Thus, ...it would be virtually impossible to specifically identify or quantify a number of property owners who would be affected in substantially the same manner as Mrs. Gee. The only quantifiable measure is this noise impact boundary defined under state law which fluctuates and shifts as a result of airport operations.

One last fact should be added to the above. The Conflict of Interest Code for BPGAA designates its jurisdiction as the airport facility plus a one-mile radius around that facility, which is smaller than the two-mile radius area discussed by you, above.

#### QUESTIONS

You have stated the following questions in your request for advice.

The Council of the City of Burbank and Margie Gee hereby request your advice on the following:

1. Does Margie Gee's participation as a plaintiff in the inverse condemnation/nuisance lawsuit disqualify her as a member of the Authority on the theory of incompatibility under Government Code Section 1126?
2. If the answer to question number 1 is negative, is Margie Gee disqualified from participating in any discussion relative to the adoption, amendment, or implementation of the Airport Authority's noise abatement rules?
3. Is Margie Gee disqualified from participating in the discussion of issues relating to the commencement or expansion of commercial flight operations at the Airport?

4. Is Margie Gee disqualified from participating in discussions relating to the relocation and construction of a new air terminal at the Airport?
5. In the event the answer to questions 2, 3, or 4 is affirmative, would an amendment to the complaint, limiting the nuisance cause of action to operations occurring prior to May 1, 1985 (the date Mrs. Gee assumed office) affect such affirmative answer(s)?

In addition, Commissioner Gee has also requested our advice as to what extent any conflict which we may find is curable. This appears to be a variation upon your question #5. We shall now address these issues.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>1/</sup> prohibits any public official from making, participating in making, or using his or her official position to influence the making of a governmental decision in which he or she has a financial interest. Section 87100. A public official has a financial interest in a decision if the requirements of Section 87103 are met. That section provides, inter alia, as follows:

An official has a financial interest in a decision within the meaning of Section 87100 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 a member of his or her immediate family or on:

\* \* \*

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

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

Ms. Gee is clearly a public official and she has an interest in real property worth more than \$1,000 (her home). By way of her participation in the two lawsuits against the operations of the airport (the first against Lockheed, the second against BPGAA) in which she claims damages for inverse condemnation, Ms. Gee has conceded that certain decisions affecting future airport operations will have a reasonably foreseeable material financial effect upon her real property interest. Thus, the real issues which must be addressed are: (1) whether Ms. Gee's interest will be affected in a manner which is distinguishable from the effect upon the public generally; and (2) which decisions, if any, will require disqualification.

In order to determine if the "public generally" exception is applicable in this situation we must first determine the issue of jurisdiction. Given that the airport is owned and operated by a joint powers agency comprised of the three cities, each of which appoints three representatives to the BPGAA Commission, we believe that it is the three-city area which constitutes the BPGAA jurisdiction. The jurisdiction is not limited to only the physical property controlled by a governmental body, but should reflect the constituency from which its governing body is drawn. Thus, a Board of Supervisors' jurisdiction is the entire county, even though its land-use powers may only affect the unincorporated portions of the county. See, Legan Opinion (9 FPPC Opinions 1 at 12, No. 85-001, August 20, 1986, copy attached).

Having determined that the populace of the three component cities is the appropriate jurisdiction, we must advise the BPGAA that we believe its Conflict of Interest Code to be in need of amendment to reflect the appropriate jurisdiction. In keeping with the Act's requirements, real property disclosure should include a two-mile radius around the combined area of the three cities and the airport facility.

We turn now to whether Ms. Gee's interests will be affected in a manner distinguishable from those of the public generally. The Commission has adopted a regulation and several Opinions which assist us in this regard. (See, 2 Cal. Adm. Code Section 18703; Owen Opinion 2 FPPC Opinions 77 (No. 76-005, June 2, 1976); Ferraro Opinion 4 FPPC Opinions 62 (No. 78-009, November 7, 1978); Overstreet Opinion 6 FPPC Opinions 12 (No. 80-010, March 2, 1981); and Legan Opinion, supra.)

As stated in the Ferraro Opinion, supra at 67, the concept of a "significant segment" of the general public does not lend itself to numerical quantification; it also requires an

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analysis of the heterogeneity of the other characteristics of the segment in question, with a sort of "sliding-scale" approach being applied.

The facts in your letter indicate that more than 8,000 persons, representing nearly 3,000 households are within the 65 CNEL contour for the airport's current operations. By statutory definition, these homes are incompatible uses with the airport and are, therefore, presumed to all be impacted in roughly the same manner by the airport's operations. Some of the documents submitted by Ms. Gee and others indicate that the allegedly negative economic effects upon property values from the airport's operations are shared by yet a broader group of residents of BPGAA's jurisdiction. (See attached letters from citizen groups.) In any event, it is clear that Ms. Gee is hardly alone in terms of the airport's noise impacts upon her real property interests. Nor do she and the other homeowners within the 65 CNEL zone have any other economic interests in common. Presumably, they come from all walks of life and are otherwise a diverse group, whose only common factor is the location of their homes within the zone.

Consequently, it is our belief in this instance that Ms. Gee's real property interest will be affected in a substantially similar manner as all other homeowners in the 65 CNEL zone and that, for purposes of this advice request, that group constitutes a significant segment of the general public. Consequently, as to her real property interest, Ms. Gee can participate in those BPGAA decisions which similarly affect all the homeowners within the 65 CNEL zone.

However, Ms. Gee also has a separate economic interest in the pending litigation against BPGAA (the second lawsuit [Blaine case].) This invokes the provisions of the first paragraph of Section 87103 (supra) and regulation 2 Cal. Adm. Code Section 18702.1, copy enclosed. Thus, if Ms. Gee's income or expenses will reasonably foreseeably be affected by as much as \$250 as a result of any decision which will affect the litigation, disqualification will be required because the parties plaintiff to the lawsuit do not constitute a significant segment of the public. That group is much too small and has in common an economic interest in the litigation, as well as the location of their personal residences.

As a result, Ms. Gee can participate only in those BPGAA decisions which affect all 65 CNEL zone homeowners in substantially the same manner, so long as the decisions do not also affect the pending litigation. We are not in a position to issue a legal opinion on the effect of inserting a cut-off

date as to continuing damages. If counsel agree that BPGAA decisions affecting operations and procedures in futuro cannot affect Ms. Gee's litigation interests if an appropriate cut-off date is inserted, then she could participate in such decisions, per the above advice. However, if counsel cannot agree on this point, only a court can ultimately resolve that question, not this Commission, especially absent briefing on that issue.

Lastly, Ms. Gee can participate in decisions which alter the 65 CNEL contour lines so long as the decisions do not cause her home to fall outside that zone while shifting it onto other homes, such as might occur as a result of a substantial shift from north/south to east/west usage. Minor changes which leave the contours in roughly the same areas, with her home remaining within, would not cause her to lose the applicability of the "public generally" exception. On the other hand, decisions which would impact on all 65 CNEL zone homeowners, such as a reduction in the number of flights (as opposed to a shift), or a change in flight times, etc., would be permissible so long as there is no impact upon her pending litigation.

#### CONCLUSION

In response to your five specific questions, our advice is as follows:

1. The Commission is not empowered to, nor does it render advice as to Section 1126; consequently, we are unable to respond to your first question.

2. Generally, Ms. Gee may participate in discussions regarding the BPGAA noise abatement rules, subject to the caveats set forth above.

3. Generally, Ms. Gee may participate in decisions regarding commencement or expansion of flight operations in general; however, issues regarding direction of takeoffs may require disqualification.

4. To the extent that relocation of the terminal involves decisions affecting direction of takeoff, the caveats expressed above would apply and disqualification may be required.

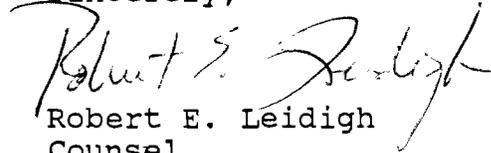
5. The issue regarding amendment of the complaint has already been discussed. Obviously, withdrawal from the complaint against BPGAA would make it clear that decisions affecting the Blaine case could not affect Ms. Gee's financial

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interests. Short of outright withdrawal, we are unable to advise on the effect of a cut-off date.

Should you have further questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh  
Counsel  
Legal Division

REL:sm

cc: Ms. Margie A. Gee  
Mr. Lee L. Blackman  
Mr. Thomas Greer



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86-02  
DOUGLAS G. HOLLAND  
CITY ATTORNEY

MAR 31 10 11 AM '86

March 26, 1986

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

Re: Request For Formal Written Advice

The Council of the City of Burbank and Margie Gee are requesting formal written advice pursuant to Government Code Section 83114(b) and Section 18329 of the Regulations of the Fair Political Practices Commission. I am the City Attorney for the City of Burbank and I have been authorized by the Council and Mrs. Gee to make this request relating to Mrs. Gee's duties under the Fair Political Practices Act.

Background Information

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runway. Takeoffs from this runway are directed to the south. Mrs. Gee and the members of her immediate family, together with several other persons, have initiated a lawsuit against the Burbank-Glendale-Pasadena Airport Authority alleging causes of action for inverse condemnation and nuisance. [A copy of the complaint is attached to this request for your information.] The essential theories advanced in this legal proceeding are as follows:

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Request For Written Advice

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5. In the event the answer to questions 2, 3, or 4 is affirmative, would an amendment to the complaint, limiting the nuisance cause of action to operations occurring prior to May 1, 1985 (the date Mrs. Gee assumed office) affect such affirmative answer(s)?

If you have any questions, or if you require additional information regarding this request, please do not hesitate to call me. Your assistance in this matter will be greatly appreciated.



Douglas C. Holland  
City Attorney

/kbh  
DHPFPPC

Attachments

A-86092  
For Exhibits and all  
incoming information,  
see Extra file (in file  
Cabinet)