



California Fair Political Practices Commission

April 23, 1986

Anthony Saul Alperin
Assistant City Attorney
Office of the City Attorney
1800 City Hall East
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. I-86-111

Dear Mr. Alperin:

Your letter to John McLean requested that we confirm written advice which your office rendered to Los Angeles City Councilman Marvin Braude on March 4, 1986. The purpose for requesting the Commission's written confirmation is to use that in pending litigation.

It has long been the policy of the Commission not to provide written advice to one of the parties to pending litigation. The Commission believes that once the matter is in litigation, the ultimate determination of the law's application is in the hands of the judicial branch. Under such circumstances the Commission's involvement, if any at all, should be in the form of a formal court appearance either as amicus or as intervenor.

You have been kind enough to forward to us the relevant pleadings in the case and John McLean and I will begin reviewing them to determine what course of action we will recommend to the Commission. Of course, as you know, the Commission last year succeeded in obtaining legislation to cause the Commission to receive copies of the pleadings whenever issues under the Political Reform Act are raised. Government Code Section 91007(b). This is to provide us with better opportunities to share with the courts our expertise and policy guidance.

Please keep us apprised of the progress of the case and as to when the next hearing will be scheduled.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

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APR 3 1 15 PM '86



JAMES K. HAHN
CITY ATTORNEY

April 4, 1986

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John McLean, Esq.
Fair Political Practices Commission
Suite 800
428 J Street
Sacramento, California 95814

Dear Mr. McLean:

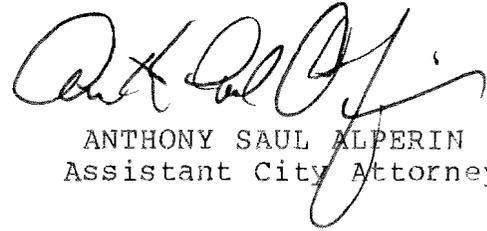
Pursuant to our telephone conversation of this morning, I am requesting written advice regarding the applicability of Government Code Section 84308 to the City's Board of Referred Powers. As I told you, we intend to submit that advice to the Court in a pending lawsuit. Our papers must be filed by April 14, 1986.

The facts are set forth in the letter to Councilman Marvin Braude which I am enclosing. (That letter recites your earlier oral advice that Section 84308 does not apply to the Board.) Also enclosed is a copy of City Charter Section 28.1. (Los Angeles is a charter city.)

If you have any questions, please let me know.

Very truly yours,

JAMES K. HAHN, City Attorney

By 
ANTHONY SAUL ALPERIN
Assistant City Attorney

ASA:jmh
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Enclosures

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March 4, 1986

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The Honorable Marvin Braude
Councilman, Eleventh District
Room 275, City Hall
200 North Spring Street
Los Angeles, California 90012

Dear Councilman Braude:

In your letter dated February 26, 1986, you asked us to advise you whether some members of the Board of Referred Powers are disqualified from acting on the Pacific Palisades oil drilling permit appeals because of the requirements of Government Code Section 84308. You indicated in your letter that your concern is based on your understanding that several members of that board have received campaign contributions of more than \$250.00 from the Occidental Petroleum Corporation during the past year.

Because of the reasons stated below, we have concluded that Section 84308 does not apply to the members of the Board of Referred Powers.

Government Code Section 84308, part of the Political Reform Act of 1974, contains prohibitions relating to the receipt of campaign contributions from persons involved in proceedings involving "licenses, permits and other entitlements for use". In short, Section 84308(c) prohibits any officer of an "agency" from participating in any way in such a proceeding if, within the prior year, the official received a contribution of \$250.00 or more from a party to or participant in the proceeding. (The entirety of Section 84308 is attached as an appendix to this letter.)

Section 84308(a)(3) defines the term "agency" to include almost all of the City's departments, bureaus, offices, boards and commissions. However, the definition expressly excludes "local government agencies whose members are directly elected by the voters . . ." Notwithstanding that exclusion, Section 84308 applies to a "person who is a member of an exempted agency but is acting as a voting member of another agency."

The Honorable Marvin Braude
Councilman, Eleventh District
Page 2.

An applicable regulation of the Fair Political Practices Commission, 2 Cal. Admin. Code Section 18438.1, further defines the exemption contained in Government Code Section 84308(a)(3) as follows:

"(a) The officers of an agency exempted by Government Code Section 84308(a)(3) are exempted only when:

"(1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency. This applies to a city council or board of supervisors which designates itself as the redevelopment agency for the city or county; or

"(2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency." (Emphasis added.)

The Board of Referred Powers was created by City Charter Section 28.1. Its membership is provided for in Los Angeles Administrative Code Section 8.1, as follows:

"The Board of Referred Powers shall consist of five members who shall be members of the City Council. Two members of the Board shall be designated by the President of the City Council to serve at the pleasure of the President, and the remaining three shall consist of, ex officio, the Chairman of the Finance and Revenue Committee, the Chairman of the Energy and Natural Resources Committee, and the Chairman of the Industry and Economic Development Committee of the City Council, respectively. . . ."

Based on this provision, it is our view that the Board of Referred Powers is a "subgroup" of the City Council within the meaning of 2 Cal. Admin. Code Section 18438.1(a)(2). It is composed solely of Council members who are eligible to serve only by virtue of their being members of the Council.

The Honorable Marvin Braude
Councilman, Eleventh District
Page 3.

The members of the Board of Referred Powers do not act "as voting members of another agency," i.e., as members of the Board of Zoning Appeals, as your letter suggests. When a matter is transferred to the Board of Referred Powers, its members do not act as the members of the board from which the matter is transferred but in place of that board.

Thus, even though the members of the Board of Zoning Appeals are governed by the requirements of Government Code Section 84308, the members of the Board of Referred Powers are not.

We have discussed this issue with the legal staff of the Fair Political Practices Commission, and we have been orally advised that such staff concurs with our conclusion.

Please let us know if we can be of further assistance to you in connection with this matter.

Very truly yours,

JAMES K. HAHN, City Attorney

BY



ANTHONY SAUL ALPERIN
Assistant City Attorney

ASA:jmh
485-5440

Attachment

§ 84308. Definitions: contributions prohibited from persons with pending applications for licenses, permits or other entitlements; amount; disclosure by all parties; construction

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers.

However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No " " officer of an agency shall accept, solicit, or direct a contribution of two hundred fifty dollars (\$250) or more, from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding; provided, however, that the officer " " knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer " " accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who " " received a contribution within the preceding 12 months in an amount of two hundred fifty dollars (\$250) or more from a party or from any participant shall disclose that fact on the record of the proceeding. No " " officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer " " has willfully or knowingly received a contribution " " in an amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent " " provided, however, that the officer " " knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7 " " .

If an officer " " receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of two hundred fifty dollars (\$250) or more made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of two hundred fifty dollars (\$250) or more, to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under the Political Reform Act of 1974 shall not be so reported.

• • •

(Added by Stats.1982, c. 1049, p. 3809, § 1. Amended by Stats.1984, c. 1681, p. —, § 2, urgency, eff. Sept. 30, 1984.)

Administrative Code References

Applicants and agents, see 2 Cal. Adm. Code 18438.3.
Bodies covered by § 84308, see 2 Cal. Adm. Code 18438.1.
Contributions, see 2 Cal. Adm. Code 18438.5.
Contributions to members of quasi-judicial boards and commissions, see 2 Cal. Adm. Code 18438.

Disclosure, see 2 Cal. Adm. Code 18438.8.

Persons who actively support or oppose, see 2 Cal. Adm. Code 18438.4.

Proceedings covered by § 84308, see 2 Cal. Adm. Code 18438.2.

Public officers must not be interested in any contract made by them in their official capacity or by any body or board of which they are members. Contracts in violation of this rule are void as against public policy.

City of Oakland v. California Constr. Co., 15 Cal. (2d) 573, 576.

Stockton P. & S. Co. v. Wheeler, 68 Cal. App. 592.

A supervisor of a county, holding a chattel mortgage on a printing plant to secure payment of a promissory note taken by him for the full amount of the purchase price of the plant, has such an interest in contracts made by the owner of the plant with the county for printing, etc., that claims and demands under the contracts, which the supervisor officially approved, are void.

Moody v. Shuffleton, 203 Cal. 100.

Where, in acts of the Legislature and in the provisions of municipal charters, there are set down modes of procedures for the removal of officers which are inconsistent with each other, the charters will control.

This provision of the charter was not superseded by the adoption of the recall provisions, but the section is to operate concurrently with the recall provisions of the charter.

Betskouski v. Superior Court, 34 Cal. App. 117.

Harby v. City of Los Angeles, 64 Cal. App. (2d) 911.

The rule against interest does not apply where a city official is merely employed to perform other services for the city not incidental to his own office, such as where a city clerk is employed to perform the duties of purchasing agent.

Raymond v. Bartlett, 77 Cal. App. (2d) 283, 286.

Officers of a municipal corporation, like those of private corporations, are agents of the corporate body, and may not use their official positions for their own benefit, or for the benefit of anyone except the municipality itself, and may not represent the corporation in any contract or transaction in which they are personally interested in obtaining an advantage at the expense of the corporation, for in such cases the City would not have the benefit of their unbiased judgment.

People v. Sullivan, 113 Cal. App. (2d) 510, 523.

Sec. 28.1. In the event the City Attorney is requested by any board, or member thereof, officer, except a member of the Council, or employee, to render an opinion upon the question of such board's, board member's, officer's or employee's prohibited interest under Section 28 of this Charter, the City Attorney shall render a written opinion upon such question. Such board, board member, officer or employee may likewise request an opinion from the City

Attorney regarding any situation wherein it may not be in the public interest for such board, board member, officer or employee to act in a particular matter, contract, sale or transaction and the City Attorney shall render a written opinion thereon.

In the event that pursuant to such request the City Attorney determines, by written opinion, that such board or board member, officer or employee has a prohibited interest under Section 28 of this Charter, or that it is not in the public interest for such board, board member, officer or employee to act in the matter, contract, sale or transaction involved, the same shall be transferred for action thereon to the Board of Referred Powers, which is hereby created. Unless such transfer is prohibited by an applicable general law of the State of California, the Board of Referred Powers is vested with the same power to act upon any matter, contract, sale or transaction so transferred to it with the same force and effect as if acted upon by the board, officer or employee from whom the matter, contract, sale or transaction was transferred. The Council shall provide by ordinance for all matters relating to number of members, appointment and functioning of the Board of Referred Powers and the procedure applicable in referring matters to it for its determination. (Sec. amended, 1965.)

Sec. 29. Every ordinance which shall have been passed by the Council shall, before it becomes effective, be signed by the City Clerk or other person authorized by the Council to sign the same on its behalf, and be presented to the Mayor for his approval and for his signature if he approves it; if not, he shall endorse thereon the date of presentation to him and shall return it to the City Clerk with his objections in writing. The City Clerk shall endorse thereon the date of its return to him, and shall at the first meeting of the Council thereafter present the same, with the objections of the Mayor of that body. Thereupon the Council shall proceed to reconsider the passage of the ordinance. Upon such reconsideration it shall in all cases require the votes of two-thirds of the whole Council to pass such ordinance over the veto of the Mayor, but where two-

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April 14, 1986

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John McLean, Esq.
Fair Political Practices Commission
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428 J Street
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Dear Mr. McLean:

Pursuant to our several telephone conversations, I have enclosed copies of the complaint and relevant portions of the plaintiff's points and authorities in No Oil, Inc. v. City of Los Angeles, Los Angeles Superior Court Case No. C 592,531.

As I indicated to Bob this morning, the hearing on April 22, 1986, has been cancelled. Thus, we do not need your letter on Section 84308 in a hurry. Of course, we still do desire the letter.

Very truly yours,

JAMES K. HAHN, City Attorney

By

ANTHONY SAUL ALPERIN
Assistant City Attorney

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Enclosure

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(213) 623-1900
5 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

C 592531

11 NO OIL, INC.,)
12)
13 Plaintiff,)
14 vs.)
15 THE CITY OF LOS ANGELES; CITY OF)
16 LOS ANGELES BOARD OF REFERRED)
17 POWERS; DAVID CUNNINGHAM, ROBERT)
18 FARRELL, HAL BERNSON, and JOAN)
19 MILKE FLORES, acting in their)
20 individual capacities as members)
21 of the Board of Referred Powers;)
22 and DOES I-XX,)
23 Defendants.)

CIVIL NOS.
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
A MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION;
EXHIBITS G-S

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1 Leewong to disqualify himself from participating in the hearings,
2 should he feel it necessary for personal reasons.

3

4

IV.

5

A TEMPORARY RESTRAINING ORDER IS NECESSARY TO

6

PREVENT BOARD OF REFERRED POWERS MEMBERS WHO

7

HAVE ACCEPTED CAMPAIGN CONTRIBUTIONS FROM

8

OCCIDENTAL IN VIOLATION OF GOVERNMENT CODE

9

SECTION 84308 FROM HEARING THE APPEALS.

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On June 21, 1985, Occidental contributed \$2,500 to BRP member Robert Farrell. (See City campaign contribution statements, as Exhibit F, to the Complaint.) Agents of Occidental, Manatt, Phelps, Rothenburg & Tunney made a contribution on this same date of \$500. (Id.)

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Government Code section 84308(c) precludes actions by members of "agencies", including boards and commissions, on land use permits if that member has received \$250 or more from a participant in the proceedings within the previous 12 months. Section 84308(c) reads in pertinent part as follows:

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24

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27

28

"Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of two hundred fifty

dollars (\$250) or more from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit or other entitlement for use pending before the agency is the officer has willfully or knowingly received a contribution in an amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent . . ."

The BRP is an agency separate and distinct from the City Council. It acts as the Board which it replaces, subject to that Board's jurisdictional limitations. The City Attorney claims the BZA members are subject to section 84308, but that BRP members are not. (See March 4, 1986, City Attorney letter, Exhibit R hereto.) Plaintiff strongly disagrees.

Section 84308 exempts from the definition of "agency" (and hence the conflict of interest provisions) "local governmental agencies whose members are directly elected by the voters". This exception has been interpreted by the Fair Political Practices Commission to "only" encompass councilmembers

///

1 acting as a "committee or subgroup of the governing body of the
2 agency." (2 Cal. Adm. Code §18438.1 (a)(2).)

3
4 The City Attorney has determined that the BRP is a
5 "subgroup" of the City Council, thereby coming within the
6 exemptions under section 84308 for City Councils. (Exhibit Q
7 hereto.) The opinion is based on the view that the BRP member
8 act "in place of" the board which has been disqualified, and not
9 "as" the members of that board. This is a distinction in form,
10 not in substance. The BRP is not a "committee" or "subgroup" of
11 the City Council but an independent board created by the City
12 Charter, whose membership acts not as City Councilmembers, but as
13 the very board which would have had jurisdiction over the matter
14 at issue but for the alleged conflict. Thus, Charter section
15 28.1, which authorizes the transfer of matters to the BRP, pro-
16 vides:

17
18 "Unless such transfer is prohibited by an
19 applicable general law of the State of
20 California, the Board of Referred Powers is
21 vested with the same power to act upon any
22 matter, contract, sale or transaction so
23 transferred to it with the same force and
24 effect as if acted upon by the board, officer
25 or employee from whom the matter, contract,
26 sale or transaction was transferred."

27 ///

28 ///

1 The independence of the BRP from the Council is further
2 demonstrated by reference to the City's Administrative Code which
3 provides that once a matter is transferred to the BRP, it

4
5 "shall thereupon have and exercise the same
6 power and jurisdiction over such matter as the
7 officer or board of the City from whom the
8 matter is referred would otherwise have
9 had . . ." City Administrative Code § 8.6

10
11 The BRP action is entered in the official records of the
12 agency it substitutes for. (Id.)

13
14 Plaintiffs submit the term "subgroup" was meant, like
15 "committees," to refer to Council bodies which look to the
16 Council for approval before taking action.

17
18 "Each Council committee shall, as such commit-
19 tee, have no administrative control over the
20 various function of the city government em-
21 braced within the division to which it is
22 assigned, but shall perform the duties of
23 investigation for and recommendation to the
24 Council in its work of legislation. . ."

25
26 It is clear the BRP cannot be considered a committee or
27 a subgroup of the City Council. Its unique, quasi-adjudicative
28 status requires that it comply with section 84308 to the same

1 extent as the members of the BZA, the board it assumes
2 jurisdiction on behalf of. Even the City Attorney agrees that
3 BZA members are governed by section 84308. Accordingly, it is
4 suggested that Councilman Farrel not be permitted to participate
5 in the hearings now set for March 24.

6
7 V.

8 PLAINTIFF IS ENTITLED TO A TEMPORARY
9 RESTRAINING ORDER AND PRELIMINARY INJUNCTION

10
11 A. A Balancing of Harms Favors Restraining
12 The Hearings From Proceeding.

13
14 The ultimate issue in an application for preliminary
15 injunction is "whether a greater injury will result to the
16 defendant from granting the injunction than to the plaintiff from
17 refusing it." Continental Baking Co. v. Katz (1968) 28 Cal.2d
18 512, 528.

19
20 Should the hearings set for March 24 proceed and
21 decisions issue, Plaintiff will have lost its opportunity to
22 disqualify the BRP or its members in this lawsuit and will suffer
23 great and irreparable harm as a result. Plaintiff has no remedy
24 at law for such a violation of their procedural due process
25 rights. Defendants, on the other hand, will suffer no injury by
26 delaying a hearing until a preliminary injunction hearing is
27 held.

28 ///

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

C592531

11 NO OIL, INC.,) CIVIL NOS.
12)
12 Plaintiff,)
13 vs.) VERIFIED COMPLAINT FOR
13) INJUNCTIVE RELIEF;
14 THE CITY OF LOS ANGELES; CITY OF) EXHIBITS A-F
14 LOS ANGELES BOARD OF REFERRED)
15 POWERS; DAVID CUNNINGHAM, ROBERT)
15 FARRELL, HAL BERNSON, AND JOAN)
16 MILKE FLORES, acting in their)
16 individual capacities as members)
17 of the Board of Referred Powers;)
17 and DOES I-XX,)
18 Defendants.)

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20 RELIEF REQUESTED AND PARTIES

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22 1. This is an action for injunctive relief against the
23 City of Los Angeles, and certain elected officials and staff, to
24 prohibit them from permitting, authorizing, conducting, or parti-
25 cipating in hearings before the City's Board of Referred Powers
26 ("BRP") on appeals BZA 3394, BZA 3393 and CP 93, now scheduled
27 for March 24, 1986. The action is brought on the basis that the
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1 Board of Referred Powers cannot provide an impartial hearing and
2 decision on those appeals.

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4 2. Plaintiff No Oil, Inc. ("No Oil") is a nonprofit
5 organization with over 3,500 members, duly organized and existing
6 under the laws of the State of California with its principal
7 place of business in the City and County of Los Angeles, Cali-
8 fornia.

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10 3. No Oil members are beneficially interested in
11 enforcement of the state conflict of interest laws and in proce-
12 dures associated with hearings described herein in that the
13 members have for many years opposed Occidental's proposal to
14 drill for oil in Pacific Palisades, including, in particular, the
15 permit applications which are the subject of the BRP hearings.
16 No Oil members will be irreparably injured if the hearing is not
17 enjoined in that substantial monies will be spent to defend such
18 appeals and Plaintiff's members will be deprived of the benefit
19 of the due process and statutory rights asserted herein and are
20 without any adequate remedy at law.

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22 4. Respondent City of Los Angeles ("City") is a muni-
23 cipal corporation incorporated in the State of California.
24 Respondent Board of Referred Powers is a body created by the City
25 Charter to assume jurisdiction over matters before other commis-
26 sions and boards in those instances where a member of the other
27 commission or board is disqualified under City Charter Section
28 28.1.

1 10. On or about May 16, 1985, Occidental Petroleum
2 Corp. ("Occidental") filed applications with the City for the two
3 final discretionary permits necessary under the Municipal Code
4 before oil drilling could commence pursuant to the ordinances, a
5 coastal development permit ("CDP") and a determination of condi-
6 tions and methods of [drilling] operations ("DCMO").

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8 11. On August 3, 1985, a joint hearing was held on the
9 two applications before two associate zoning administrators
10 ("ZA"), Robert Janovici (ruling on the CDP application) and Jack
11 Sedwick (ruling on the DCMO application). No Oil expended over
12 \$60,000 in presenting opposition at the eight-hour hearing and
13 submittals associated therewith.

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15 12. On December 12, 1985, Zoning Administrator Janovici
16 issued a decision denying Occidental's application for a CDP. On
17 the same day, Zoning Administrator Sedwick issued a decision
18 determining the conditions and methods of drilling operations.

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20 13. On or about December 18, 1985, Occidental appealed
21 both the coastal permit decisions and the determination as to the
22 conditions and methods of drilling operations to the Los Angeles
23 Board of Zoning Appeals ("BZA"), the final reviewing body in the
24 City on each of these two particular applications.

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26 14. On December 19, 1985, Plaintiff No Oil, Inc.
27 appealed the decision determining the conditions and methods of
28 drilling operations to the BZA.

1 15. The City set hearings on all three of the above
2 appeals (BZA 3393, 3394 and CP 93) for February 6, 1986.

3
4 16. On January 21 and 28, the BZA held meetings with
5 City staff two hours prior to the regular BZA meeting time for
6 the purpose of discussing the agenda for the February 6 hear-
7 ing. No substantive issues were discussed at either of the meet-
8 ings. Although written notice was apparently not provided to any
9 BZA members, the two meetings were publicly announced in the
10 course of a prior, regularly scheduled BZA meeting. At least one
11 meeting was attended by an attorney for Occidental.

12
13 17. On January 31, 1986, BZA President James D. Leewong
14 requested by letter that the City Attorney disqualify the entire
15 Board on the basis that the BZA could not render a decision con-
16 sistent with the public interest based on the following five
17 grounds:

18 "1. There now exists possible uncertainty
19 over the validity of the proceedings
20 should they go forward;

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22 2. There may be a public perception of
23 impropriety if the proceedings go for-
24 ward;

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26 3. There are uncertain consequences to my-
27 self which may arise as a result of the
28 unnoticed meetings;

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4. There are uncertain consequences to the Board, of which I am President, which may arise as a result of the unnoticed meetings; and

5. I personally believe that I will not be able to conduct the proceedings in a just manner and fairly and rationally consider the evidence presented to render an appropriate decision." (Exhibit A hereto.)

18. On February 4, 1986, the City Attorney issued a letter opinion directed to President Leewong indicating that the two BZA meetings "appear to have been held in violation of the Ralph M. Brown Act (Government Code Section 54950, et seq.)" on the basis that there was no written notice of said meeting to the board members, and that President Leewong had expressed personal concern over the related possible appearance of impropriety and over his inability to participate in the proceedings in a fair and impartial manner. Based on the "facts" noted in the letter, the City Attorney concluded it "would not be in the public interest for the BZA to act on the subject appeals" and ruled the matter transferred to the Board of Referred Powers ("BRP") pursuant to City Charter Section 28.1. (Exhibit B hereto.)

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1 28. The City's transfer of the CDP and DCMO appeals to
2 the BRP is improper and not supported by the provisions of City
3 Charter Section 28.1 in that it was not in the public interest to
4 disqualify the BZA or to transfer the matter to the BRP because:

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6 A. The particular Brown Act violation
7 involved was merely a minor technical
8 digression from state law and could not
9 justify and has never before justified
10 disqualification of the BZA or any other
11 City board or commission;

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13 B. The subjective opinion of a BZA member,
14 without application of objective stan-
15 dards for disqualification, cannot alone
16 support a transfer of jurisdiction to the
17 BRP, as Section 28.1 has been interpreted
18 and applied by the City Attorney; and

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20 C. Given the biases and partiality of BRP
21 members alleged above, it could not pos-
22 sibly be in the public interest to trans-
23 fer the appeals to the BRP from the BZA,
24 which membership had never voted on any
25 Occidental oil drilling application.

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1 Plaintiff does not believe contributions were not returned to
2 Occidental or its agent by said BRP member on or before March 6,
3 1986, thirty days after the BRP assumed jurisdiction of the
4 appeals.

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6 WHEREFORE, Plaintiff prays for relief as follows:

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8 ON THE FIRST AND SECOND CAUSES OF ACTION

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10 1. That Defendants, and each of them, be enjoined from
11 permitting, authorizing, conducting or otherwise participating in
12 hearings before the Board of Referred Powers on Appeals of City
13 appeals BZA 3393 and 3394 and CP 93.

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15 ON THE THIRD CAUSE OF ACTION

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17 2. That Defendant Robert Farrell be enjoined from
18 conducting or otherwise participating in hearings before the
19 Board of Referred Powers on appeals of City case appeals BZA 3393
20 and 3394 and CP 93.

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22 ON ALL CAUSES OF ACTION

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24 3. For costs and attorneys' fees incurred herein.

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4. For any other relief the Court deems appropriate.

DATED: March 21, 1986

BURKE, WILLIAMS & SORENSEN
JOHN W. BELSHER
CAROL A. SCHWAB
COLIN LENNARD

BY: Colin Lennard
COLIN LENNARD
Attorneys for Plaintiff



California Fair Political Practices Commission

April 10, 1986 .

Anthony Saul Alperin
Assistant City Attorney
1800 City Hall East
Los Angeles, CA 90012

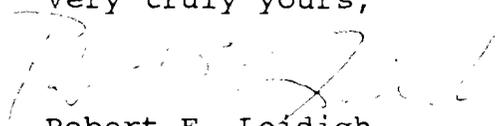
Re: A-86-111

Dear Mr. Alperin:

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