



California  
Fair Political  
Practices Commission

**SUPERSEDED**  
by 18702.1(2)(4)

May 23, 1986

Gordon C. Phillips  
Redondo Beach City Attorney  
415 Diamond Street  
Redondo Beach, CA 90277

Re: Your Request for Advice  
Our File No. A-86-134

Dear Mr. Phillips:

You have written requesting advice regarding your duties under the Political Reform Act.<sup>1/</sup>

FACTS

You are the City Attorney of Redondo Beach, California, which is the master lessor of 18 master leases in the King Harbor-Redondo Beach Pier area.

Under the terms of each master lease, each lessee is required to periodically renegotiate the rental which is due the City.

Four of the master lessees maintain marinas with a total of 1,562 boat slips.

The City is now about to embark on a program seeking to renegotiate under the terms of each of the master leases, and, if possible engage lessees whose leases do not yet call for renegotiation to renegotiate. Without question the City will seek and require legal advice from time to time.

You are a boat tenant of Marina Cove, which has approximately 866 slips of the total of 1,562 slips in the harbor. While most of the slip rental agreements or leases are

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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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in writing, you have had an oral agreement which you made prior to taking office. The oral agreement was not given to you as a result of your office. You are billed every two months for your slip rent, as are other tenants.

The City Council has adopted an ordinance which is intended to allow the Harbor and Pier Lessee member of the Harbor Commission to represent the interests of the Harbor and Pier Lessees on the Harbor Review Board. The ordinance provides in pertinent part that:

The City Council finds and declares that the individual appointed as the Harbor and Pier Lessee member of the Harbor Commission is intended to represent and further the interest of the Harbor and Pier Lessees within the jurisdiction of the Harbor Commission and that such representation and furtherance will ultimately serve the public interest. Accordingly, the Council finds that for purposes of persons who hold such office, the Harbor and Pier Lessees within the jurisdiction of the Harbor Commission are tantamount to and constitutes a significant segment of the public generally within the meaning of Section 87103 of the Government Code.

#### QUESTIONS

1. Does your tenancy with Marina Cove disqualify you from participating in negotiations concerning Marina Cove?
2. Does your tenancy in Marina Cove disqualify you from participating in negotiations concerning any lease other than Marina Cove?

#### CONCLUSION

You are disqualified from participating in any negotiations in which it is reasonably foreseeable that your personal expenses, income, assets or liabilities will be increased or decreased by at least \$250 as a result of those negotiations.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in or in any way attempting to influence a

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governmental decision in which he has a financial interest. 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 a member of his immediate family or on specified economic interests. Section 87103. More specifically, an official may not participate in a decision if it is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his immediate family will be increased or decreased by at least \$250 by the decision and the effect of the decision on the official or his immediate family will be distinguishable from its effect on the public generally. 2 Cal. Adm. Code Section 18702.1. Accordingly, you may not participate in negotiations concerning the Marina Cove lease or any other lease if it is reasonably foreseeable that your personal expenses, income, assets, or liabilities will be increased or decreased by at least \$250 as a result of the negotiations and the effect upon your personal expenses, income, assets or liabilities will be distinguishable from the effect on the public generally. For example, if it is reasonably foreseeable that as a result of these negotiations your slip rental will be increased or decreased by \$45 for each two month period, you will be required to disqualify from this matter unless the effect of the decision is not considered to be distinguishable from the effect on the public generally.

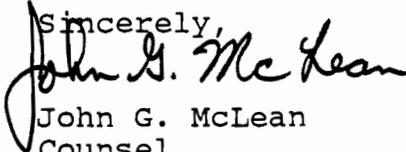
For the "public generally" exception to apply to this situation, the renegotiated leases would have to affect a "significant segment" of the public, and they would have to affect you "in substantially the same manner" as they would affect other members of that segment of the public. 2 Cal. Adm. Code Section 18703.

Traditionally, the Commission has considered the "public" to consist of the entire jurisdiction of the agency in question. Thus, in the present case, the "public" would consist of the entire City of Redondo Beach which we are told has a population of approximately 60,000 people. Based on the facts provided, we do not know if all of the boat tenants of the four master lessees will be affected in "substantially the same manner" as a result of the renegotiated leases. Presumably, even if the master leases are negotiated on the same terms, the master lessees may choose to pass on different portions of the rental increase or decrease to their lessees. However, even assuming the tenants of all 1,562 boat slips are affected in substantially the same manner, we do not believe

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they constitute a significant segment of the public.<sup>2/</sup>  
Furthermore, it is not clear that all or even a substantial  
portion of the tenants (subleassees) are from the City of  
Redondo Beach. They may, in fact, be from outside.

If you should have any further questions, please contact me  
at (916) 322-5901.

Sincerely,  
  
John G. McLean  
Counsel  
Legal Division

JGM:sm

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<sup>2/</sup>We note that the ordinance you refer to is intended to  
allow the Harbor and Pier Lessee member of the Harbor  
Commission to participate in Commission decisions based on a  
finding that "for purposes of persons who hold such office",  
the Harbor and Pier Lessees within the jurisdiction of Harbor  
Commission constitute a significant segment of the public  
generally. Since you are not the Harbor and Pier Lessee member  
of the Harbor Commission the ordinance does not make the public  
generally exception applicable to you. In addition, since the  
Harbor and Pier Lessee member of the Harbor Commission has not  
requested our advice, we expressly make no determination as to  
the effect of the ordinance. 2 Cal. Adm. Code Section 18329.



APR 24 8 42 AM '86

CITY OF REDONDO BEACH  
CALIFORNIA

415 DIAMOND STREET  
REDONDO BEACH, CALIFORNIA 90277

April 21, 1986

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

Gentlemen:

Please advise me whether or not I have a conflict of interest which would prohibit me from participating in lease negotiations under the following facts:

FACTS

I am the City Attorney of Redondo Beach, California, which is the master lessor of 18 master leases in the King Harbor - Redondo Beach Pier area.

Under the terms of each master lease, each lessee is required to periodically renegotiate the rental which is due the City.

Four of the master lessees maintain marinas with a total of 1,562 boat slips.

The City is now about to embark on a program seeking to renegotiate under the terms of each of the master leases, and, if possible engage lessees whose leases do not yet call for renegotiation to renegotiate. Without question the City will seek and require legal advice from time to time.

I am a boat tenant of Marina Cove, which has approximately 866 slips of the total of 1,562 slips in the harbor. While most of the slip rental agreements or leases are in writing, I have had an oral agreement with the marina prior to taking office, and my oral agreement was not given to me as a result of my office. I am billed every two months for my slip rent, as are other tenants.

The City adopted Ordinance No. 2427 c.s. which provides that the "Harbor and Pier Lessees . . . constitute a significant segment

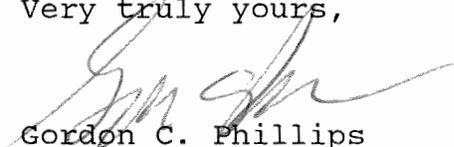
of the public generally . . . " (Sec.12-1.904). A copy of the ordinance is enclosed.

ISSUE

Does my tenancy with Marina Cove marina disqualify me from:

1. Participating in negotiations concerning Marina Cove?
2. Participating in any of the discussions concerning any lease other than Marina Cove, so that I am disqualified from participating in any negotiations whatsoever?

Very truly yours,



Gordon C. Phillips  
City Attorney

Enclosure: Ordinance No. 2427

ORDINANCE NO. 2427 C.S.

AN ORDINANCE AMENDING ARTICLE 9, CHAPTER 1,  
TITLE 12, OF THE REDONDO BEACH MUNICIPAL CODE,  
RELATING TO HARBOR REVIEW BOARD

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WHEREAS, Government Code Sec. 87100, et seq., prohibits officials from participating in governmental decisions in which he or she has a certain financial interest, unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public;

WHEREAS, the City Attorney has advised the Harbor and Pier Lessee member of the Harbor Review Board not to vote on certain matters based on both the opinion of the City Attorney and the Fair Political Practices Commission that the said Lessees do not constitute the public generally or a significant segment of the public and that it was reasonably foreseeable that the decision would have a material effect on his financial interest, and that to participate or vote on those matters would be a violation of the law,

WHEREAS, in order to allow the Harbor and Pier Lessee member of the Harbor Review Board to vote on all matters which do not affect that member in a substantially different manner than it will affect Harbor and Pier Lessees generally, it is necessary that the City Council formally declare, and to amend the

ordinance creating the Harbor Review Board to state that the Harbor and Pier Lessees are a significant segment of the public;

WHEREAS, it is the desire of the Council to bestow commission status on the Harbor Review Board;

NOW THEREFORE, the City Council of the City of Redondo Beach, California, does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 12-1.901, 12-1.902, 12-1.903, 12-1.904, 12-1.905, 12-1.906, 12-1.907, 12-1.908, 12-1.909, 12-1.910, and 12-1.912, Article 9, Chapter 1, Title 12, of the Redondo Beach Municipal Code are hereby amended to read as follows:

Sec. 12-1.901. Created.

There is hereby created a Harbor Commission (referred to in this article as "Commission") for the City consisting of seven (7) members.

Sec. 12-1.902. Jurisdiction.

The jurisdiction of the Commission shall be limited to the harbor area as delineated on the map set forth in Section 12-1.914 of this article.

Sec. 12-1.903. Appointment and terms of members.

Members of the Commission shall serve four (4) year terms commencing on July 1 and

ending June 30 four (4) years hence, except that three (3) of the members initially appointed to the Commission shall be appointed for terms expiring on June 30, 1983, while four (4) of the members shall be appointed for terms expiring on June 30, 1985. Thereafter, all appointments and reappointments shall be for a period of four (4) years.

Sec. 12-1.904. Qualifications for appointment.

Appointments to the Commission shall be in accordance with the following criteria:

(a) Six (6) members shall have training and experience in one of the disciplines set forth in this subsection as follows, and at least six (6) of the twelve (12) disciplines shall be represented on the Commission:

)1) A State-registered civil or structural engineer, or five (5) years' practical experience in a related engineering field;

(2) A member of the Bar of the State;

(3) A State-licensed architect;

(4) A certified public accountant, or an officer of a financial institution;

(5) An oceanographer or marine engineer with five (5) years' practical experience;

(6) A State-licensed real estate broker;

(7) A property manager with five (5) years' practical experience;

(8) A State-licensed general contractor;

(9) A practicing economic or financial consultant with five (5) years' experience;

(10) A commercial developer with five (5) years' experience;

(11) An executive or owner/operator of a business;

(12) A management level employee with five (5) years' practical experience with a public or governmental entity; and

(13) A management level employee with at least five (5) years' experience in harbor recreational development.

(b) One member and an alternate shall be selected from a list of not less than five (5) names to be submitted by the harbor and pier lessees, such list to be approved by a majority of the harbor and pier lessees. The alternate shall attend each meeting of the Commission and participate in the deliberations of the Commission, but shall not vote except in the event the member is absent or disqualified.

The City Council finds and declares that the individual appointed as the Harbor and Pier Lessee member of the Harbor Commission is intended to represent and further the interest of the Harbor and Pier Lessees within the jurisdiction of the Harbor Commission and that such representation and furtherance will ultimately serve the public interest. Accordingly, the Council finds that for purposes of persons who hold such office, the Harbor and Pier Lessees within

the jurisdiction of the Harbor Commission are tantamount to and constitutes a significant segment of the public generally within the meaning of Section 87103 of the Government Code.

Sec. 12-1.905. Filling vacancies.

If any vacancy shall occur in the membership of the Commission, other than by expiration of the term of office, the vacancy shall be filled by the Mayor and with the approval of the Council for the unexpired term of the vacated office.

Sec. 12-1.906. Existing members: Expiration of terms.

The respective terms of office of all existing members of the Commission shall terminate on or after November 1, 1982, and upon the appointment and qualification of their successors.

Sec. 12-1.907. Removal of members.

The members of the Commission may be removed from office by a vote of the majority of all members of the Council.

Sec. 12-1.908. Appointment of a chairperson.

At the first meeting of the Commission in every fiscal year, the members of the Commission shall appoint one of their number as a chairperson and one of their number as a vice-chairperson, both of whom shall hold office for one year and until his or her successor is appointed.

Sec.12-1.909. Meetings and failure to attend.

(a) The Commission shall hold regular meetings at least once every month.

(b) In the event any member of the Commission shall absent himself from the regular meetings of the Commission for a period of 60 days consecutively following the last regular meeting attended by such member, unless by permission of the Council expressed in its official minutes, or in the event such member shall be convicted of a crime involving moral turpitude or ceases to be a qualified elector of the City, his office shall become vacant and shall be so declared by the Council.

Sec. 12-1.910. Powers and duties.

(a) The Commission shall hold hearings on all applications for conditional use permits and variances for the use and development of lands within the jurisdiction of the Commission as provided for in Sections 10-2.610 through 10-2.613 of Article 2, Chapter 2, Title 10 of this Code.

(b) The Commission shall hold hearings on any matter concerning the commercial or recreational development of the harbor.

(c) The Commission shall further the commercial and recreational development of the harbor.

(d) The Commission shall review and recommend to the Council on all new lease and sublease arrangements with the City relating to harbor lands, facilities, or improvements.

(e) The Commission shall be advised and may report to the Council on all subleases with firms doing business within the jurisdiction of the Commission.

(f) The Commission shall be advised and may report to the Council on the assignment of all leases and subleases with

the City relating to harbor lands, facilities, or improvements.

(g) The Commission shall advise the Council on any matter concerning the harbor when so requested by the Council.

Sec. 12-1.911. Finality of decisions.

The decision of the Commission shall be final, unless within 20 days the applicant for any permit, or any aggrieved party, shall appeal the action taken by the Commission to the Council. The Council, after a public hearing, may sustain, modify, reject, or overrule any action taken by the Commission. The action of the Council shall be final and conclusive.

Sec. 12-1.913. Rules and regulations.

The Commission shall establish and public such rules and regulations as it deems necessary for its government and for the faithful performance of its duties.

SECTION 2. Any provisions of the Redondo Beach Municipal Code, or appendices thereto, or any other ordinances of the city inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. This ordinance shall be published by one insertion in the Easy Reader, the official newspaper of said city, and same shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

Passed, approved, and adopted this 16th day of September, 1985.

ATTEST:

  
\_\_\_\_\_  
City Clerk

(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Mayor

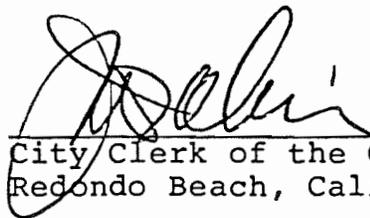


STATE OF CALIFORNIA     )  
COUNTY OF LOS ANGELES   )     ss  
CITY OF REDONDO BEACH    )

The undersigned, the duly elected, qualified, and acting City Clerk of the City of Redondo Beach, California, does hereby certify that a full, true, and correct copy of Ordinance No. 2427 c.s. entitled AN ORDINANCE AMENDING ARTICLE 9, CHAPTER 1, TITLE 12, OF THE REDONDO BEACH MUNICIPAL CODE, RELATING TO HARBOR REVIEW BOARD has been posted at the City Hall in said City, after the introduction of said ordinance and for a period of not less than five (5) days prior to the date hereof.

WITNESS my hand and the official seal of said City of Redondo Beach, California, this 16th day of September, 1985.

(SEAL)

  
\_\_\_\_\_  
City Clerk of the City of  
Redondo Beach, California



# California Fair Political Practices Commission

April 25, 1986

Gordon C. Phillips  
City Attorney  
415 Diamond Street  
Redondo Beach, CA 90277

Re: 86-134

Dear Mr. Phillips:

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 that reads "John G. McLean".

John G. McLean  
Counsel  
Legal Division

JGM:plh