



California Fair Political Practices Commission

May 9, 1986

Edward Duddy
Moreno Valley City Attorney
Zimmer & Singer, Inc.
P.O. Box 788
Riverside, CA 92502

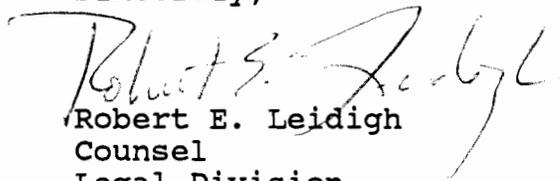
Re: Your Request for Advice
Our File No. I-86-153

Dear Mr. Duddy:

Your letter has been received. Pursuant to Government Code Section 83114 and Regulation 2 Cal. Adm. Code Section 18329(b)(8)(A) and (c)(7)(A), we decline to provide you or Mr. Webb with advice regarding the propriety of past conduct. Actions which have occurred in the past either were violations of the law or were not, dependent upon all of the material facts. The courts or the administrative enforcement procedure, with the attendant due process rights, would be the appropriate forums for determining the facts under such circumstances, not an advice request.

Should you or Mr. Webb desire prospective advice regarding future conduct, please do not hesitate to contact this office in advance.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

DONALD F. ZIMMER
M. NEAL SINGER
EDWARD DUDDY

LAW OFFICES
ZIMMER & SINGER, INC. P P C
4298 ORANGE STREET
P. O. BOX 788
RIVERSIDE, CALIFORNIA 92502

TELEPHONE 784-0500
AREA CODE 714

APR 21 9 16 AM '86

April 18, 1986

Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Post Office Box 807
Sacramento, CA 95804-0807

*referred to
Inf. —
Do not send
out*

Re: Request for Formal Written Advice

Gentlemen:

I am the City Attorney for the City of Moreno Valley. I am writing to you with the authorization of Mr. Stephen Webb, a Councilmember of the City of Moreno Valley, to request your written advice regarding whether Mr. Webb was disqualified from voting on a matter which came before the City Council on January 21, 1986, January 28, 1986, February 11, 1986, and February 18, 1986.

Acting on my oral and written advice as City Attorney, Mr. Webb participated in the questioned matter. I have enclosed a copy of my February 12, 1986 written memorandum advice on the issue, together with the attachments to that memorandum. As you will note, the written advice merely confirms prior oral advice given to Mr. Webb on February 7, 1986 and to the City Council on February 11, 1986.

I have also enclosed a copy of a February 15, 1986 letter from Mr. George Hague, a citizen of Moreno Valley, disputing Mr. Webb's right to participate in the City Council's deliberations on the questioned matter. The letter is addressed "To Whom It May Concern." The attachments to Mr. Hague's letter have been deleted as being, except for a copy of a newspaper article, duplicates of my February 12, 1986 advice memorandum which is enclosed herewith. The newspaper article is a report of the part of the February 11, 1986 meeting at which the City Council considered the matter at issue.

I have set forth below the facts which appear to me to be relevant to the question regarding Mr. Webb's qualification to participate in the City Council's deliberations on the matter.

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Page 2

QUESTION PRESENTED:

A City Councilmember of the City of Moreno Valley, possesses a financial interest, within the meaning of Government Code 87103(c) and 87103(d), in a company which provides cable television services within the City. Does possession of such an interest create a conflict of interest such as to disqualify Mr. Webb from participation in City Council consideration of a project reasonably expected to generate new subscribers to cable television services generally?

SUMMARY OF PERTINENT FACTS:

Mr. Stephen Webb is a Councilmember of the City of Moreno Valley. Mr. Webb is employed by Moreno Cablevision ("Cablevision") in a managerial position and received more than \$250 from Cablevision in each of the respective 12-month periods prior to January 21, 1986, January 28, 1986, February 11, 1986, and February 18, 1986. Mr. Webb has no ownership interest in Cablevision.

On January 21, 1986, January 28, 1986, February 11, 1986 and February 18, 1986, Mr. Webb participated in City Council deliberations or voted, or both, on three development-related proposals submitted on behalf of Griffin Homes. The proposals included a specific plan and subdivision under which 1,214 residential units would be developed on approximately 483 acres over a contemplated period of time of ten years. The other two proposals were for a change of zone to accommodate the proposal and an annexation/development agreement, pursuant to which the specific plan would be implemented.

On January 21, 1986, Mr. Webb voted with the other four members of the City Council to continue consideration of the proposals to January 28, 1986. On January 28, 1986, in a series of three to two votes, Mr. Webb voted in favor of approving the specific plan, to introduce a rezoning ordinance, to approve the related tentative tract maps, and to continue until February 11, 1986, consideration of the proposed development agreement. On February 11, 1986, the development agreement was approved and on February 18, 1986, an ordinance was adopted, approving that agreement, both on three to two votes with Mr. Webb voting in favor.

The 483 acres involved in the subject proposals were formerly part of a different development owned by a

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Page 3

different developer (Markborough), and as to which a different already-approved specific plan applied. The Markborough specific plan contemplated development of 461 residential units on the 483 acres which became part of the Specific Plan under which Griffin Homes proposed the development of 1,214 residential units.

Prior to January 21, 1986, then-existing zoning for the 483 acres would have permitted the development of 783 residential units, as follows:

- (a) 145 acres in the R-A-2 1/2 zone, allowing 58 units;
- (b) 60 acres in the W-2-20 zone, allowing 3 units;
- (c) 99.5 developable acres (out of 132.5) in the R-4 zone, allowing 721 units; and
- (d) 146.5 acres in the R-5 zone (open-space-combination, allowing no residential units.

The Markborough specific plan and zoning were approved by the Riverside County Board of Supervisors prior to the 1984 incorporation of the City. The actions in which Mr. Webb participated resulted in increasing the 783 allowable number of residential units under prior zoning by 431 to the 1,214 units approved for the Griffin Homes specific plan and zoning.

Mr. Webb's company, Moreno Cablevision, is one of two cable television service companies presently serving the City of Moreno Valley (under currently applicable Federal law, franchises for such businesses may be required by the City, but such franchises may not be exclusive). The transfer of ownership interests in Cablevision is permitted by California law within the meaning of Section 18702.2(e)(1) of the regulations of the Fair Political Practices Commission (2 Cal. Adm. Code, Section 18702.2).

There is, and has been, no agreement between Cablevision and the developer pursuant to which Cablevision would be given any right or preference in respect to cable television service to all or any part of the development. Also, Mr. Webb has informed me that the development is large enough that it could feasibly provide its own cable television system, one which would not be subject to the City's franchise requirements.

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April 18, 1986
Page 4

Mr. Webb has informed me further that Cablevision has a historical penetration rate of 17.8 percent of the residences in the City, and an average monthly billing of \$23.00 per customer. This penetration rate and average billing figures applied at all times pertinent to the actions in question in this letter.

If you have any question regarding this letter, please let me know. Mr. Webb may be reached by telephone at (714) 242-6651 or by mail at City of Moreno Valley, Post Office Box 1440, Moreno Valley, California.

Very truly yours,



Edward Duddy, City Attorney
City of Moreno Valley

ED/pd

Enclosures

cc: Councilmember Webb
Mayor Nieburger
Councilmember Horspool
Councilmember Lynn
Councilmember Scott
City Manager Dixon

DONALD F. ZIMMER
M. NEAL SINGER
EDWARD DUDDY

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APR 21 9 16 AM '86
TELEPHONE 784-0500
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April 18, 1986

Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Post Office Box 807
Sacramento, CA 95804-0807

Re: Request for Formal Written Advice

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Fair Political Practices Commission
April 18, 1986
Page 2

WHAT A
TANGLED WEBB

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WHEN FIRST WE
PRACTICE TO ~~DECEIVE~~
DECEIVE

also
§ 871

QUESTION PRESENTED:

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COUNCILMAN
WEBB OWNS
A MINORITY
INTEREST IN
CABLEVISION

WRONG!
COUNCILMAN
WEBB IS THE
OWNERS A
GEN. MGR. INTEREST
WEBB'S FATHER
OWN A
CONTROLLING INTER
IN "CABLEVISION"

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DUDDY'S
ANALYSIS
783 BEFORE
+ 431 ADDITIONAL
1214 TOTAL

WEBB'S
VOTE →

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INVESTIGATE
THIS !!

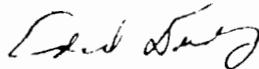
ONLY 2
COMPANIES
GRANTED
FRANCHISES
BY THE CITY

Legal Division
Fair Political Practices Commission
April 18, 1986
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If you have any question regarding this letter, please let me know. Mr. Webb may be reached by telephone at (714) 242-6651 or by mail at City of Moreno Valley, Post Office Box 1440, Moreno Valley, California.

Very truly yours,



Edward Duddy, City Attorney
City of Moreno Valley

ED/pd

Enclosures

cc: Councilmember Webb
Mayor Nieburger
Councilmember Horspool
Councilmember Lynn
Councilmember Scott
City Manager Dixon

the 17.8% figure relate
to the city ~~was~~ PENETR
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MOUNTAIN. !
NECESSITATING
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PROJECT. i.e.
almost 100% penetr
unless a homeowner
buys A SATELLITE DISH

DONALD F. ZIMMER
M. NEAL SINGER
EDWARD DUDDY

LAW OFFICES
ZIMMER & SINGER, INC.
4298 ORANGE STREET
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TELEPHONE 784-0500
AREA CODE 714

APR 28 7 11 AM '86
April 23, 1986

Legal Division
Fair Political Practices Commission
428 J Street, Suite 800 (P. O. Box 807)
Sacramento, California 95804-0807

Re: Request for Formal Written Advice (S. Webb) -
Correction

Gentlemen:

Please refer to my letter of April 18, 1986, requesting your written advice as to whether or not Councilmember Stephen Webb of the City of Moreno Valley was disqualified from participating in a matter which came before the City Council.

The statement in the second paragraph on page 2 of my April 18th letter, to the effect that Mr. Webb has no ownership interest in Cablevision, should be deleted. Mr. Webb does in fact own a minority interest in Cablevision acquired in mid-1985. This correction should not affect the answer to the question presented, inasmuch as Mr. Webb's employment already has established a financial interest in Cablevision on the part of Mr. Webb.

Please telephone me at the above number if you have any questions.

Very truly yours,

ZIMMER & SINGER, INC.



Edward Duddy, City Attorney
City of Moreno Valley

ED/h

cc: Mayor Nieburger
Councilmember Horspool
Councilmember Lynn
Councilmember Scott
Councilmember Webb
City Manager Dixon