



California Fair Political Practices Commission

September 24, 1986

Natalie E. West
Attorney at Law
Suite 1335 Ordway Building
One Kaiser Plaza
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-86-168

Dear Ms. West:

This letter is sent in response to your request for advice on behalf of Contra Costa County Supervisor Robert I. Schroder regarding his obligations under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

You have asked whether Supervisor Schroder is prohibited from participating in a decision on which of three alternative sites will be granted a use permit for a landfill. Supervisor Schroder owns a 50% interest in an insurance brokerage company which has a client that may be financially affected by the decision.

CONCLUSION

Supervisor Schroder may not participate in the decision regarding which of the three alternative sites will be granted a use permit for a landfill.

FACTS

Supervisor Schroder is a 50% owner in the Schroder Insurance Company. Schroder Insurance is, and for the last forty years has been, the insurance broker for Valley Disposal Service Company ("Valley Disposal"). In this capacity, Schroder Insurance earns annual commissions in excess of \$500.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Sections 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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Valley Disposal has an 18.2% interest in a corporation known as Central Landfill ("Central") that is endeavoring to build a landfill site. Central has purchased certain property and has applied for permits to use that property as a landfill site.

Valley Disposal has net tangible assets of \$4,900,000 for the year ending December 31, 1985. It had pre-tax income during 1985 in excess of \$750,000 and net income of \$385,096.

At present, three alternative landfill sites have been identified and environmental impact reports are currently in preparation. The decision before the supervisors will not be whether to grant a permit, but rather which one of the three sites will be chosen.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on:

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

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

You have indicated that the decision will not have any effect on the insurance premiums paid by Valley Disposal. Accordingly, we have not analyzed any potential financial effect

which the decision will have directly on Schroder Insurance. However, an official's income need not be affected in order for disqualification to be appropriate. Witt v. Morrow (1977) 70 Cal.App.3d 817, 139 Cal.Rptr. 16.

As a 50% owner of Schroder Insurance, income to Schroder Insurance is attributed to Supervisor Schroder on a 50% basis. Since Valley Disposal provides income to Schroder Insurance of over \$500 per year, Valley Disposal is a source of income of over \$250 to Supervisor Schroder. Therefore, under subdivision (c) of Section 87103, he may not participate in any decision which will have a reasonably foreseeable material financial effect on Valley Disposal.^{2/}

Regulation 18702.2 sets out tests for determining whether a decision will have a material financial effect on a business entity. In establishing these tests, the Commission sought to establish specific, definitive criteria for determining when a decision's effect would be material. The tests vary depending

^{2/} In addition to his financial interest in Valley Disposal, Supervisor Schroder would have a financial interest in Central if it is an "otherwise related business entity." Regulation 18706. A business entity is "otherwise related" if any one of the following three tests is met:

(1) One business entity has a controlling ownership interest in the other business entity.

(2) There is shared management and control between the entities....

(3) A controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

Regulation 18236(b)(1)-(3).

You have indicated that none of these tests is met in the present situation. Accordingly, Supervisor Schroder does not have a financial interest in Central.

However, the fact that Central is not "otherwise related" to Valley merely means that we need not look at the effect which the decision will have on Central. Since we have already concluded that Supervisor Schroder has a financial interest in Valley, we must still analyze whether the decision will have a material financial effect on Valley.

upon the size of the business entity. The test applicable to Valley Disposal^{3/} provides that a decision will have a material financial effect if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)(1)-(3).

In the present situation, the Valley asset which will be affected by the decision is its ownership interest in Central. You have advised us that Valley's ownership interest in Central will be affected by at least \$10,000 by the decision on the landfill site. You have indicated that if the Central Landfill site is not chosen, Valley's investment in Central, which exceeded \$10,000, would probably become worthless and be written off as a bad debt. On the other hand, you have indicated that

^{3/} You have pointed out that Regulation 18702(b)(1)(C) analyzes materiality in terms of increase or decrease in the value of "current assets or liabilities," but that Regulation 18702.2 does not contain the term "current."

When the Commission adopted Regulation 18702.2 to supersede Regulation 18702(b)(1), it dropped "current" from "current assets" in the materiality standards because it had been advised that "current assets" is an accounting term which refers to "cash on hand" and other liquid assets. The Commission intended to expand the assets covered by the materiality standard to include all assets of a company. This is clearly demonstrated by the Commission's decision in the Legan Opinion, 9 FPFC Opinions 1, No. 85-001 (Aug. 20, 1985) (copy enclosed). In Legan, the Commission applied the test in Regulation 18702.2 to real property assets of Kaiser Cement. In its Advice Letter to Robert Noyce, No. A-85-114 (June 18, 1985) (copy enclosed); the Commission made it clear that effects upon the values of stocks held by individuals would be considered as effects upon their assets and could be a basis for disqualification.

Natalie E. West
September 24, 1986
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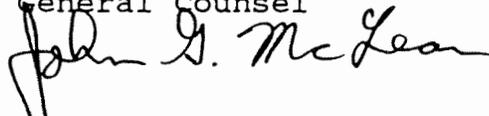
if the Central Landfill site is approved, Central Landfill would probably pay a return to its investors. Since Valley has a substantial investment in Central, it is likely that Valley's assets would be increased or decreased by \$10,000 or more as a result of the decision.

Accordingly, Supervisor Schroder may not participate in the decision on which one of the three alternative sites will be granted a use permit for a landfill. If at some point the Central Landfill site is eliminated from consideration, Supervisor Schroder may participate in the decision regarding which of the remaining sites will be granted a use permit unless it is reasonably foreseeable that Valley's assets, expenses or liabilities would be affected to the degree set out in the above-mentioned regulation.

Thank you for your cooperation and assistance in providing all of the information which was needed to provide this advice. If you should have any further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

JGM:km

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August 14, 1986

REPLY TO:

John G. McLean
Counsel
Legal Division
California Fair Political
Practices Commission
428 J Street, Suite 800
P.O. Box 8978
Sacramento, CA 95804-0807

Re: Request for Advice
Your File No. 86-168

Dear Mr. McLean:

This letter is a follow up to our telephone conversation of July 26, 1986.

Valley Disposal owns an 18.2% interest in Central Landfill. Based on this fact, you asked me to determine the following: If Central is able to open a landfill at its proposed site, will the decision result in an increase in the value of Valley's assets of \$10,000 or more? Conversely, if Central is not able to open a landfill, will the decision result in a decrease in the value of Valley's assets of \$10,000 or more?

While it is difficult to respond with specificity to these questions, I have discussed the matter with Sanford Skaggs, attorney for Central Landfill, and it appears that the decision will affect Valley's assets by \$10,000 or more.

He informed me that if the Central Landfill site is not chosen, Valley's investment in Central, which exceeded \$10,000, will probably become worthless and be written off as a bad debt.

On the other hand, if the Central Landfill site is approved, Central Landfill would probably pay a return to its investors, including Valley. Since Valley owns a substantial investment in Central, it is likely that Valley's assets will be increased by \$10,000 or more. ¹

1/ There is still a question as to whether \$10,000 is the appropriate figure, or whether \$30,000 is more appropriate, since Valley's assets border on the criteria set forth in regulation 18702.2(f). See 18702.2(e) and (g).

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Your File No. 86-168
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I had previously advised Supervisor Schroder that in my opinion disqualification was not required because the decision will not have a direct impact on Valley. In this regard, regulation 18702 defines materiality in terms of increase or decrease in the value of "current assets or liabilities." 18702(b)(1)(C). Regulations 18702.2 does not contain the reference to "current", but should be interpreted to require some kind of direct and immediate impact. Moreover, Valley does not own more than 50% of Central Landfill and is not an "otherwise related business entity" as defined by FPPC regulations. However, based on our telephone conversation, it appears likely that the FPPC will determine that the decision will have a material financial effect on Valley and that disqualification is required. If you reach this decision, I think it is important to clarify the way that you are interpreting the Act as it applies to business entities which have an ownership interest in other business entities. I am not alone in believing that the FPPC was interpreting sections 18706 and 18236 to mean that disqualification was not required unless two companies have a parent-subsidiary relationship, or are "otherwise related."

Furthermore, when you reach a conclusion in this case, I believe it is important to remember that application of conflict of interest laws requires the balancing of two competing interests. On the one hand, decisions should be made to benefit the public, not private financial interests. At the same time, making decisions is one of the primary duties of an official. Requiring disqualification effectively disenfranchises the citizens who officials represent, and should not be required incautiously.

The Political Reform Act was enacted out of a belief that government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth. Section 81001(a). When the Act's disqualification provisions are construed so broadly as to require disqualification in cases where the official will derive no actual or potential financial benefit, it serves to make government less representative, not more so.

Section 81002(c) provides that that "assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."

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This standard should be the touchstone against which the Act and regulations are interpreted. In this instance, there is no way that the Supervisor's assets or income may be materially affected. The Schroder Insurance Company has been selling insurance to Valley Disposal for over fifty years, since the Supervisor was three years old. As we previously informed you, neither he nor his insurance company will receive any financial gain (or loss) as a result of the decision. Regardless of which site is chosen, the insurance premium paid by Valley will not be affected.

Instead, the Supervisor's Insurance Company sells insurance to a company that owns an interest in another company that seeks to build a landfill. Requiring disqualification under these circumstances would prevent the Supervisor from participating in one of the most difficult and controversial issues facing the county. This is precisely the type of issue that requires robust, open debate, discussion and participation if government is to represent the will of all people equally. I am very concerned about an overly broad interpretation of the statute that would serve to frustrate some of the very objectives it seeks to achieve.

As I am sure you will agree, this is a highly complex and technical area of the law. Supervisor Schroder has made every effort since he first sought my advice last September and requested advice from the Commission in May, to assure that he complies with both the letter and spirit of the law while also fulfilling his responsibilities as an elected official. If you conclude that disqualification is required, please advise Supervisor Schroder concerning the scope of decisions from which disqualification would be required. Would disqualification be required from decisions concerning all landfill sites, just these concerning Central Landfill and so forth.

Please contact me if you would like any additional information.
Thank you.

Very truly yours,


Natalie E. West

cc: Robert Schroder
Sanford Skaggs

NEW:dp

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REPLY TO:

July 24, 1986

John G. McLean
Counsel
Legal Division
California Fair Political
Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Re: Your File No. 86-168

Dear Mr. McLean:

In response to your letter of June 9, 1986, I have obtained the following information:

1. Central Landfill should be evaluated pursuant to 18702.2(g) because it does not meet any of the financial standards set forth elsewhere in the regulation.
2. Valley Disposal Service, Inc. is not covered by (c) or (d) or the first paragraph of (f). It has net tangible assets of \$4,900,000 according to audited financial statements for the year ending December 31, 1985.

It has pre-tax income in excess of \$750,000 but net income of \$385,096, which is less than \$400,000 specified in the applicable financial standards.

I do not know whether you require strict compliance with these standards, in which case paragraph (g) or substantial compliance, in which case you would, I assume, apply paragraph (e).

With respect to the potential impact of the landfill decision on Valley Disposal, the Board of Supervisors will be asked to make decisions concerning the location of a landfill site in Contra Costa County. Six alternative landfill sites have been identified and environmental impact reports are currently in preparation.

The County has identified three sites and private organizations have proposed the remaining three.

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The insurance premium paid by Valley Disposal is based on the type of truck and the length of the haul (Less than 50 miles, more than 50 but less than 100 miles, and so forth). The insurance premium paid by Valley will not be affected by the choice of landfill site because the company will continue to use the same trucks and the length of the haul will be less than fifty miles no matter which site is chosen.

With respect to impact on gross revenues, it is my understanding that the choice of landfill site will not have any direct impact on Valley's revenues. While there is a potential for increased or decreased costs depending on which landfill site is chosen and perhaps other factors (such as disposal fees), these changes seem speculative at best. In addition, Valley can pass any changes directly to the customer.

If the Central Landfill site is chosen, Central Landfill would probably pay a return to its investors, one of which is Valley Disposal. However, I do not believe that the law requires disqualification since Valley Disposal does not meet the tests of a business entity that is "otherwise related" to Central Landfill.

If you would like me to obtain any specific information, please do not hesitate to contact me.

Very truly yours,



Natalie E. West

cc: Robert Schroder

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MAY 15 10 03 AM '86

May 13, 1986

Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: Request for Advice: Gov. Code Section 83114

Dear Sir or Madam:

I represent Robert I. Schroder, Contra Costa County Supervisor for the Third District. In the near future, the Board of Supervisors will consider applications for a use permit authorizing a new landfill site in the county.

Several months ago, Supervisor Schroder asked me for my legal advice concerning any potential conflict of interest that he might have concerning the use permit decision and I prepared the enclosed letter.

He has now requested me to obtain written advice from the Fair Political Practices Commission pursuant to section 83114. Based on the facts contained in the enclosed letter, is Supervisor Schroder required to disqualify himself from making or participating in the making of a decision of the Board of Supervisors of Contra Costa concerning the location of a landfill site?

Your prompt attention to this matter is appreciated. Please contact me if I can provide any additional information.

Very truly yours,

Natalie E. West
NATALIE E. WEST *sp*

Enclosure

cc: Supervisor Robert I. Schroder

NATALIE E. WEST
ATTORNEY AT LAW
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OAKLAND, CALIFORNIA 94612
(415) 839 9468

January 6, 1986

Robert Schroder
Contra Costa Supervisor
Third District
P.O. Box 4097
Walnut Creek, California 94596

Dear Mr. Schroder:

You have asked me for an opinion concerning making or participating in the making of decisions concerning a potential landfill site in Contra Costa County. The facts as I understand them are as follows: You are a member of the Board of Supervisors of Contra Costa County. You are also a 50% owner in the Schroder Insurance Company. Schroder Insurance insures and has, for the last forty years, insured the Valley Disposal Service Company. Valley Disposal Service Company pays a annual insurance premium in excess of \$500.

Within the next few months, the Board of Supervisors of Contra Costa County will consider applications for a new landfill site in the county. Valley Disposal Company has a 18.2% interest in one of the firms that is endeavoring to build a landfill site. It is my understanding that five entities, including Valley Disposal, have formed a corporation known as Central Landfill. Central Landfill has purchased certain property and has applied for permits to use that property as a landfill site.

Based on these facts, you have asked whether you are required to disqualify yourself from decisions involving issuance of a use permit for the landfill.

Whether or not you are required to disqualify yourself from decisions involving the landfill depends on a factual determination involving two issues:

1. whether the decision concerning the landfill will have a material financial effect on Valley Disposal, and
2. whether there is shared management and control between Central Landfill and Valley Disposal.

Robert Schroder
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Based on the information available to me, it does not appear that the decision will have a material financial effect on Valley Disposal or that Valley Disposal has shared management and control of Central Landfill. Therefore, I believe it is highly unlikely that you would be required to disqualify yourself. However, you should be aware that only the Fair Political Practices Commission has legal authority to give advice that will insulate you in an enforcement proceeding. After you have reviewed this letter, you may want to request advice directly from the Commission. I would be glad to request advice on your behalf if you choose to pursue that route.

With those introductory comments, I will review the applicable provisions of law.

The Political Reform Act requires public officials to disqualify themselves from making or participating in the making of governmental decisions that may have a material financial effect on certain financial interests, including sources of income. Disqualification is required not only when the decision may affect a source of income but also when the decision may affect a business entity that is a subsidiary or "otherwise related" to the source of income.

In the following paragraphs, we determine that Valley Disposal is a source of income to you. You will be required to disqualify yourself if the decision will have a material financial effect on Valley Disposal. I set forth the standards that will determine whether a financial effect is deemed to be "material." Next, I consider whether Central Landfill is a business entity that is "otherwise related" to Valley Disposal so that disqualification may be required. I set forth certain criteria that you should apply to analyze the relationship between Valley Disposal and Central Landfill. If these criteria are met, you will be required to disqualify yourself from decisions involving issuance of a permit to Central Landfill.

1. Valley Disposal

a. Source of Income

Initially, it is important to recognize that Valley Disposal Service Company is a source of income to you. The Schroder Insurance Company receives an insurance premium in excess of \$500 per year from Valley Disposal Company. Gov. Code Section 82030 defines income to include a "pro-rata share of any income of any business entity ... in which the individual

Robert Schroder
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... owns, directly, indirectly or beneficially, a 10% interest or greater." Since you are a 50% owner in the Schroder Insurance Company, 50% of the insurance premium paid by Valley Disposal Service Company is attributable to you as income.

The disqualification provisions apply if the decision may affect a source of income aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the official within twelve months prior to the time when the decision is made. Gov. Code section 87103(c). Since the amount of the premium exceeds \$500 per year, your 50% share of the premium exceeds the \$250 threshold. Thus, Valley Disposal is a source of income to you and you are required to disqualify yourself from making or participating in the making of any decision if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally on Valley Disposal.

b. Material Financial Effect

FPPC regulations set forth standards for determining whether the decision will have a material financial effect on a source of income. 2 Cal. Adm. Code section 18702(3)(A)(B)(C) and (D). Paragraphs (A), (B) and (D) are clearly not applicable to the instant situation and I will not discuss them. The only section which might be applicable sets out a monetary test. A decision is deemed to be "material" if the effect of the decision will be to increase or decrease gross or net revenues beyond certain dollar amounts. In the instant case, the Board of Supervisors is making land use decisions concerning the location of the landfill. It will not set the rates at the landfill or rates charged by disposal companies such as Valley Disposal. Thus, the decision will not affect Valley Disposal's gross or net revenues.

If a new disposal site is not approved and Valley Disposal is required to haul garbage to a distant location, the company might charge higher rates to cover increased costs. Revision of its rates would not be a direct result of the supervisors' decision and would probably require approval of new contracts with local jurisdictions. Although such higher rates would increase gross revenues, the potential impact seems sufficiently indirect and speculative so that it would not be considered to be "an effect of the decision."

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Thus, it is my opinion that the decision concerning the landfill location will not have a material financial effect on Valley Disposal.

2. Central Landfill

Although the decision will have no direct impact on Valley Disposal, it will have a material financial effect on Central Landfill because decisions concerning the landfill permits will have a direct and immediate impact on Central Landfill. Such an impact is deemed to be a material financial effect. 2 Cal. Adm. Code 18702(a).

In certain cases, an official is required to disqualify himself from decisions affecting a business entity in which he has no direct investment because affected business entity is related to another entity which is a source of income to the official. Since the decision will have a material financial effect on Central Landfill, we need to determine whether Central Landfill is sufficiently related to Valley Disposal Company so that disqualification may be required. Analysis of the issue is governed by Fair Political Practices Commission regulations. 2 Cal. Admin. Code Section 18706 provides that "an official has a financial interest in a decision within the meaning of Government Code 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 a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code Section 87103(a), (c) or (d)." (emphasis added)

The term "parent, subsidiary or otherwise related business entity" is further defined by FPPC regulation 18236. That regulation sets forth standards to determine when one corporation is a parent, subsidiary or otherwise related business entity of another. A parent-subsidiary relationship requires that one corporation directly or indirectly possess more than 50 percent of the voting power of another corporation. That test does not appear to be met in the instant case because Valley Disposal owns only 18.2% interest in Central Landfill and therefore, it is unlikely that Valley Disposal owns more than 50 percent of the voting power of Central Landfill.

We must apply the tests set forth in paragraph (b) of the regulation to determine whether Central Landfill is "an otherwise related business entity" of Valley Disposal. The regulation sets

Robert Schroder
January 6, 1986
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out three tests. First, two entities are "otherwise related if one entity has controlling ownership interest in the other entity." 2 Cal. Admin. Code section 18236(b)(1). As stated above, that test does not appear to be present in the instant case since Valley Disposal owns only a 18.2% interest in Central Landfill.

In addition, a business entity is otherwise related to another business entity if a controlling owner (50% or greater interest as shareholder or as a general partner) in one entity is also controlling owner of the other entity. 2 Cal. Admin. Code section 81236(b)(3). Based on the information you have furnished to me, there is no indication that a controlling owner in Valley Disposal is a general partner or owns 50% or more in Central Landfill. Therefore, this test also does not appear to be met by the facts of the instant case.

Finally, one business entity is otherwise related to another if there is shared management and control between the two entities. 18236(b)(2). The regulation further specifies that in determining whether there is shared management and control, consideration should be given to the following factors:

- (A) the same person or substantially the same person owns and manages the two entities;
- (B) there are common or commingled funds or assets;
- (C) the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis;
- (D) there is otherwise a regular and close working relationship between the entities.

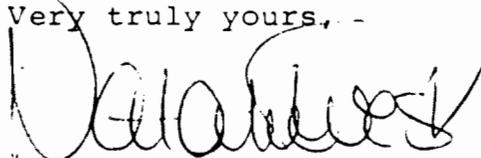
It is my understanding that none of these standards are met and that the only connection between Valley Disposal and Central Landfill is that the president of Valley Disposal sits on the board of directors of Central Landfill. If so, there is no shared management and control between Valley Disposal and Central Landfill.

In conclusion, I do not believe that the facts of the instant case require you to disqualify yourself from participating in decisions concerning issuance of a use permit for a new landfill site.

Robert Schroder
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I am available to discuss the analysis set forth above if you have any additional questions concerning this matter. I hope you have not been inconvenienced by the delay in responding to your inquiry and that you find this information of assistance.

Very truly yours, -



NATALIE E. WEST



California Fair Political Practices Commission

January 15, 1987

Natalie E. West
Attorney at Law
Civic Center Complex
835 East 14th Street
San Leandro, CA 94577

Re: Follow-up to Advice Letter
Our File No. A-86-168

Dear Ms. West:

This letter is in response to your request for additional advice on behalf of Contra Costa County Supervisor Robert I. Schroder regarding his obligations under the conflict of interest provisions of the Political Reform Act.^{1/} Our previous advice letter to you dated September 24, 1986, is incorporated herein by reference and a copy is attached for your convenience.

QUESTION

Central Landfill has withdrawn its application for a permit to operate a landfill. May Supervisor Schroder participate in decisions regarding whether to grant use permits for the remaining two sites currently being considered for landfills?

CONCLUSION

Supervisor Schroder may participate in the decisions regarding whether to grant use permits for the two remaining sites currently being considered for landfills unless it is reasonably foreseeable that the expenses or liabilities of Valley Disposal Service Company will be materially affected by the decisions.

FACTS

Supervisor Schroder is a 50 percent owner in the Schroder Insurance Company. Schroder Insurance is, and for the last 40 years has been, the insurance broker for Valley Disposal

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Natalie E. West
January 15, 1987
Page 2

Service Company ("Valley Disposal"). In this capacity, Schroder Insurance earns annual commissions in excess of \$500.

Valley Disposal has an 18.2 percent interest in a corporation known as Central Landfill ("Central"). At the time our previous advice letter was written, Central had purchased certain property and had applied for a permit to use that property as a landfill site.

In our advice letter, we concluded that Supervisor Schroder is prohibited from participating in a decision regarding "which of three alternative sites will be granted a use permit for a landfill." We further concluded that if at some point the Central Landfill site is eliminated from consideration, Supervisor Schroder may participate in the decision regarding which of the remaining sites will be granted a use permit unless it is reasonably foreseeable that Valley's assets, expenses or liabilities would be affected to the degree set out in Regulation 18702.2.

You have received a letter from Silvano B. Marchesi, Assistant Contra Costa County Counsel, which indicates that the issues before the supervisors will not be which of the three sites will be granted a use permit for a landfill. Rather, each permit application will be judged separately. Mr. Marchesi's letter states in pertinent part:

Presently, there are three separate applications pending before the County for landfill sites. Each is an application for a land use permit. Each application will be judged independently, based on the criteria set forth in the County Ordinance Code relating to the issuance of such permits. It is possible that all the applications will be granted, or that one or two will be granted, or even that none of them will be granted. Legally, the issuance or denial of a permit for one site has no effect on either of the other applications.

Since the time Mr. Marchesi's letter was written, Central has withdrawn its application for a permit to operate a landfill.^{2/} (See, letter from Boyd M. Olney, Jr., to Harvey Bragdon, dated December 11, 1986; copy attached.)

^{2/} This also occurred since the time you requested additional advice. Accordingly, some portions of your request are no longer relevant. As you requested on the telephone, we are providing advice regarding Supervisor Schroder's participation in the currently remaining decisions.

You have indicated that you do not believe the decisions regarding the remaining permit applications will have any reasonably foreseeable impact on Valley's expenses or income. You have provided the following additional facts regarding the effects which the decisions to issue or deny permits on the two remaining sites may have on Central and Valley:

The applications do not involve setting gate fees, tipping charges or any other fee that Valley might have to pay to a landfill. Those fees will not be set by the Board of Supervisors. They will be privately established. You have been informed that it will be several years before fees are established.

The two sites currently under consideration are close enough together so that there would not be any significant difference in cost for Valley to haul waste to either site.

If both of the sites are rejected, Valley may have to truck waste to Altamont, which would increase hauling costs above what they are now. However, it is also possible that the existing landfill may be used as a transfer station. In that situation, Valley trucks would go to the current landfill site where waste would be transferred to larger trucks and hauled to another landfill site. Finally, even if one or more new landfill sites are approved, Valley may still choose to truck to Altamont if the fee structure eventually established at the new site(s) is higher than the costs of trucking to Altamont.

ANALYSIS

As stated in our previous advice letter, Supervisor Schroder may not participate in any decision which will have a reasonably foreseeable material financial effect on Valley.^{3/} The effect of a decision is considered material to Valley if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

^{3/} Supervisor Schroder does not have a financial interest in Central. (See, our previous advice letter at p.3.) Therefore, the effect which any decision may have on Central is irrelevant to our analysis except to the extent that the effect is translated into a financial effect on Valley.

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)(1)-(3).

Since Central has withdrawn its permit application, the decision regarding the remaining applications will not affect Valley's ownership interest in Central. However, we must still analyze the effect which these decisions will have on Valley's expenses.

First, Valley may pay different fees for dumping at different sites. Under the standards set forth in the Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975), in order for an effect to be reasonably foreseeable it must be more than a mere possibility; there must be a substantial probability. In the present situation, the fees to be charged at different sites are not currently known and will not be set for several years. Furthermore, the fees will be privately established and will not be set by the Board of Supervisors. Under these circumstances, we do not believe the effect which these decisions will have on the fees paid by Valley is "reasonably foreseeable."

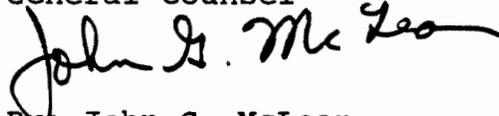
Second, Valley's expenses may be affected by the costs of hauling waste to different sites. Presumably, however, Valley's decision regarding which site it will use will be based not just on hauling, but also on dumping fees. For example, Valley may choose to dump at a site which is located at a further distance than another site in order to take advantage of lower dumping fees. Since the fees to be charged at different sites are not currently foreseeable, we do not believe that the overall effect which these decisions may have on Valley's expenses is foreseeable. Therefore, Councilmember Schroder may participate in the decisions regarding the remaining permit applications.

Natalie E. West
January 15, 1987
Page 5

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

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in black ink that reads "John G. McLean". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

By: John G. McLean
Counsel, Legal Division

DMG:JGM:km
Enclosures

F F P C
Nov 10 9 47 AM '86

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(415) 892-8878

REPLY TO:

November 6, 1986

Supervisor Robert Schroder
Your file No. A-86-168

John G. McLean
Counsel, Legal Division
California Fair Political
Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Dear Mr. McLean:

This letter requests additional advice on behalf of Contra Costa County Supervisor Robert I. Schroder. In your advice letter dated September 24, 1986, you concluded that Supervisor Schroder may not participate in the decision regarding which of three alternative landfill sites will be granted a use permit for a landfill. You further concluded that "[i]f at some point the Central Landfill site is eliminated from consideration, Supervisor Schroder may participate in the decision regarding which of the remaining sites will be granted a use permit unless it is reasonably foreseeable that Valley's assets, expenses or liabilities would be affected to the degree set out in the regulation [defining material financial effect on a businss entity]."

Additional advice is requested concerning Supervisor Schroder's ability to vote on the other two applications.

As a matter of information, the County is not restricted to granting one permit for a landfill. See enclosed letter from Silvano B. Marchesi, Assistant Contra Costa County Counsel.

Based on the analysis contained in your letter, it seems to me that if the Central Landfill application has been approved, the Supervisor should disqualify himself from participating in decisions involving any of the other two sites because there is the potential that the other site, if approved, would detract business from the Central Landfill site, thus having a material financial effect on Central and perhaps, in turn, on Valley. Nevertheless, this connection is somewhat remote and speculative.

John G. McLean
Counsel, Legal Division
Re: Supervisor Robert Schroder
Your file No. A-86-168
November 6, 1986
Page 2

If the Central site has been rejected, we must examine the potential impact of the remaining decisions both on Central, and directly on Valley.

With respect to impact on Central, if the Central Landfill site is disapproved, it seems apparent that the site will be eliminated from active consideration by the Board of Supervisors. The landfill permits are being processed under a chapter of the code that regulates landfill permits. That chapter is silent on requests for reconsideration, and resubmittals of applications. However, other sections of the code regulating land use provide that requests for reconsideration must be filed within ten days after the decision, Section 26-2.2408. Furthermore, after being rejected, no new land use permit can be filed for one year unless there has been a material change in circumstances and subject to the discretion of the planning director. Section 26-2.2003. The county may apply these procedural sections to landfill permits. In any event, it seems highly unlikely that Central would be able to resurrect its application if the other two applications are denied.

With respect to the impact on Valley, assuming that the Central site is rejected, we need to examine whether approval of either or both of the remaining sites would have an impact on Valley's assets or expenses.

The decision will not have any direct impact on Valley's expenses or income. The applications do not involve setting gate fees, tipping charges or any other fee that Valley might have to pay a landfill. These fees will be privately established and will not be set by the Board of Supervisors. In fact, I have been informed that it will be several years before fees are established.

The two sites are close enough so that there would not be any significant differences in costs resulting from Valley's hauling waste different distances.

If all of the sites are rejected, Valley would probably have to truck waste to Altamont, which would increase hauling costs above what they are now. However, the current landfill is approaching capacity and is not an available alternative. Even if one or more new landfill sites are approved, Valley could choose to

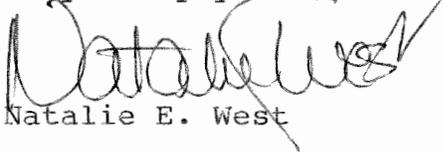
John G. McLean
Counsel, Legal Division
Re: Supervisor Robert Schroder
Your file No. A-86-168
November 6, 1986
Page 3

truck to Altamont if the fee structure eventually established at the new site is higher than the costs of trucking to Altamont. This scenerio is further complicated because the existing landfill may be used as a transfer station. Valley trucks would go to the Acme site, where waste would be transferred to larger trucks and hauled to another landfill site.

In summary, it is extremely difficult to identify any quantitative outcome on Valley as a resonably foreseeable result of decisions involving the two landfill sites other than the Central site.

Based on the foregoing, Supervisor Schroder would like to be advised whether he can participate in decisions affecting the landfill sites other than the site owned by Central. Your prompt attention to this request is appreciated.

Very truly yours,



Natalie E. West

NEW:dp

Enclosure

cc: Supervisor Robert I. Schroder
Silvano B. Marchesi, Contra Costa County Counsel

VICTOR J. WESTMAN
COUNTY COUNSEL

SILVANO B. MARCHESI
ARTHUR W. WALENTA, JR.
ASSISTANTS

MICHAEL D. FARR
EDWARD V. LANE, JR.
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OFFICE OF COUNTY COUNSEL

CONTRA COSTA COUNTY

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SHARON L. MILLER
PAUL R. MUÑIZ
DAVID F. SCHMIDT

October 20, 1986

Natalie E. West
Attorney at Law
Ordway Building, Suite 1335
One Kaiser Plaza
Oakland, CA 94612

Re: FPPC opinion on Robert Schroder

Dear Ms. West:

This office has been provided a copy of the 9-24-86 letter to you from the California Fair Political Practices Commission in response to your request for advice concerning Supervisor Robert I. Schroder. In reading the letter we noticed a misstatement of fact.

On page 2, the last sentence in the section on Facts states as follows:

"The decision before the supervisors will not be whether to grant a permit, but rather which one of the three sites will be chosen."

Technically, this statement is incorrect. Presently, there are three separate applications pending before the County for landfill sites. Each is an application for a land use permit. Each application will be judged independently, based on the criteria set forth in the County Ordinance Code relating to the issuance of such permits. It is possible that all the applications will be granted, or that one or two will be granted, or even that none of them will be granted. Legally, the issuance or denial of a permit for one site has no effect on either of the other applications.

We do not know what effect this change in the recitation of facts might have on the opinion which was issued by the FPPC. We simply wish to bring it to your attention for your consideration.

Very truly yours,

Victor J. Westman
County Counsel



By: Silvano B. Marchesi
Assistant County Counsel

SBM:df'

cc: Robert I. Schroder, Supervisor, District III

MCCUTCHEN, DOYLE, BROWN & ENERSEN

FORMERLY

VAN VOORHIS & SKAGGS

COUNSELORS AT LAW

1855 OLYMPIC BOULEVARD, THIRD FLOOR

POST OFFICE BOX V

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WASHINGTON, D.C.
SHANGHAI

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(415) 937-8004
CABLE ADDRESS MACPAG

December 17, 1986

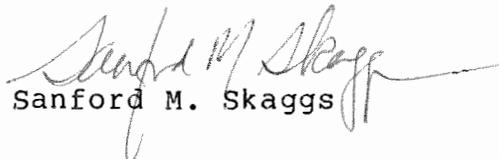
Mr. John McLean
Fair Political Practices Commission
Legal Department
P. O. Box 807
Sacramento, CA 95804-0807

Central Landfill Corporation
Our File No. 71950.003

Dear Mr. McLean:

In accordance with Natalie West's request I am enclosing a copy of Central Landfill's letter dated December 11, 1986 to Mr. Bragdon, Community Development, Contra Costa County withdrawing its applications for a landfill.

Very truly yours,


Sanford M. Skaggs

SMS:ksc4/10
Encl.
cc: Natalie West

F/1950.03

CENTRAL LANDFILL

December 11, 1986

Mr. Harvey Bragdon
Community Development
651 Pine Street
Martinez, CA 94553

County Files No. 6-85-CO
No. GPA 9-85-CO
No. 2689-RZ
No. 2104-86

Dear Mr. Bragdon:

Central Landfill Corporation hereby withdraws its applications referenced above.

We have evaluated the current status of these applications and have determined that the likelihood of obtaining a favorable decision does not justify further expenditure of our funds.

We continue to believe that the site is an excellent one which would have served well the interests of the public. We committed and expended approximately \$1 million of our funds towards this project. Unfortunately, for us and for the public, it is clear that the project will not go forward.

We appreciate the efforts of the County staff who have worked hard to process our applications expeditiously and professionally.

Very truly yours,



Boyd M. Olney, Jr.

cc: Mr. P. Batchelor
Supervisors
Ms. Linda Best



California Fair Political Practices Commission

November 14, 1986

Natalie E. West
Civic Center Complex
835 East 14th Street
San Leandro, CA 94577

Re: 86-168-Follow-Up

Dear Ms. West:

Your letter requesting advice under the Political Reform Act was received on November 10, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
Robert I. Schroder