



California Fair Political Practices Commission

July 1, 1986

Margie Handley, Commissioner
California Transportation Commission
P.O. Box 942873
Sacramento, CA 94273-0001

Re: Your Request For Advice
Our File No. A-86-188

Dear Ms. Handley:

Thank you for your request for advice regarding your duties under the Political Reform Act.^{1/}

QUESTION

As an officer and shareholder in a business which supplies asphalt to Caltrans through its bidding process, are you prohibited from participating as a member of the California Transportation Commission in decisions regarding the State Transportation Improvement Plan?

CONCLUSION

You are prohibited from participating in the decision on the portions of the State Transportation Improvement Plan which could have a material financial effect on the business entity in which you are an officer and shareholder.

FACTS

You are currently a Commissioner with the California Transportation Commission (CTC). One of the CTC's main duties is to annually adopt the five-year State Transportation Improvement Plan (STIP). The STIP, which is required to be

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. As I indicated in our phone conversation, you should also seek the Attorney General's advice regarding the conflict of interest provisions of Section 1090, *et seq.* Those provisions may place limitations on your authority to bid on Caltrans projects. The Commission does not render advice with respect to Section 1090.

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adopted prior to July 1 of each year, represents the program of capital projects and aggregated operating expenses for the part of California's transportation system under the jurisdiction of the CTC. Included in the STIP is the State highway system. Although the CTC does not decide which company will obtain work on a particular project, it does determine the amount and timing of state allocations for the projects. The CTC adopts the STIP on a county-by-county basis.

You are the President and a 53 percent shareholder in Hot Rocks, Inc., a business which is engaged in the sale of asphalt. In the past, Hot Rocks, Inc., has bid on Caltrans contracts in Mendocino, Lake and Sonoma counties. At the present time, due to the cost of liability insurance, Hot Rocks, Inc., is not bidding on any Caltrans projects, but may want to do so in the future. Hot Rocks, Inc., has 3 or 4 competitors who normally bid on the same projects on which Hot Rocks, Inc., bids. You have indicated that the bidding is highly competitive. Currently, Hot Rocks, Inc., has contracts with Caltrans on more than 50 percent of the projects on which these entities normally bid.

ANALYSIS

The Political Reform Act provides that a public official may not make, participate in making, or in any way use her official position to influence the making of any governmental decision in which she knows or has reason to know she has a financial interest. Section 87100.

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 her immediate family, or 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

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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).

In the present situation, you have an investment interest in Hot Rocks, Inc., worth over \$1,000, you are an officer of the entity, and it is a source of income to you. Accordingly, you may not participate in any decision which will have a reasonably foreseeable material financial effect on Hot Rocks, Inc.^{2/}

Because Hot Rocks, Inc., is successful in such a large number of the Caltrans projects on which it bids and because it has relatively few competitors, we believe it is reasonably foreseeable that the STIP decisions for the counties in which Hot Rocks, Inc., bids on contracts, would have a financial effect on Hot Rocks, Inc. (See, Thorner Opinion 1 FPPC Opinions 198, No. 75-089, Dec. 4, 1975; and Advice Letter to David E. Milano, No. 77-07-051; copies enclosed.) Of course, you are not prohibited from participating in the STIP decision for any county in which Hot Rocks, Inc., will not be bidding on contracts.

Having reached the conclusion that at least some STIP decisions will have a reasonably foreseeable effect on your financial interests, it is necessary to consider whether the effect of these decisions will be considered "material." The Commission has adopted regulations 2 Cal. Adm. Code Sections

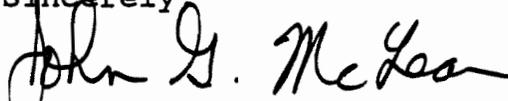
^{2/} As a 53% owner of Hot Rocks, Inc., customers of the business are sources of income to you on a pro rata basis. Section 82030. Accordingly, you may not participate in any decision which will have a material financial effect on a customer who has been a source of income to Hot Rocks, Inc., of \$471 or more within 12 months prior to the time when the decision is made. You have not provided us with facts to indicate that your customers may be affected by the STIP decisions. However, if this is the case, you should contact us for further advice.

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18702, 18702.1 and 18702.2 (copies enclosed) which provide guidelines for making this determination. These regulations should be applied to the particular factual circumstances of each decision. Without knowing more about the size of your company and the probable size of paving contracts, we are unable to apply these regulations to your circumstances at this time. If you have specific facts which you want considered, please feel free to contact this agency again.

I trust that this letter responds to your questions. If you would like to discuss this further, I may be reached at (916) 322-5901.

Sincerely



John G. McLean
Counsel
Legal Division

JGM:plh
Enclosures

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CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, P.O. BOX 942873
SACRAMENTO 94273-0001
(916) 445-1690

May 28, 1986

John G. McLean, Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear John:

Thank you for your time this morning. As you requested, I am writing this letter to ask for a written opinion as to any possible conflict of interest in voting to approve the State Transportation Improvement Plan (STIP)--and also if I can continue to bid on Procurement bids, which are an integral part of my business.

As you know, I am a General Engineering Contractor, and also supply asphalt and aggregates to Caltrans through their Procurement Bidding process. There are several other suppliers in the area, so the bidding is highly competitive and I must be the low bidder in order to sell asphalt and aggregates to Caltrans. At the present time, due to the exorbitant increases in liability insurance, I am not bidding on any Caltrans projects as a Prime Contractor, but I may want to do so in the future. This, too, is all done by the bidding process and is highly competitive.

There is no way that I can see by being a Commissioner that I would have access to any information that would affect this bidding process. I have abstained whenever any projects were approved in Mendocino, Lake, and Sonoma Counties, where I know my business will be directly affected.

My question is, relative to the STIP, since this is the total transportation plan for the State of California, even though it may have a small percentage of projects that would directly affect my business, may I vote to adopt the STIP? Commissioner Hawthorne and I find ourselves in similar circumstances, so it may expedite matters to refer this to the same person who is handling his case.

I need an answer by June 26, as that will be the day we will vote to approve the STIP.

Sincerely,

A handwritten signature in cursive script that reads "Margie Handley".

MARGIE HANDLEY
Commissioner



California Fair Political Practices Commission

June 9, 1986

Margie Handley, Commissioner
California Transportation Commission
P.O. Box 942873
Sacramento, CA 94273-0001

Re: 86-188

Dear Ms. Handley:

Your letter requesting advice under the Political Reform Act has been received on June 3, 1986 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