



# California Fair Political Practices Commission

July 22, 1986

Lyle L. Lopus  
Assistant City Attorney  
City of Fremont  
39700 Civic Center Drive  
Fremont, CA 94538

Re: Your Request for Advice  
Our File No. I-86-198

Dear Mr. Lopus:

Thank you for your letter concerning the conflict of interest provisions of the Political Reform Act. When we discussed your letter on the telephone, you indicated that your question has become moot. Therefore, in accordance with Commission regulation 2 Cal. Adm. Code Section 18329 (copy enclosed), we decline to provide written advice in response to your question. However, I would like to briefly clarify our interpretation of the "rule of legally required participation" in Government Code Section 87101.

The Commission has stated that the "rule of legally required participation" shall be narrowly construed. 2 Cal. Adm. Code Section 18701(c); Hudson Opinion, 4 FPPC 12 (No. 77-007, Feb. 7, 1978); Brown Opinion, 4 FPPC 19 (No. 77-024, Feb. 7, 1978). There is no precedent in the Commission opinions or in the staff advice letters for advising you that the rule of legally required participation applies when a quorum cannot be achieved due to a councilmember's illness. Whether the rule should apply in a particular case depends on the specific facts of that case; we have no guidelines as to what those facts must be. If, in the future, you are faced with a situation where you believe it would be appropriate to apply the rule of legally required participation, please contact us for advice.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
Counsel  
Legal Division

KED:km  
Enclosure



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## City of Fremont

39700 Civic Center Drive  
Fremont, California 94538

(415) 790-6620

June <sup>13,</sup>~~12,~~ 1986

Legal Division  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street, Suite 800  
Sacramento, CA 95814

### Gentlepersons:

I am writing to request written confirmation and some expansion of advice given me by Kathy Donovan this morning.

The facts I related to Ms. Donovan are as follows:

- a) Fremont is a general law city with all five City Council positions presently filled.
- b) A land use application is pending which, under the Government Code, will require three votes for approval.
- c) Two councilmembers are disqualified under conflict of interest provisions.
- d) One councilmember, who is otherwise qualified to participate, has suffered a sudden physical incapacity of presently uncertain duration.

My understanding of the advice Ms. Donovan gave me really is as follows:

1) Under the terms of Government Code Section 87101 and Section 18701 of the Regulations, neither of the disqualified councilmembers will be legally able to participate until such time, if ever, it is determined that the physically incapacitated councilmember:

- (A) will remain permanently incapacitated;
- (B) may remain incapacitated for an undetermined period of substantial duration; or
- (C) will remain incapacitated for a substantial period of certain duration.

CF

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One point which Ms. Donovan and I did not discuss is exactly how long a period of incapacity must extend to bring the rule of necessity into play. I would appreciate your specific guidance on this point.

(2) Citing the FPPC's Hudson opinion (4FPPC 13), Ms. Donovan has informed me that, should the rule of necessity come into play, only one of the two disqualified councilmembers will be permitted to participate and that the determination of which of the two will participate must be by lot or some other random means.

(3) I also understood Ms. Donovan to have said that, notwithstanding the opinion expressed in 61 Ops.Atty.Gen 243, any councilmember who participates under Government Code Section 87101 may fully participate; and thus he may both vote on and participate in discussion on the decision to be made.

I would very much appreciate your prompt written response to this letter. It seems that time is of the essence for the project applicant; and, following the Council meeting of July 1, 1986, vacation schedules of two councilmembers will further complicate this problem.

Sincerely yours,



LYLE L. LOPUS,  
Assistant City Attorney

LLL/aj