



# California Fair Political Practices Commission

August 26, 1986

Vincent F. Biondo, Jr.  
City Attorney  
City of Carlsbad  
1200 Elm Avenue  
Carlsbad, CA 92008-1989

Re: Your Request for Advice  
Our File No. A-86-238

Dear Mr. Biondo:

Please excuse the delay in my response to your letter; this letter will confirm the telephone advice provided to you by Kathy Donovan on August 22, 1986. You have written requesting advice on your behalf and on behalf of Carlsbad City Councilmember Ann Kulchin. Your four questions revolve around your mutual joint tenancy ownership of an apartment building in San Diego. You have posed the following questions:

## QUESTIONS

1. Is there any obligation on behalf of Council Member Kulchin or myself to report our respective interests in the apartment project on our financial disclosure statement?
2. Should we continue reporting the loans on the property?
3. Are we correct in our assumption that our past and potential future participation in decisions affecting Pacific Scene present no conflict of interest problem since our past dealings with them had little or no financial impact on our investment, was unrelated to any of the matters pending in Carlsbad, did not involve any reportable interests and would not have a material financial effect on any investment, interest in real property, business entity or source of income?
4. Is there any conflict of interest problem presented by the fact that Mrs. Kulchin is a member of the Carlsbad City Council and that the Council is the appointing authority for the City

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Attorney and has in the past and will in the future make decisions affecting the budget of the City Attorney's office and the City Attorney's salary? If the answer is yes, what should be done about it?

#### CONCLUSION

1. You need not disclose the real property interest which is located more than two miles outside the jurisdiction.
2. As long as the balance on the loans equals or exceeds \$10,000 at any time during the reporting period, the loans must be disclosed.
3. We cannot provide you with advice regarding past conduct. As to any future decisions involving Pacific Scene, unless Pacific Scene was a source of income or gift of \$250 or more within the 12-month period preceding the decision, there would be no basis for any disqualification.
4. Generally, the mere joint ownership of real property as tenants in common or as joint tenants does not create a financial interest in the other joint tenant.

#### FACTS

. . . Council Member Kulchin and her husband, as joint tenants, own a 28 percent interest in a 40 unit residential apartment building located in the City of San Diego. The remaining 72 percent is owned by my wife and myself as husband and wife community property. The legal relationship between the Biondos and the Kulchins is as co-owners holding as tenants in common. There is no partnership or any other agreement of any kind between us in relationship to our ownership of the property. Mr. Kulchin and I have entered into a contract with a professional apartment management firm located in San Diego. The firm has no connection with the City of Carlsbad and does not business in our jurisdiction. All matters in regard to the operation of the apartment building are handled by the professional manager. The property was acquired in October of 1983. The acquisition was financed in part by loans from savings and loan associations which were arranged with loan officers located in San Diego. The terms are standard in every respect and consistent with those generally available to the public. We are presently pursuing a

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refinancing of the property with another savings and loan located in San Diego utilizing a program generally available to the public. Either because the savings and loan associations maintained a branch office in Carlsbad or on the possibility that they might be doing some business in the City, Council Member Kulchin and myself have always disclosed the loans on our financial disclosure statements. The interest in property has not been disclosed since it is located outside the City's jurisdiction (approximately 40 miles away). Mr. Kulchin and I have the management and control of our respective community properties. To the extent there have been discussions about the property they have always been held and any decisions made by Mr. Kulchin and myself. Shortly after acquisition there was a minor difficulty regarding the maintenance of a slope bank located behind a portion of the adjoining property owner who had title to the slope, Pacific Scene Company, regarding levels of maintenance. It was ultimately agreed by myself and representatives of Pacific Scene that we should resolve our disagreement by recording a parcel map which would transfer the approximate one acre of slope bank from Pacific Scene to the Kulchin/Biondo's on our assumption of the responsibility and expense of maintaining the bank. The parcel map was accomplished at no cost to us and no money was paid to Pacific Scene for the property. The transfer of property resulted in some minimal increase in our landscaping maintenance expense (estimated at less than \$500 per year). The area in question is in steep slopes, has no utilities or access, is undevelopable, and, in our view, has no value. The primary motivation for the arrangement was to eliminate the need to deal with the neighboring homeowner's association who would shortly be acquiring Pacific Scene's interest in regard to maintenance questions on the slope. Both Council Member Kulchin and myself have participated in decisions subsequent to that time affecting Pacific Scene activities located in the City of Carlsbad. None of these activities affected our San Diego property in any way.

#### ANALYSIS

1. The Political Reform Act requires that certain interests in real property must be disclosed. However, real property interests situated more than 2 miles outside the jurisdiction (City of Carlsbad) are not required to be

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disclosed on your Statement of Economic Interests. Government Code Sections 87200, 87202, 87203, 86206; and 82033 and 82035.<sup>1/</sup>

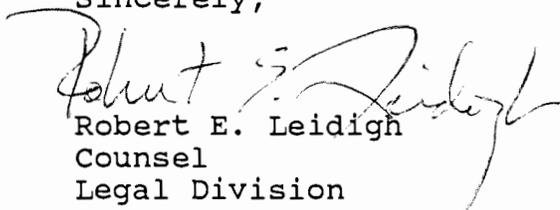
2. Inasmuch as you have determined that the lenders either are doing business in your jurisdiction or are planning to do so, the loans from commercial lenders, such as the savings and loan associations, made in the ordinary course of business without regard to official status, must be disclosed if they exceed \$10,000 in balance at any time during the reporting period. Sections 82030, 87200, 87202, 87203 and 87207(a)(5).

3. As previously stated, it is the Commission's policy not to render advice regarding past conduct. As to future decisions involving Pacific Scene, you are invited to seek our advice.

4. If the apartment building were operated by a partnership formed by yourself and the others, the provisions of the Nord Opinion might be applicable. (Opinion Requested by Steven Nord, 8 FPPC Opinions 6, No. 83-004, Oct. 4, 1983, copy enclosed.) However where a mere joint tenancy arrangement is involved, we have held that no economic interest is created between the joint tenants. See Advice letter to Dennis Lee, No. A-81-504, copy enclosed. Consequently, so long as your relationship is confined to that of joint tenants and no income flows from you to the Kulchin's, Councilmember Kulchin will not have an economic interest in you that would require her disqualification as to decisions affecting your salary.

Should you have any further questions, I may be reached at (916) 322-5901.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh  
Enclosures

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

# CITY OF CARLSBAD

1200 ELM AVENUE  
CARLSBAD, CALIFORNIA 92008-1989  
(619) 438-5531

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VINCENT F. BIONDO, JR.  
CITY ATTORNEY

DANIEL S. HENTSCHE  
ASSISTANT CITY ATTORNEY

July 18, 1986

Fair Political Practices Commission  
Att: Robert Leidigh  
P. O. Box 807  
Sacramento, California 95804-0807

Dear Mr. Leidigh:

This letter is a request for formal written advice made on behalf of myself and Mrs. Ann Kulchin, a member of the City Council of the City of Carlsbad, California. Her mailing address is 3014 Garboso Street, Carlsbad, California, 92008. This request is submitted under your regulation Section 18329 and pursuant to her specific authorization.

The facts which relate to your consideration of the questions presented below are as follows: Council Member Kulchin and her husband, as joint tenants, own a 28 percent interest in a 40 unit residential apartment building located in the City of San Diego. The remaining 72 percent is owned by my wife and myself as husband and wife community property. The legal relationship between the Biondos and the Kulchins is as co-owners holding as tenants in common. There is no partnership or any other agreement of any kind between us in relationship to our ownership of the property. Mr. Kulchin and I have entered into a contract with a professional apartment management firm located in San Diego. The firm has no connection with the City of Carlsbad and does no business in our jurisdiction. All matters in regard to the operation of the apartment building are handled by the professional manager. The property was acquired in October of 1983. The acquisition was financed in part by loans from savings and loan associations which were arranged with loan officers located in San Diego. The terms are standard in every respect and consistent with those generally available to the public. We are presently pursuing a refinancing of the property with another savings and loan located in San Diego utilizing a program generally available to the public. Either because the savings and loan associations maintained a branch office in Carlsbad or on the possibility that they might be doing some business in the

City, Council Member Kulchin and myself have always disclosed the loans on our financial disclosure statements. The interest in property has not been disclosed since it is located outside the City's jurisdiction (approximately 40 miles away). Mr. Kulchin and I have the management and control of our respective community properties. To the extent there have been discussions about the property they have always been held and any decisions made by Mr. Kulchin and myself. Shortly after acquisition there was a minor difficulty regarding the maintenance of a slope bank located behind a portion of the the apartment building. There was a disagreement with the adjoining property owner who had title to the slope, Pacific Scene Company, regarding levels of maintenance. It was ultimately agreed by myself and representatives of Pacific Scene that we should resolve our disagreement by recording a parcel map which would transfer the approximate one acre of slope bank from Pacific Scene to the Kulchin/Biondo's on our assumption of the responsibility and expense of maintaining the bank. The parcel map was accomplished at no cost to us and no money was paid to Pacific Scene for the property. The transfer of property resulted in some minimal increase in our landscaping maintenance expense (estimated at less than \$500 per year). The area in question is in steep slopes, has no utilities or access, is undevelopeable, and, in our view, has no value. The primary motivation for the arrangement was to eliminate the need to deal with the neighboring homeowner's association who would shortly be acquiring Pacific Scene's interest in regard to maintenance questions on the slope. Both Council Member Kulchin and myself have participated in decisions subsequent to that time effecting Pacific Scene activities located in the City of Carlsbad. None of these activities affected our San Diego property in any way.

Based on these facts we would appreciate advice on the following questions:

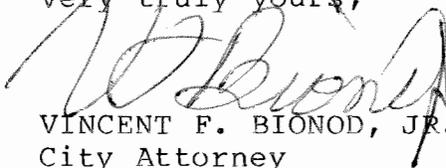
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4. Is there any conflict of interest problem presented by the fact that Mrs. Kulchin is a member of the Carlsbad City Council and that the Council is the appointing authority for the City Attorney and has in the past and will in the future make decisions affecting the budget of the City Attorney's office and the City Attorney's salary? If the answer is yes, what should be done about it?

If you need any additional information in order to provide us with formal written advice pursuant to Government Code Section 83114b please let me know.

Very truly yours,



VINCENT F. BIONOD, JR.  
City Attorney

rmh

c: Council Member Kulchin



# California Fair Political Practices Commission

July 22, 1986

Vincent F. Biondo  
Carlsbad City Attorney  
1200 Elm Avenue  
Carlsbad, CA 92008-1989

Re: 86-238

Dear Mr. Biondo:

Your letter requesting advice under the Political Reform Act has been received on July 21, 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 "Robert E. Leidigh".

Robert E. Leidigh  
Counsel  
Legal Division

REL:plh  
cc: Ann Kulchin