



# California Fair Political Practices Commission

November 26, 1986

James L. Hazard  
Sellar, Hazard, Snyder,  
Kelly & Fitzgerald  
P.O. Box 3510  
Walnut Creek, CA 94598

Re: Your Request for Advice  
Our File No. A-86-302

Dear Mr. Hazard:

You have requested written advice on behalf of Parke Boneysteele and John Clausen, members of the Board of Directors of the Central Contra Costa Sanitary District ("District"), regarding their duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

## QUESTION

Are Mr. Boneysteele and Mr. Clausen prohibited from participating in a decision regarding sewer connection fees for the Rossmoor development within Walnut Creek?

## CONCLUSION

Mr. Clausen and Mr. Boneysteele may participate in the decision regarding sewer connection fees for the Rossmoor development.

## FACTS

The Rossmoor development is a cooperative living situation. Each owner has an undivided interest in the whole development with the right to possess his or her own individual unit. The development is divided into nine neighborhoods with subregional neighborhoods called "mutuals." Each mutual is

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

collectively owned by various shareholders. The original intent was to create apartment-like units. As Rossmoor has grown, the concept has been expanded to provide single family condominium-type units.

Rossmoor is internally governed as follows: The Golden Rain Foundation pays for water and cable TV and maintains the infrastructure. Each mutual takes care of the general landscaping and maintenance of the units within the mutual. Each "project" takes care of more specific needs of the units within the project, such as outside painting, etc.

The District will soon be deciding whether to increase sewer connection fees in the Rossmoor development. The proposed increase in fees would be paid by the developer at the time new units are connected to the sewer system. UDC, a commercial developer, has the exclusive development rights within Rossmoor and therefore is the sole entity directly affected by a rate increase.

#### Board Member Boneysteele

Mr. Boneysteele owns a condominium unit in the Rossmoor development. He pays \$250 per month to the Golden Rain Foundation. Thirty dollars of the amount goes to the Golden Rain Foundation litigation fund. The remaining \$220 goes for other services. Additionally, the Golden Rain Foundation is responsible for retiring a several million dollar debt on existing community facilities and must provide new community facilities and pay any increased charges for water, cable TV, security services, etc.

In order to ascertain what impact, if any, this proposed fee increase would have on existing residents, your firm contacted Greg Erickson, the assistant director of business operations for the Golden Rain Foundation. He advised you that UDC, the current developer, pays 1.35% of the purchase price of all new units to the Golden Rain Foundation. This percentage is negotiated at various times between the Golden Rain Foundation and the developer. If the developer had to pay a higher connection fee, it might be less willing to maintain its current 1.35% contribution to the Golden Rain Foundation. If UDC's contribution rate was lowered, the loss in revenues might result in an increase in the dues paid by residents. In any event, Mr. Erickson did not believe that under any circumstances there would be an annual increase to owners of living units at Rossmoor in the amount of \$250 or more. You have also noted that, to the extent that less money is spent by

the Golden Rain Foundation on developing new facilities or maintaining the existing facilities, it could affect the fair market value of living units at Rossmoor. Historically, there has been a steady increase in the value of such units. Additionally, the Golden Rain Foundation has a mutual defense and/or litigation agreement with UDC. In the event that UDC wished to litigate any fee increase, the Golden Rain Foundation might be a party adverse to the District in said litigation.<sup>2/</sup>

As of August 4, 1986, there were 5,598 occupied units in the Rossmoor development. The District provides wastewater collection and treatment services to approximately 94,000 residents in the District, as well as providing wastewater treatment services, on a contract basis, for residents in neighboring communities.

#### Board Member Clausen

Mr. John Clausen is the retired county counsel of Contra Costa County. He is currently employed "of counsel" on a part-time basis with the firm of Thiessen, Gagen and McCoy, in Danville, California. He has no equity ownership in the firm. He works for the firm on a project-by-project basis and is paid a fixed fee for each project. The firm of Thiessen, Gagen and McCoy represents UDC, the developer of Rossmoor, on an unrelated matter. Mr. Clausen has not and will not participate in the representation of UDC in any manner. UDC was represented by other counsel at the rate hearing on the proposed fee increase and presumably would retain counsel other than Mr. Clausen or Thiessen, Gagen and McCoy for any prospective litigation between UDC and the District.

#### 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 the official or a member of his immediate family or on:

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<sup>2/</sup> UDC takes the position that the proposed fee increase would violate a 1963 contract made between the District and Rossmoor Corporation.

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

(b) Any real property in which the public official has a direct or indirect interest 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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Section 87103(a)-(e).

Board Member Boneysteele

The potential conflict of interest regarding Mr. Boneysteele involves the potential that an increase in sewer connection fees might affect either his monthly assessment to the Golden Rain Foundation or the fair market value of his condominium unit. In the present situation, you have indicated that the decision regarding sewer connection fees may affect the monthly assessment which Mr. Boneysteele pays to the Golden Rain Foundation, or the fair market value of his condominium, which is undoubtedly worth \$1,000 or more. However, for the reasons stated below, we believe the effect of the decision will be substantially the same as the effect on the public generally.

The Commission has adopted a regulation and several opinions which are of assistance in determining whether a

public official's interests will be affected in a manner distinguishable from those of the public generally. (See, Regulation 18703; Owen Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976); Ferraro Opinion, 4 FPPC Opinions 62 (No. 78-009, November 7, 1978); Overstreet Opinion, 6 FPPC Opinions 12 (No. 80-010, March 2, 1981); and Legan Opinion, 9 FPPC Opinions 1 (No. 85-001, August 20, 1986).) Regulation 18703 provides in pertinent part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

In order to be considered a significant segment of the public, a group usually must be large in numbers and heterogenous in quality. (See, Ferraro Opinion, supra, at 67.) Each of the opinions listed above provides us with guidance in applying Regulation 18703 to different factual situations.

The facts in your letter indicate that approximately 5,600 residences out of 94,000 residences in the District are in the Rossmoor development. Presumably the residents are a heterogenous group whose only common factor is the location of their homes within the Rossmoor development. Additionally, Mr. Boneysteele will be affected not just similarly, but identically to the other residents in the development. Under these circumstances, we believe the effect of the decision on Mr. Boneysteele will not be distinguishable from the effect on the public generally. Accordingly, he may participate in the District's decision.

#### Board Member Clausen

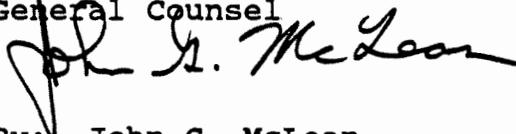
The facts you have presented indicate that the law firm of Thiessen, Gagen and McCoy is a source of income (presumably of \$250 or more in the past 12 months) to Mr. Clausen. Accordingly, Mr. Clausen may not participate in any decision which will have a reasonably foreseeable material financial effect on Thiessen, Gagen and McCoy. However, in the present situation, the facts do not indicate that the decision will have any financial effect on Thiessen, Gagen and McCoy. Furthermore, there does not appear to be a nexus between the District's decision and the purpose for which Mr. Clausen receives income. (Regulation 18702(b)(3)(B).) Accordingly, Mr. Clausen may participate in the District's decision.

James L. Hazard  
November 26, 1986  
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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, appearing to read "John G. McLean". The signature is written in a cursive style with a large, stylized initial "J".

By: John G. McLean  
Counsel, Legal Division

DMG:JGM:plh

SELLAR, HAZARD, SNYDER, KELLY & FITZGERALD

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DONALD J. LIDDLE  
\*TIMOTHY P. HOAGLAND  
H. MAL CAMERON  
STEPHANIE GRAY  
KENTON L. ALM  
MARY S. CAIN

October 30, 1986

Ms. Diane Griffiths  
General Counsel  
California Fair Political  
Practices Commission  
P. O. Box 807  
Sacramento, California 94804-0807

Reference: REQUEST FOR ADVICE  
Our Letter of October 24, 1986

Dear Ms. Griffiths:

On October 24, 1986, I forwarded to you a letter requesting advice pursuant to Title 2, Division 6 of the California Administrative Code Section 18329. I learned today that the letter just arrived in your office. We have a meeting scheduled for December 4, 1986, of the Board of Directors of the Central Contra Costa Sanitary District regarding this matter. Allowing for the 21 working days response time for advice requests it is possible we may not receive the FPPC's response prior to the scheduled Board meeting. Therefore, we would appreciate your expeditious handling of our request so we might receive your response by December 2.

Thank you for your courtesy in accommodating this request.

Very truly yours,

SELLAR, HAZARD, SNYDER,  
KELLY & FITZGERALD

  
JAMES L. HAZARD  
JLH:sb

SELLAR, HAZARD, SNYDER, KELLY & FITZGERALD

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October 24, 1986

California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, California 94804-0807

Reference: REQUEST FOR ADVICE PURSUANT TO  
TITLE 2, DIVISION 6 OF THE  
CALIFORNIA ADMINISTRATIVE CODE  
SECTION 18329

Gentlemen:

Pursuant to Government Code Section 83114 I hereby request the Commission to provide written advice with respect to the duties of Parke Boneysteele and John Clausen, members of the Board of Directors of the Central Contra Costa Sanitary District. The name, title, position and mailing address of the persons whose duties are in question are as follows:

Mr. Parke L. Boneysteele, Director  
Central Contra Costa Sanitary District  
1836 Stanley Dollar Drive, Apt. 2B  
Walnut Creek, California 94596

Mr. John B. Clausen, Director and  
President Pro Tem  
Central Contra Costa Sanitary District  
24 Crest Court  
Walnut Creek, California 94596

Please be further advised that at the Board of Directors' meeting on October 16, 1986, Board Members Boneysteele and Clausen granted me their personal authorization to act as their representative in making this formal written request for advice.

INTRODUCTION OF ISSUES

On August 21, 1986, the Board of Directors of the Central Contra Costa Sanitary District had on for consideration raising

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the District fees, including connection fees, which included raising sewer connection fees for the Rossmoor development within Walnut Creek. A decision was made on other fees, but not as to the connection fees at Rossmoor on that date. The matter was continued initially to the Board's meeting on September 4, 1986, and subsequently to October 16, 1986. The matter has again been continued for decision to the Board's meeting on December 4, 1986. Pursuant to Health and Safety Code Section 5471, a 2/3rds vote of the legislative body is required to raise or set fees. Case law requires that four affirmative votes are required to set said fees.

#### QUESTION PRESENTED

Is either member Boneysteele or Clausen prohibited from voting on setting the Rossmoor connection fees under the Political Reform Act of 1984 as amended, and/or the regulations adopted by the Commission to enforce said act?

#### STATEMENT OF FACTS

The following sets forth the facts which create the potential conflict of interest.

#### Board Member Boneysteele

Background Rossmoor Development. The original Rossmoor development as envisioned by the Rossmoor Corporation in 1962 was to be a cooperative living situation. Each owner would have an undivided interest in the whole development with the right to possess their own individual unit. The development was divided into nine neighborhoods with subregional neighborhoods called "mutuals." Each "mutual" was collectively owned by various shareholders. The original intent was to create an apartment-type situation with sizes to include one bedroom, one bath; and two bedroom, one bath dwelling units or living units. Additionally there were plans to provide limited health care facilities for senior citizens that would buy into the cooperatives. Accompanying leisure services such as golf course, swimming pools, tennis courts, club houses, etc. were also planned.

As Rossmoor has grown since 1962 the concept has been expanded to provide basically single family condominium units. Rossmoor is internally governed as follows: The Golden Rain Foundation is analogous to the federal government. Each "mutual" is analogous to the state government. Each "project" is analogous to a county form of government. The Golden Rain Foundation pays water, cable TV and maintains the infrastructure. Each "mutual" takes care of the general landscaping and maintenance

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of the units within the mutual. Each project takes care of more specific needs of the units within the project, such as outside painting, etc.

Board Member Boneysteele owns a condominium unit in Project 49, Mutual 3. He pays \$250 per month to the Golden Rain Foundation. \$30.00 of this amount goes to the Golden Rain Foundation litigation fund. The remaining \$220 goes for other services. Additionally, the Golden Rain Foundation is responsible for retiring a several million dollar debt on existing community facilities, the obligation to provide new community facilities and for paying any increases in water, CTAV, security, etc. services. Please see the attached letter of August 29, 1986, of Golden Rain President Robert R. Mauser.

The proposed increase in sewer connection fees would be paid by the developer at the time of connecting new units to the sewer system. UDC, a commercial developer, has the exclusive development rights within Rossmoor and therefore is the sole entity directly affected by a rate increase. In order to ascertain what impact, if any, this proposed fee increase would have on existing residents, on Friday, October 24, 1986, we contacted Greg Erickson, the assistant director of business operation of the Golden Rain Foundation. He advised our firm that UDC, the current developer, pays 1.35% of the purchase price of all new units to the Golden Rain Foundation. This percentage is negotiated at various times between the Golden Rain Foundation and the developer. To the extent that the developer would have to pay an increase connection fee, it might be less willing to maintain its current 1.35% contribution to the Golden Rain Foundation. In any event, Mr. Erickson did not believe that under any circumstances would there be an annual increase to owners of living units at Rossmoor in the amount of \$250 or more. Of course, to the extent that less money is spent on developing new facilities or maintaining the existing facilities, it could affect the fair market value of living units at Rossmoor. Historically, there has been a steady increase in the value of such units.

As of August 4, 1986, there were 5,598 occupied units with 7,862 occupants at Rossmoor Walnut Creek. The Central Contra Costa Sanitary District provides wastewater collection and treatment services to 236,000 residents within its district, as well as providing wastewater treatment services, on a contract basis, for 114,000 residents in neighboring communities.

The potential conflict of interest regarding Mr. Boneysteele involves the potential that an increase in sewer connection fees might affect either his monthly assessment to the Golden

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Rain Foundation or the fair market value of his condominium unit.

Additionally, the Golden Rain Foundation has a mutual defense and/or litigation agreement with UDC. In the event that UDC wished to litigate any fee increase based upon an alleged violation of the 1963 alleged fixed fee contract between the District and the Rossmoor Corporation, the Golden Rain Foundation might be an adverse party in said litigation. Additionally, Project 49 in which Mr. Boneysteele owns a unit is currently involved in litigation against UDC. This arises out of a dispute concerning the obligations for maintenance and/or improvements between Project 49 and the developer.

Board Member John Clausen

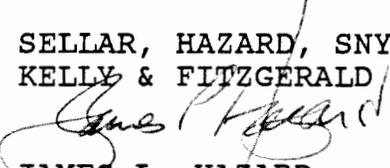
Director John Clausen is the retired County Counsel of Contra Costa County. He is currently employed as "Of Counsel" on a part-time basis with the firm of Thiessen, Gagen & McCoy, in Danville, California. He has no equity ownership in said firm. He works for the firm on a project-by-project basis and is paid a fixed fee for each project. The firm of Thiessen, Gagen & McCoy represents UDC, the developer of Rossmoor, on an unrelated matter. Mr. Clausen has not and will not participate in the representation of UDC in any manner. UDC, the developer of Rossmoor, was represented at the rate hearing, and presumably for any prospective litigation between UDC and the District, by Allan M. Berland, attorney at law, 601 California Street, San Francisco, California 94108.

CONCLUSION

Please provide me with your written advice as to whether or not there is a conflict of interest which would preclude either Board Members Boneysteele or Clausen from voting on this issue under the Political Reform Act of 1984, and the regulations relating thereto. In the event that there is a conflict of interest which would preclude both Board Members Clausen and Boneysteele from voting, in light of the fact that four affirmative votes are required, please advise me what procedure the District should use to determine which member may vote.

Very truly yours,

SELLAR, HAZARD, SNYDER,  
KELLY & FITZGERALD

  
JAMES L. HAZARD

JLH:sb

cc: Mr. Parke L. Boneysteele  
Mr. John B. Clausen