



# California Fair Political Practices Commission

December 31, 1986

Mary R. Casey  
Assistant City Attorney  
City of San Rafael  
P.O. Box 60  
San Rafael, CA 94915-0060

Re: Your Request for Advice  
Our File No. I-86-310

Dear Ms. Casey:

You have requested advice concerning the duties of the members of the San Rafael City Planning Commission under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> You have not requested advice regarding a particular decision. Therefore, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

The City of San Rafael is in the process of amending its General Plan. In the near future, the Planning Commission will be making recommendations to the City Council concerning various portions of the General Plan. You have asked for guidance regarding whether the Commissioners are disqualified from participating in any of the Planning Commission's decisions.

## CONCLUSION

The Commissioners may not participate in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their economic interests. This determination must be made on a decision-by-decision basis.

---

<sup>1/</sup> 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.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. By making recommendations to the City Council, the planning commissioners participate in the making of a governmental decision. (Regulation 18700(c)(2).) Therefore, if a commissioner has a financial interest in one of the Commission recommendations, he may not participate in that decision.

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 the effect on the public generally, on the official or a member of his or 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.

(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).

Mary R. Casey  
December 31, 1986  
Page 3

You have provided us with updated statements of economic interests on each of the planning commissioners. The statements indicate that the planning commissioners have a wide variety of economic interests.<sup>3/</sup> The planning commissioners will be required to disqualify themselves from participating in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their economic interests. This determination must be made on a decision-by-decision basis by analyzing each of the separate components described below.

First, an analysis must be made of whether the effect of the decision on the official's economic interest is reasonably foreseeable. An effect is reasonably foreseeable if there is a "substantial likelihood" that it will occur. Certainty is not required; however, if the effect is but a "mere possibility," it is not considered reasonably foreseeable. (Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1976), copy enclosed.)

Second, a determination must be made as to whether the effect of the decision on the official's economic interest will be distinguishable from the effect on the public generally. Regulation 18703 provides that a material financial effect of a governmental decision on an official's economic interests 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. For example, a decision by a city council to increase the property tax, which will affect all property owners of the city, does not affect any individual city councilmember (no matter how much he or she pays in property taxes) in a different manner than it affects the public generally. As a result, it does not create a conflict of interest for any city councilmember. By way of contrast, a decision concerning a zoning variance for an official's business or home, which has a different effect on

---

<sup>3/</sup> It should be noted that some economic interests which may be a basis for disqualification may not be listed in an official's statement of economic interests. For example, an investment interest worth \$1,000 or more in real property which is the official's principal residence need not be listed in the official's statement of economic interests, but may be a basis for disqualification.

the official's economic interest than on other members of the general public, may constitute a conflict of interest for the official.

Finally, a determination must be made as to whether the effect of the decision on the official's economic interests will be "material." Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in making this determination. It is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material.

Whether an effect on a business entity in which an official has an investment, or which is a source of income to an official, will be considered material depends on the financial size of the business entity. (Regulation 18702.2.) For example, an effect of only \$10,000 on the gross revenues or assets of a small business is material. (Regulation 18702.2(g).) However, in the case of a Fortune 500 company, the effect would need to be at least a \$1 million effect on the company's gross revenues or assets for it to be material. (Regulation 18702.2(c).)

A similar "sliding scale" applies to effects on real property in which an official holds an interest. As a general rule, an effect of \$10,000 or more on the fair market value of real property is material. When the effect is between \$1,000 and \$10,000, it may be material, depending on the value of the real property. (Regulation 18702(b)(2).) An effect below \$1,000 is deemed not material. (Regulation 18702(b)(2)(B).)

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests. (Regulation 18702(a).) For example, the effect may be material if the decision significantly affects the use or enjoyment of land or other interests, or if the official's receipt of income from a private source is directly related to the decision.

It should be noted that although a commissioner may be disqualified from participating in the decision regarding a particular component of the General Plan, the official may in some circumstances participate in the decision regarding whether to adopt the General Plan as a whole. (See, Advice Letter to Raymond M. Haight, No. A-86-021 (copy enclosed).)

Mary R. Casey  
December 31, 1986  
Page 5

We would be pleased to provide you with more specific guidance regarding specific decisions which come before the Planning Commission. If you should have any questions, please contact me at (916) 322-5901.

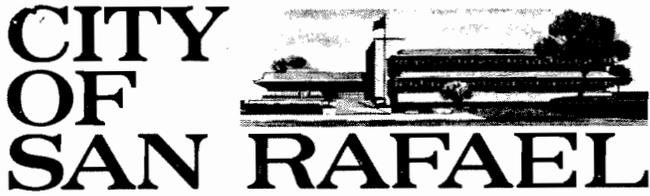
Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script, appearing to read "John G. McLean".

By: John G. McLean  
Staff Counsel

JGM:km  
Enclosures



F P P C  
Nov 1 10 54 AM '86

1400 FIFTH AVENUE, P O BOX 60 SAN RAFAEL  
CALIFORNIA 94915-0060

MAYOR  
LAWRENCE E. MULRYAN

COUNCIL MEMBERS  
DOROTHY L. BREINER  
GARY R. FRUGOLI  
RICHARD P. NAVE  
JERRY RUSSOM

October 30, 1986

John McLean, Esquire  
Staff Counsel  
Fair Political Practices Commission  
110 "K" Street  
P. O. Box 807  
Sacramento, California 94805

Dear John,

Pursuant to our numerous telephone conversations concerning potential conflicts of interest involved in Planning Commissioners voting on recommendations to the City Council concerning the City's Draft General Plan, we have decided to seek an advise letter from your office. Therefore, we believe we have included all relevant information, including a copy of the Draft General Plan. Please advise us if you need anything further.

Thank you for your assistance in this endeavor.

Very truly yours,

GARY T. RAGGHIANI  
City Attorney

  
MARY R. CASEY  
Assistant City Attorney

MRC:em

Enclosure

cc: Anne Moore, Planning Director  
All Planning Commissioners  
Pamela J. Nicolai, City Manager  
Lawrence E. Mulryan, Mayor  
All Councilmembers

FACTS: The City of San Rafael is in the process of amending its General Plan. The data collection stage of the process has ended and, currently, the City is in the process of collecting public comment on the Draft Plan. In December 1986 or thereafter, the Planning Commission will be making recommendations to the City Council concerning the following issues:

A. Land use designations, goals and policies.

1. Annexation.
2. Residential land use categories and densities.
3. Density of residential development.
4. Residential site design.
5. Master plan zoning.
6. Non-residential land use categories and intensities.
7. Design.
8. Commercial services.
9. Community services.
10. Implementing programs.

B. Circulation goals and policies.

1. Levels of service.
2. Traffic allocation.
3. Transportation improvements.
4. Transit.
5. Implementing programs.

C. Housing goals and policies.

1. Protecting and conserving existing housing.
2. New market and below market rate housing.
3. Special housing needs.
4. Housing opportunity areas.
5. Implementing programs.
6. Conserve the existing housing stock.
7. Market and below market rate housing.
8. Special housing needs.
9. Housing opportunity areas.

D. Parks and Recreation goals and policies.

1. Standards and requirements.
2. Specific sites and facilities recommendations.
3. Implementing programs.

City Planning Commissioners own the following interests in real and personal property:

A. Planning Commissioner Michael J. Smith owns interests in:

1. Independent Bankshares, Common stock valued between \$10,000 - \$100,000.
2. Common stock valued \$10,000 - \$100,000 in Frank Howard Allen a real estate sales company that does business in San Rafael. Stock disposed of in February 1984.
3. Real property of greater than 10% and valued at more than \$10,000 or more in 10 pieces of real property in different locations in San Rafael.
4. Properties held by Gallinas properties, a business entity in which Commissioner Smith is a limited partner. Gallinas properties owns several pieces of real property in various locations in San Rafael.
5. Six pieces of rental property located in San Rafael. Smith receives over \$1,000 in rental income annually from each piece.
6. Outstanding loans, each of which is over \$10,000 from Westamerica Bank and Rex Silvernale, and Martin Avner, all located in San Rafael.

B. Planning Commissioner Albert Boro owns interest in:

1. Over \$10,000 in stock in American Telephone and Telegraph.
2. Over \$10,000 in Pacific Bell stock.
3. Over \$10,000 in Pacific Gas & Electric stock.
4. All of the above interests in stock are also sources of income to Commissioner Boro. Boro is employed by Pacific Bell.

C. Planning Commissioner Richard P. O'Brien owns interests in:

1. Stock in Hospital Corporation of America, Monolithic Memories, Inc. and Quotron Systems, Inc. valued at \$1,000 - \$10,000 each.
2. Stock in Public Storage, Inc. valued at \$10,000 - \$100,000. Public Storage does business in San Rafael. O'Brien is a limited partner.
3. ABC Driving School located in San Rafael. O'Brien is the owner.
4. Real property, a single-family dwelling located at 24 Park Street, San Rafael, valued at over \$100,000 dollars.

D. Planning Commissioner Suzanne M. Scott owns interests in:

1. Common stock in Chevron Research Corp. valued over \$100,000.
2. Stock in Smith Kline Beckman Pharmaceuticals Corporation valued at over \$10,000 - \$100,000.

E. Chairman of the Planning Commission, Bob W. Livingston:

1. Derives a source of income from Backen, Arrigoni & Ross, a San Francisco Architectural firm. Some of the firm's clients have projects that will be affected by the decisions of the Draft General Plan.

F. Planning Commissioner Maynard H. Willms owns interests in:

1. Stock, whose value is over \$100,000 in Crowley Maritime Corp., a company that will be affected by the Plan. Also receives over \$10,000 income from Crowley, his employer.
2. Between \$1,000 - \$10,000 in Pacific Gas and Electric stock.

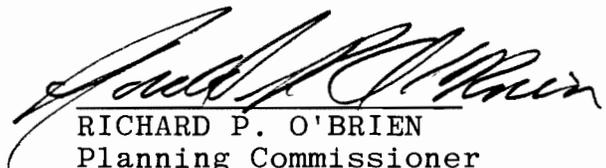
G. Planning Commissioner Joyce B. Rifkind owns interests in:

1. Investments in common stock in Rifkind Company Realtors, Inc., a real estate brokerage company doing business in San Rafael. The value of this interest is over \$100,000. Common stock in Mobil Oil Corp. which is held in trust for Commissioner Rifkind's children.
2. Eleven different pieces of real property in various locations in San Rafael.
3. Rifkind Company Realtors, Inc., pension plan valued at \$10,000 - \$100,000.
4. Owns Rifkind Company Realtors, Inc. Owns investments in Woodson Mortgage Company valued at over \$100,000 dollars.
5. Sources of income to Rifkind are as follows:
  - a. Rifkind Company Realtors, San Rafael, over \$10,000.
  - b. Real estate management \$10,000.
  - c. Payments on note secured by deed of trust in Nevada valued at over \$10,000.
  - d. Owns four apartment houses in San Rafael with income over \$10,000.
  - e. Rental/shopping center, San Rafael, over \$10,000.
  - f. Commissioner Rifkind has outstanding loans from several lending institutions.

The undersigned hereby authorize Gary T. Ragghianti and Mary R. Casey our designated representatives, to write to the Fair Political Practices Commission for an opinion as to whether or not we have conflicts of interest that would prevent us from voting on upcoming decisions on the City's draft general plan.



MICHAEL J. SMITH  
Planning Commissioner  
132 Nantucket Avenue  
San Rafael, CA 94901



RICHARD P. O'BRIEN  
Planning Commissioner  
41 Bonnie Banks Way  
San Rafael, CA 94901



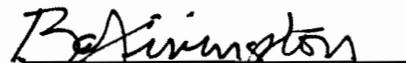
JOYCE B. RIFKIND  
Planning Commissioner  
11 Laurelwood Court  
San Rafael, CA 94901



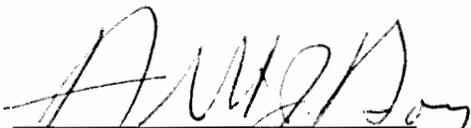
MAYNARD H. WILLMS  
Planning Commissioner  
92 Upper Oak Drive  
San Rafael, CA 94903



SUZZANE M. SCOTT  
Planning Commissioner  
182 Irwin Street  
San Rafael, CA 94901



BOB W. LIVINGSTON  
Chairman, Planning  
Commission  
160 Tamal Vista Drive  
San Rafael, CA 94901



ALBERT J. BORO  
Planning Commissioner  
274 Mountain View Avenue  
San Rafael, CA 94901