



California Fair Political Practices Commission

December 22, 1986

Gilbert R. Contreras
3494 Harris Street
Lemon Grove, CA 92045

Re: Your Request for Advice
Our File No. I-86-312

Dear Mr. Contreras:

You have requested advice concerning your duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

FACTS

You are a member of the Coastal Commission. You also have negotiated a contract with the University of California, San Diego, under which your consulting company will conduct a workshop/seminar for members of the university staff. The subject of the workshop/seminar will be promotion of small independent contractors in obtaining sole source contracts.

^{1/} 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.

Your letter states only a general question; it does not seek advice concerning a specific decision pending before the Coastal Commission. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTIONS

1. Does your status as a member of the Coastal Commission preclude you from contracting with the university to conduct the workshop/seminar?

2. If you decide to enter into the contract with the university, will the contract affect your ability to participate in Coastal Commission decisions which affect the property of the University of California, San Diego or any other property in which the University of California has an interest?

CONCLUSIONS

1. Your status as a member of the Coastal Commission does not preclude you from contracting with the university to provide the workshop/seminar.

2. If you receive income totaling \$250 or more under the contract, you must disqualify yourself from participating in Coastal Commission decisions which would have a reasonably foreseeable material financial effect on the property of the University of California, San Diego, or on any other property in which the University of California has an interest.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any 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 governmental decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any source of income aggregating \$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(c).)

Thus, the Act requires a public official to disqualify himself from participating in any governmental decision which would have a reasonably foreseeable material financial effect on any source of income of \$250 or more to the official. The Act does not prohibit a public official from receiving income so long as the official discloses the income and disqualifies himself from participating in decisions that could affect the source of the income. Therefore, the Act does not preclude you or your company from contracting with the university to provide the workshop/seminar on contracts.

If you do enter into the contract with the university, and you will receive income of \$250 or more under that contract, you may be required to disqualify yourself from participating in certain Coastal Commission decisions. You have informed us that the contract would be between your consulting company and the University of California. You are a one-third owner of the consulting company; therefore, sources of income to the company are considered sources of income to you, based on your pro rata share of the total income received. (Section 82030(a).) As a 33-1/3-percent owner of the company, 33-1/3 percent of the total payments (i.e., gross payments rather than net profits) promised or received under the contract are considered income to you.

Assuming that your pro rata share of the total payments under the contract would be \$250 or more (i.e., if your firm will receive \$750 or more under the contract), the University of California would be considered a source of \$250 or more in income to you.^{2/} Therefore, while the contract is pending and during the 12-month period following the receipt of payments under the contract, you would be required to disqualify yourself from participating in any Coastal Commission decision which would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the University of California.

Whether any Coastal Commission decision would foreseeably and materially affect the University of California, in a manner

^{2/} In your letter, you stated that you are negotiating with the University of California, San Diego. The University of California, San Diego, is one of nine campuses which comprise the University of California. All nine campuses are governed by the Regents of the University of California, who are vested with full powers of organization and government concerning the administration of the University of California. The Regents have legal title to, and power to manage and dispose of, the property of the University of California. (Cal. Const., Art. IX, Sec. 9.) Thus, the administrators at the University of California, San Diego, derive their authority from the Regents of the University of California. Since the University of California, San Diego, operates only as an arm of the University of California, we consider the University of California to be the source of income to your company and to you under the contract.

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distinguishable from the effect on the public generally, must be determined on a decision-by-decision basis. This letter will provide general guidance. You have stated that a representative of the Attorney General's office attends all Coastal Commission meetings and would be available to assist you in determining the effects of specific decisions on the University of California. It would be appropriate for you to seek advice from the Attorney General's office or from our office if you have any questions about a specific Coastal Commission decision.

Whether any effect on the University of California is "reasonably foreseeable" is the first determination you must make. 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, 1975), copy enclosed.)

In general, the effects of Coastal Commission decisions on the University of California will be distinguishable from the effects of those decisions on the public generally. Regulation 18703 (copy enclosed) provides that the effect of a decision on the university is distinguishable from its effect on the public generally unless the decision will effect the university in substantially the same manner as all members of the public or a significant segment of the public. In your letter you stated that the University of California has extensive property holdings in the coastal zone. These extensive property interests are not typical of the property interests of the general public. Thus, the effect of most Coastal Commission decisions on the University of California will ordinarily be distinguishable from the effect on the public generally. (See, Legan Opinion, 9 FPPC Opinions 1, 13-14 (No. 85-001, August 20, 1985), copy enclosed.)

Whether a Coastal Commission decision will materially affect the University of California is the final issue you must resolve. Regulations 18702 and 18702.1 (copies enclosed) provide some guidance as to whether an effect will be considered material. If the university has initiated the proceeding in which the decision will be made, or if the university is a named party in a proceeding before the Coastal Commission, the effect on the university is presumed to be material. (Regulation 18702.1(a)(1).) In other decisions which would have a less direct effect on the university, decisions which would foreseeably affect the value of the university's property by the amounts specified in Regulation

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18702(b)(2) will be considered to materially affect the university.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures

GILBERT R. CONTRERAS
3494 Harris Street
Lemon Grove, California 92045
(619) 462-4711

F P F U
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November 10, 1986

FEDERAL EXPRESS

Diane Griffiths, Esq.
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

RE: Request for Written Advice
(Government Code Section 83114(b))

Dear Ms. Griffiths:

I am at present a member of the State Coastal Commission. Prior to my appointment to the Commission and since that time, I have been engaged in negotiations with the University of California, San Diego (UCSD) concerning my company's engagement to perform consulting services for the University. UCSD has now offered to retain my company for the purpose of conducting a workshop/seminar on behalf of the University. The subject-matter of the workshop/seminar will be the promotion of small independent contractors in obtaining contracts that do not require bonding. My company will do all of the community outreach for the workshop through its contacts and efforts in the small business community and minority communities of San Diego County.

Because UCSD is located in the Coastal Zone and other University of California campuses and properties are located in the Coastal Zone, I am concerned about avoiding any appearance of conflict in regard to my Coastal Commission duties. I would like to know where I stand in this regard prior to accepting the UCSD proposal.

I have requested an opinion from my personal lawyer, which I have enclosed with this letter for your review. I also am requesting from you an advice letter pursuant to Government Code Section 83114(b). My questions are as follows:

1. Am I permitted to enter into a consulting or other services for the University of California, San Diego?

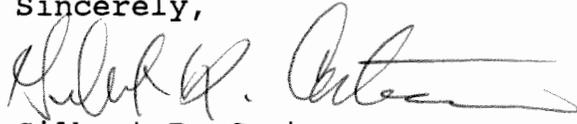
Diane Griffiths, Esq.
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2. If so, am I precluded from participating in all Commission decisions which affect the University of California as well as UCSD?

3. If I am so precluded, what steps should I take to avoid participating in such decisions?

I would appreciate receiving your written advice as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gilbert R. Contreras".

Gilbert R. Contreras

GRC:caw
Enclosures

GILBERT R. CONTRERAS
3494 Harris Street
Lemon Grove, California 92045
(619) 462-4711

Hand Deliver

November 6, 1986

Ms. Rosemary Norling
University of California
Department of Facilities and
Design Construction
Rupertius Way, Building 202
La Jolla, CA 92093

Dear Ms. Norling:

I have obtained a legal opinion from my personal attorney, Mr. Jerry J. Gumpel, concerning any potential conflicts of interest which might arise by virtue of my position on the State Coastal Commission. I intend to follow and rely upon Mr. Gumpel's opinion as set forth in the enclosed letter.

Please contact me if I can provide any additional information in this regard.

Sincerely,

Gilbert R. Contreras

GC:pjm
enc

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November 6, 1986

CONFIDENTIAL-ATTORNEY/CLIENT PRIVILEGE

Mr. Gilbert R. Contreras
3494 Harris Street
Lemon Grove, CA 92045

RE: University of California Agreements

Dear Gil:

You have requested a legal opinion concerning the requirements of California's Political Reform Act as applied to your proposed agreements with the University of California. You are seeking this opinion due to your position as a Commissioner of the State Coastal Commission and the fact that the University of California has, at present, several campuses and other properties which are located within the coastal zone.

Your request, in reality, requires an answer to two separate questions. First, as a State Coastal Commissioner, are you or your business entities permitted to perform services for the University of California for compensation? Second, if so, can you vote on projects or requests which come before the Coastal Commission if those projects or requests pertain to the University of California?

With regard to the first question, we have found no prohibition on your ability to contract with the University of California to provide it with a wide range of services for which you and your business associates have particular expertise and experience. Your attempts over the past three years to render affirmative action services both to the University and on its behalf need not be ended now simply because you have obtained a seat on the Coastal Commission. It is unfortunate that the University has delayed in engaging your services, but you are not precluded from accepting the University's proposed contract or contracts by virtue of your Coastal Commissioner status.

The more difficult issue is, of course, whether you can vote on University of California projects which come before the Coastal Commission in the event you are engaged to perform consulting and/or affirmative action services for the

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University. The provisions of the State Political Reform Act (government Code Section 81000, et. seq.) are applicable to such a situation and, in our opinion, clearly prohibit you from participating in all Commission decisions which have a material financial effect on the University.

Section 87100 of the Act prohibits any public official from participating in making or influencing a governmental decision in which he knows he has a "financial interest." A public official has a financial interest in such a governmental decision if it is reasonably foreseeable that the decision will have a "material financial effect" on the official or on an associated business entity or specified income source. (See Section 87103 of the Act.)

If you are compensated by the University in any amount greater than \$250.00 within 12 months of any decision or are deemed to be an employee of the University, you would be prohibited from participating in Commission decisions on University of California projects--if those decisions would have a "material financial effect" on the University. It is probable that most Commission decisions on University projects or applications would have such a material financial effect on the University. However, it is also conceivable that certain Commission decisions will have no such material financial effect. In those instances, you are permitted to fully participate in the Commission's decision-making process.

In sum, if you are engaged by the University to perform services for compensation, you will be prohibited from participating in all Commission decisions which have a material financial effect on the University. The obvious question that will arise with regard to each such decision is whether or not it has the requisite material financial effect. It would also appear that any determination of that question would have to be done on the case by case basis.

For any particular application before the Commission, you will, therefore, have to ask a series of questions:

1. Will the Commission's decision affect the University of California?
2. If so, will the decision have a financial effect on the University?
3. And, if so, is the financial effect a material one?

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If you reach question number three and your answer is yes to it, then you cannot participate in the decision.

When you have determined that you should not participate in a particular matter being heard by the Commission, you should immediately disclose that fact and excuse yourself from the proceeding. Your excusing yourself from the proceeding should be complete (you should physically remove yourself from the hearing) so that no question of "participation" or "influence" will arise.

There will, of course, be times when the answers to the above questions may not be abundantly clear. In such instances, both you and, undoubtedly, the University will make certain that not even an appearance of impropriety exists by assuring that you are not participating in questionable decisions. The University will need to make you aware each time a matter affecting it is to be presented to the Commission so that you will be able to comply with all conflict of interest requirements, including excusing yourself from participation in Commission decisions.

It is ironic that after three years of negotiating, you have finally succeeded with your proposals to the University. Your position as a Coastal Commissioner should not be used to now deny you the contracts which you have sought for so long. As a Coastal Commissioner, you will need to be alert to any possible conflict of interest matters vis-a-vis the University, as will the University. This may be difficult, but not impossible and should not be used to deny you the contracts at this late date.

Please contact me if you have any questions concerning this matter.

Sincerely,


Jerry J. Gumpel

JJG:caw



California Fair Political Practices Commission

November 14, 1986

Gilbert R. Contreras
3494 Harris Street
Lemon Grove, CA 92045

Re: 86-312

Dear Mr. Contreras:

Your letter requesting advice under the Political Reform Act was received on November 12 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathrn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh