



California Fair Political Practices Commission

December 17, 1986

Richard D. Hongisto
Supervisor
City and County of San Francisco
Room 235, City Hall
San Francisco, CA 94102

Re: Your Request for Advice
Our File No. A-86-319

Dear Mr. Hongisto:

This is in response to your request for advice regarding your duties under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

You have asked whether you are prohibited from participating, as a member of the Board of Supervisors of the City and County of San Francisco, in a decision regarding a proposed amendment to the San Francisco Rent Stabilization and Arbitration Ordinance by virtue of the fact that you own several residential rental properties located within the City and County of San Francisco.

CONCLUSION

If the decision to change the minimum required percentage of ownership before eviction is allowed will have a reasonably foreseeable material financial effect on your economic interests, you may not participate in the decision. We have not been provided with sufficient facts to determine the reasonably foreseeable effects of this decision upon your economic interests.

FACTS

Under the terms of the current San Francisco Residential Rent Stabilization and Arbitration Ordinance, a landlord may not evict a tenant unless, among others:

^{1/} Government Code Section 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.

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The landlord seeks to recover possession in good faith, without ulterior reasons and with honest intent, for the landlord's use or occupancy as his or her principal residence, or for the use and occupancy as the principal residence of the landlord's children, parents, grandparents, grandchildren, brother or sister, or the landlord's spouse or the spouses of such relations, for a period of at least 12 continuous months. For purposes of this subsection, the term landlord shall be defined as an owner of record of at least 10% interest in the property. A landlord may not receive possession under this subsection if a comparable unit in the building is already vacant and available, or if such a unit becomes vacant and available during the period of the notice terminating tenancy. If a comparable unit does become vacant and available during said notice period, the landlord shall rescind the notice to vacate. It shall be rebuttably presumed that the landlord has not acted in good faith if the owner or relative for whom the tenant was evicted does not move into the unit and occupy said unit for a minimum of 12 continuous months.

The Board of Supervisors is presently considering a proposed amendment that would raise the minimum required percentage of ownership as provided for above from 10% to 26%.

You are the sole owner of six pieces of residential rental property. At least two of the properties are multi-unit dwellings. Each of the properties has a value of more than \$100,000. Each of the properties provides you with more than \$10,000 per year in rental income.

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. 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, among other interests, any real property in which the public official has a direct or indirect interest worth \$1,000 or more. Section 87103(b).

In the situation you have presented, it is necessary to determine whether there will be a foreseeable material

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financial effect on any of the real properties owned by you. In the case of an interest in real property, "materiality" is defined in pertinent part as follows:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

* * *

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(a) and (b)(2)(B).

The proposed amendment to this ordinance will require that owners of rental units own a substantially larger percentage of a real property before they have the right to evict a tenant for purposes of owner occupancy or occupancy by certain relatives of the owner. We have not been provided with sufficient facts to determine the reasonably foreseeable effects of this decision upon the value of your real property interests. If it is determined that the proposed ordinance will affect the value of residential real properties to the degree set out in the above-mentioned regulation, you may not participate in the decision regarding the proposed ordinance. For example, if it is determined that the proposed ordinance will discourage certain

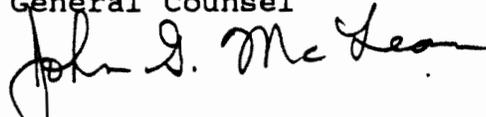
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individuals and groups of individuals from purchasing such properties, and if that occurrence will affect the fair market value of the properties to the degree provided in this regulation, you may not participate in the decision regarding the proposed amendment.

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 that reads "John G. McLean". The signature is written in dark ink and is positioned below the typed name of the signatory.

By: John G. McLean
Counsel, Legal Division

JGM:km

Member
Board of Supervisors
City and County of San Francisco



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RICHARD HONGISTO

November 10, 1986

Fair Political Practices Commission
Technical Assistance and Analysis Division
428 J Street, 8th Floor
Sacramento, CA 95814

Re: Request for Advice Under
Government Code Section 83114

Dear Sir or Madame:

Enclosed you will find a copy of a proposed amendment to the San Francisco Rent Stabilization and Arbitration Ordinance, as well as a copy of my Statement of Economic Interests. The Statement of Economic Interests is still correct with respect to all residential real estate that I own within the City and County of San Francisco.

Under the terms of the current San Francisco Residential Rent Stabilization and Arbitration Ordinance, a landlord may evict a tenant for purposes of owner occupancy or occupancy of certain specified relatives of the owner, as long as the owner owns at least 10% interest in the subject property. The proposed enclosed amendment would raise that minimum required percentage to 26%.

I do not believe that I have an economic interest in this legislation, as I do not believe that its passage would affect the value of my property in any way. However, I am writing this letter to request formal advice under Government Code section 83114.

I believe that you issued an opinion letter concerning whether I could vote on proposed condominium legislation in 1981. You might wish to refer to that letter in responding to this request.

Thank you for your anticipated cooperation. Should you have any questions, please feel free to contact me.

Very truly yours,


Richard D. Hongisto

1 (Rent Ordinance)
2 AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING
3 SECTION 37.9 TO REDEFINE THE TERM "OWNER OF RECORD."

4 Note: Additions are underlined; deletions are
5 indicated with ((double)) parentheses.

6
7 Be it ordained by the People of the City and County of San
8 Francisco:

9 Section 1. The San Francisco Administrative Code is hereby
10 amended by amending Section 37.9 thereof to read as follows:

11
12 Section 37.9. Evictions. Notwithstanding Section 37.3,
13 this section shall apply as of August 24, 1980, to all landlords
14 and tenants of rental units as defined in Section 37.2(o).

15 (a) A landlord shall not endeavor to recover possession
16 of a rental unit unless:

17 (1) The tenant has failed to pay the rent to which
18 the landlord is lawfully entitled under the oral or
19 written agreement between the tenant and landlord or
20 habitually pays the rent late or gives checks which
21 are frequently returned because there are
22 insufficient funds in the checking account; or

23 (2) The tenant has violated a lawful obligation or
24 covenant of tenancy other than the obligation to
25 surrender possession upon proper notice and failure
26 to cure such violation after having received written
27 notice thereof from the landlord; or

28 (3) The tenant is committing or permitting to exist a
29 nuisance in, or is causing substantial damage to, the
30 rental unit, or is creating a substantial

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interference with the comfort, safety or enjoyment of the landlord or other tenants in the building, and the nature of such nuisance, damage or interference is specifically stated by the landlord in the writing as required by Section 37.9(b); or

(4) The tenant is using or permitting a rental unit to be used for any illegal purpose; or

(5) The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement provided that such terms do not conflict with any of the provisions of this chapter; or

(6) The tenant has, after written notice to cease, refused the landlord access to the rental unit as required by state or local law; or

(7) The tenant holding at the end of the term of the oral or written agreement is a subtenant not approved by the landlord; or

(8) The landlord seeks to recover possession in good faith, without ulterior reasons and with honest intent, for the landlord's use or occupancy as his or her principal residence, or for the use and occupancy as the principal residence of the landlord's children, parents, grandparents, grandchildren, brother or sister, or the landlord's spouse or the spouses of such relations, for a period of at least 12 continuous months. For purposes of this subsection, the term landlord shall be defined as an

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owner of record of at least ((10%)) 26% interest in the property. A landlord may not recover possession under this subsection if a comparable unit in the building is already vacant and available, or if such a unit becomes vacant and available during the period of the notice terminating tenancy. If a comparable unit does become vacant and available during said notice period, the landlord shall rescind the notice to vacate. It shall be rebuttably presumed that the landlord has not acted in good faith if the owner or relative for whom the tenant was evicted does not move into the unit and occupy said unit for a minimum of 12 continuous months; or

(9) The landlord seeks to recover possession in good faith in order to sell the unit in accordance with a condominium conversion approved under the San Francisco subdivision ordinance and does so without ulterior reasons and with honest intent; or

(10) The landlord seeks to recover possession in good faith in order to demolish or to otherwise permanently remove the rental unit from housing use and has obtained all the necessary permits on or before the date upon which notice to vacate is given, and does so without ulterior reasons and with honest intent; or

(11) The landlord seeks in good faith to remove temporarily the unit from housing use in order to be able to carry out capital improvements or rehabilitation work and has obtained all the necessary permits on or before the date upon which

1 notice to vacate is given, and does so without
2 ulterior reasons and with honest intent. Any tenant
3 who vacates the units under such circumstances shall
4 have the right to reoccupy the unit at the prior rent
5 adjusted in accordance with the provisions of this
6 chapter. The tenant will vacate the unit only for
7 the minimum time required to do the work. In
8 addition to the above, no landlord shall endeavor to
9 recover possession of any unit subject to a RAP loan
10 as set forth in Section 37.2(k) of this chapter
11 except as provided in Section 32.69 of the San
12 Francisco Administrative Code; or

13 (12) The landlord seeks to recover possession in good
14 faith in order to carry out substantial
15 rehabilitation, as defined in Sec. 37.2(q), and has
16 obtained all the necessary permits on or before the
17 date upon which notice to vacate is given, and does
18 so without ulterior reasons and with honest intent.
19 Notwithstanding the above, no landlord shall endeavor
20 to recover possession of any unit subject to a RAP
21 loan as set forth in Section 37.2(k) of this chapter
22 except as provided in Section 32.69 of the San
23 Francisco Administrative Code.

24 (b) A landlord who resides in the same rental unit with
25 his or her tenant may evict said tenant without just cause as
26 required under subsection (a) above.

27 (c) A landlord shall not endeavor to recover possession
28 of a rental unit unless at least one of the grounds enumerated in
29 subsections (a) or (b) above is the landlord's dominant motive
30 for recovering possession and unless the landlord informs the

1 tenant in writing on or before the date upon which notice to
2 vacate is given of the grounds under which possession is sought
3 and that advice regarding the notice to vacate is available from
4 the Residential Rent Stabilization and Arbitration Board, before
5 endeavoring to recover possession.

6 (d) No landlord may cause a tenant to quit involuntarily
7 or threaten to bring any action to recover possession, or
8 decrease any services, or increase the rent, or take any other
9 action where the landlord's dominant motive is retaliation for
10 the tenant's exercise of any rights under the law. Such
11 retaliation shall be a defense to any action to recover
12 possession. In an action to recover possession of a rental unit,
13 proof of the exercise by the tenant of rights under the law
14 within 6 months prior to the alleged act of retaliation shall
15 create a rebuttable presumption that the landlord's act was
16 retaliatory.

17 (e) It shall be unlawful for a landlord or any other
18 person who willfully assists the landlord to endeavor to recover
19 possession or to evict a tenant except as provided in Sec. 37.9(a)
20 and (b). Any person endeavoring to recover possession of a
21 rental unit from a tenant or evicting a tenant in a manner not
22 provided for in Sec. 37.9(a) and (b) without having a substantial
23 basis in fact for the eviction as provided for in Sec. 37.9(a)
24 shall be guilty of a misdemeanor and shall be subject, upon
25 conviction, to the fines and penalties set forth in Sec. 37.10.
26 Any waiver by a tenant of rights under this chapter shall be void
27 as contrary to public policy.

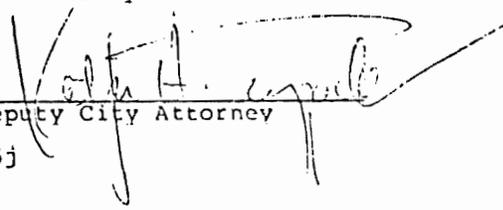
28 (f) Whenever a landlord wrongfully endeavors to recover
29 possession or recovers possession of a rental unit in violation

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1 of Sections 37.9 and/or 37.10 as enacted herein, the tenant or
2 board may institute a civil proceeding for injunctive relief,
3 money damages of not less than three times actual damages, and
4 whatever other relief the court deems appropriate. The
5 prevailing party shall be entitled to reasonable attorney's fees
6 and costs pursuant to order of the court. The remedy available
7 under this subsection shall be in addition to any other existing
8 remedies which may be available to the tenant or the board.

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10 APPROVED AS TO FORM:

11 GEORGE AGNOST
12 City Attorney

13 By 
14 Deputy City Attorney
15 1705j

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