



California Fair Political Practices Commission

January 30, 1987

C. T. Swallow
Deputy City Attorney
1501 Truxtun Avenue
Bakersfield, CA 93301

Re: Your Request for Advice
Our File No. A-86-340

Dear Mr. Swallow:

You have requested advice on behalf of Bakersfield City Councilmember Mark Dickerson, concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. May Councilmember Dickerson participate in a decision to approve an environmental impact report dealing with oil exploration in the southwest portion of Bakersfield, the area where his residence is located?
2. May Councilmember Dickerson participate in decisions concerning a proposed ordinance that would govern oil exploration and extraction within the entire city of Bakersfield?
3. May Councilmember Dickerson participate in a decision to grant an application for a conditional use permit for an oil well which is within approximately 600 feet of his residence?

CONCLUSIONS

1. Councilmember Dickerson may participate in the decision to approve the environmental impact report, so long as the

^{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.

decision would affect his property in substantially the same manner as it would affect most residential properties in the southwest portion of the city.

2. Councilmember Dickerson may participate in decisions concerning the proposed city-wide ordinance, so long as the ordinance would affect his property in substantially the same manner as it would affect a significant segment of other residential properties in Bakersfield.

3. Councilmember Dickerson may not participate in the decision to grant an application for a conditional use permit for an oil well which is within approximately 600 feet of his residence.

FACTS

In 1985, the City of Bakersfield enacted an ordinance requiring every oil well drilled within the city to obtain a conditional use permit from the Board of Zoning Adjustment. This ordinance was enacted in response to concerns for public health and safety as a result of oil drilling near residential areas. Bakersfield is the largest city in Kern County, and the principal residential, business and employment center for the oil industry in Kern County. More than 80 operating oil companies are doing business in the Bakersfield metropolitan area. Portions of seven major oil fields are located within the Bakersfield city limits, and more than 350 operating wells are located inside the city limits. The ordinance enacted in 1985 was a preliminary attempt to deal with the problems posed by oil development within urban and residential areas.

Shortly after the enactment of this ordinance, it became clear to the city planning staff that a major oil field was located in a residential section of the southwest portion of the city. Applications for conditional use permits in that southwest area became so numerous that the city staff decided a comprehensive study and environmental impact report regarding the oil field area (approximately 10 square miles) was necessary. A draft environmental impact report (EIR) concerning the southwest area has been prepared. The population of the area affected by the EIR is approximately 25,600, of which 21,600 are residents of the City of Bakersfield.

The city has also been developing a city-wide comprehensive ordinance that would allow the development of oil wells within Bakersfield without the requirement for a conditional use permit if the residents of the City of Bakersfield are not

caused undue discomfort or their safety threatened thereby. This city-wide ordinance would affect the entire population of Bakersfield, which is approximately 140,062.

Councilmember Dickerson's residence is located in the southwest portion of the city, in the area covered by the EIR. Councilmember Dickerson owns one-half of the mineral rights of the property. He is currently leasing these mineral rights to Chevron Oil Exploration for \$12.50 per year. Chevron Oil Exploration has not applied for a permit to extract oil from the property, and at present, it is not known whether Chevron Oil Exploration will extract oil from the property. In the event that a successful well is developed, the maximum potential income that Councilmember Dickerson would receive from the lease is expected to be less than \$500 per year.

You have stated that it is impracticable to determine the number of residents or owners of real property in the City of Bakersfield who own mineral rights, but that the number is at least several thousand. There is oil under virtually all of the city, at various depths.

The applicant for a conditional use permit for an oil well is TXO. You have stated that the city sends written notice of the application to all property owners within 1,000 feet of the proposed well. You have indicated that these persons are "presumed to be potentially affected" by the proposed well.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he 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 its effect on the public generally, on the official or a member of his or her immediate family, or 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).)

Councilmember Dickerson is a public official due to his membership on the city council. (Section 82048.) His interest in his personal residence is an interest in real property which is presumably worth \$1,000 or more. Accordingly, we must determine whether the decisions facing the city council would foreseeably and materially affect Councilmember Dickerson or his real property interest in a manner that is distinguishable from the effect on the public generally.

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In the Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975) (copy enclosed), the Commission stated that an effect is "reasonably foreseeable" if there is a substantial likelihood that it will occur as the result of a decision. The effect need not be certain, but if an effect is merely a possibility, it is not considered reasonably foreseeable.

The Commission has also adopted regulations which contain guidelines for determining whether the reasonably foreseeable effect of a decision will be considered material. According to these guidelines, if a decision could foreseeably increase or decrease an official's personal income by \$250 or more in a year, the effect on the official is considered material. (Regulation 18702.1(a)(4) (copy enclosed).) Furthermore, a decision materially affects an official's real property interests if it concerns the actual or permitted use of real property in which the official has an interest of \$1,000 or more. (Regulation 18702.1(a)(3).) Both of these guidelines are relevant to our analysis of questions 1 and 2.

The environmental impact report

Your first question concerns the approval of an EIR dealing with oil exploration in an area which includes Councilmember Dickerson's residence. It is difficult to foresee whether this decision would affect the amount of personal income Councilmember Dickerson would receive from Chevron Oil Exploration under the mineral rights lease. Chevron Oil Exploration has not applied for a conditional use permit to extract oil from the property, and has not otherwise demonstrated any intention to obtain approval to extract oil from Councilmember Dickerson's property. On the telephone, you stated that the price of oil seems to be a significant factor in Chevron Oil Exploration's decision to attempt to extract oil from the property. Based on these facts, we cannot conclude that it is reasonably foreseeable that Councilmember Dickerson's personal income would be increased or decreased by at least \$250 in a year as a result of the decision on the EIR.

Although the EIR decision would not foreseeably and materially affect Councilmember Dickerson's personal income, it is a decision which concerns the actual or permitted use of Councilmember Dickerson's real property. Therefore, Regulation 18702 provides that Councilmember Dickerson must disqualify himself from participating in the decision, unless the effect of the decision on Councilmember Dickerson's real property will not be distinguishable from the effect on the public generally. (Regulation 18702.1(a)(3) and (c)(1).)

Regulation 18703 (copy enclosed) provides that the effect of a governmental decision on an official's 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. The Commission has interpreted the "public generally" provision to cover those persons within the jurisdiction of the official in question. (Owen Opinion, 2 FPFC Ops. 77,81 (No. 76-005, June 2, 1976), copy enclosed.) Therefore, for purposes of your question, the public generally is all, or a significant segment of, the residential property owners in the City of Bakersfield.

In the Owen Opinion, supra, the Commission concluded that residential property owners constitute a significant segment of the public. The Owen Opinion concerned the establishment of a downtown "core area" in the City of Davis. The Commission stated:

... we conclude that residential home owners within and in the immediate vicinity of the "core area" constitute a "significant segment" of the public and Planning Commissioner Hunt accordingly need not disqualify himself from participation merely because he owns a home as described. While certain aspects of the plan may operate to increase the value of this home, either as residential or commercial property, it is apparent that the plan will have a "substantially similar" effect on numerous other residential properties, perhaps throughout the entire city as well as those near the "core area." The effect of the plan on residential property values is speculative at this point. More importantly, there is no indication that the plan or any portion thereof will have a peculiar impact on the value of Commissioner Hunt's property. If further evidence emerges in the development of the plan which would distinguish the effect of the plan or a portion of it upon Commissioner Hunt's interest in comparison to other residential property owners, he may be required to disqualify himself with respect to the matter before him for decision.

Owen Opinion, supra, at p.81
(emphasis added).

The effect of the EIR on residential property in the southwest portion of Bakersfield is more direct than the effects discussed in the Owen Opinion. However, there are approximately 25,600 residents in the area covered by the EIR

decision. Approximately 21,600 of the residents in that area live inside the Bakersfield city limits. It appears that a significant segment of the population of Bakersfield owns residential property in the 10-square mile area of Bakersfield covered by the EIR. So long as the effect of the EIR decision on the actual or permitted use of Councilmember Dickerson's real property would be substantially the same as the effect on the actual or permitted use of most other residential property in that portion of Bakersfield, then Councilmember Dickerson's real property would be affected by the decision in the same manner as the public generally. Under those facts, Councilmember Dickerson would be permitted to participate in the decision to approve the EIR.

The oil exploration ordinance

Your second question is whether Councilmember Dickerson may participate in decisions concerning a proposed ordinance that would govern oil exploration and extraction within the entire City of Bakersfield. The city-wide ordinance is similar to the EIR decision in that it is difficult to foresee a material effect on Councilmember Dickerson's income from Chevron Oil Exploration, but the ordinance would certainly affect the actual or permitted use of Councilmember Dickerson's property. The ordinance would also affect the actual or permitted use of all other residential property in the jurisdiction. Unless there are facts which indicate that the city-wide ordinance would have a peculiar effect on Councilmember Dickerson's real property in comparison to other residential properties within Bakersfield, Councilmember Dickerson may participate in decisions on the city-wide ordinance.

The conditional use permit

Your third question is whether Councilmember Dickerson may participate in a decision to grant TXO's application for a conditional use permit for an oil well which would be within approximately 600 feet of his residence. The issue we must address here is whether an oil well within 600 feet of Councilmember Dickerson's residence would foreseeably and materially affect the value of his residence.

Regulation 18702(a) (copy enclosed) provides that the effect of a decision on an official's interests is considered material if it is "significant." Regulation 18702(b)(2) sets forth monetary guidelines for determining whether the effect of a decision on the value of an official's real property will be considered material. These guidelines provide that an effect on the fair market value of real property in which an official has an interest will be considered material if it will increase or decrease the fair market value 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(b)(2)(B).

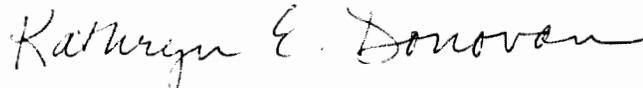
For example, if Councilmember Dickerson's residence is valued at \$200,000 or less, and the decision to locate an oil well within 600 feet of his residence could increase or decrease its value by \$1,000 or more, then the effect is considered material.

You informed us in your letter that the city must send written notice of the conditional use permit application to all persons owning property interests within 1,000 feet of the proposed well. You stated that these persons are "presumed to be potentially affected" by the conditional use permit. Councilmember Dickerson's residence is located well within the boundary of the 1,000-foot notice area. In our opinion, this notice requirement supports a conclusion that a material effect on Councilmember Dickerson's real property is reasonably foreseeable as a result of the conditional use permit decision. Therefore, Councilmember Dickerson must disqualify himself from participating in decisions on the conditional use permit.

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

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

OFFICE of THE CITY ATTORNEY

RICHARD J. OBERHOLZER

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1501 TRUXTUN AVENUE
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(805) 326-3721

MUNICIPAL LAW:

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Assistant City Attorney

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Assistant City Attorney

CONDIE THOMAS SWALLOW
Deputy City Attorney

LITIGATION:

DON MCGILLIVRAY
Assistant City Attorney

ROBERT M. SHERFY
Deputy City Attorney

INVESTIGATIONS:

DON MARTIN
City Attorney Investigator

December 18, 1986

Kathryn E. Donovan, Counsel
Fair Political Practices
Commission
Legal Division
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, CA 95804 0807

RE: Request for Advice (Mark Dickerson, Councilmember
for the City of Bakersfield)

Dear Ms. Donavan:

On October 10, 1986, I discussed the following matters with you by telephone, and on October 13, 1986, you discussed these matters with other members of the staff of the Fair Political Practices Commission.

Mark Dickerson is a councilmember of the City of Bakersfield. Mr. Dickerson owns one-half of the mineral rights of the property located at 5404 Christa Street, Bakersfield, California, the site of his personal residence. Mr. Dickerson is presently leasing these mineral rights to Chevron Oil Exploration and receives \$12.50 a year pursuant to the provisions of the lease. It is not presently known when or if Chevron Oil Exploration will extract oil from the property. In the event that a successful well is developed, the maximum potential income that Mr. Dickerson would receive from the lease is expected to be less than \$500 a year.

Mr. Dickerson is asking for a written opinion from your office as to whether or not he would have any conflict regarding the following matters which may soon be brought before the City Council:

1. An environmental impact report dealing with oil exploration within the vicinity of his residence.
2. A proposed ordinance that would govern oil exploration and extraction within the entirety of the City of Bakersfield.

Kathryn E. Donovan, Counsel
December 18, 1986
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3. A TXO conditional use permit application for a well which is within approximately 600 feet of his residence.

The estimated population of the City of Bakersfield is approximately 140,062. The estimated population of Ward 6, the portion of the City of Bakersfield represented by Councilmember Mark Dickerson, is 21,999. The population of the area encompassed by the environmental impact report is approximately 25,600. The population of the portion within the City is approximately 21,600, and the population of Ward 6 within the area is approximately 9,407.

It is impracticable to determine the number of residents or owners of real property who own mineral rights within the City of Bakersfield, but the number is at least several thousand. There is oil under virtually all of the City of Bakersfield at various depths.

Additional information regarding the environmental impact report and the proposed ordinance may be found in your file number A-86-229, regarding Ty Stillman, a planning commissioner for the City of Bakersfield.

With regard to the application by TXO for a conditional use permit, all persons owning property interests within 1,000 feet of the proposed well are presumed to be potentially affected by the conditional use permit and are sent notice of the application.

If you have any questions or would like additional information, please contact me immediately.

Thank you for your time and consideration.

Very truly yours,



C. T. Swallow
Deputy City Attorney

CTS:lg

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California Fair Political Practices Commission

December 29, 1986

C. T. Swallow
Deputy City Attorney
1501 Truxtun Avenue
Bakersfield, CA 93301

Re: 86-340

Dear Mr. Swallow:

Your letter requesting advice under the Political Reform Act was received on December 23, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn 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. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:km

cc: Mark Dickerson, Councilmember
City of Bakersfield