



California Fair Political Practices Commission

February 9, 1987

Wes Bannister
Huntington Beach
City Councilmember
15562 Chemical Lane
Huntington Beach, CA 92649

Re: Your Request for Advice
Our File No. A-87-030

Dear Mr. Bannister:

This is in response to your requests for advice dated January 14, 1987 and January 15, 1987, regarding your duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} In recent telephone conversations, you have provided additional facts which differ from your January 15 letter. This letter confirms advice I provided to you by telephone on January 30, 1987.

QUESTION

An oil company is seeking approval from the city council to consolidate oil drilling activities in an area of approximately 20 city blocks. Are you prohibited from participating in the city council's decision on the consolidation?

CONCLUSION

You may participate in the decision if, at the time of the decision, the sale of oil rights by your client has been completed and the sale does not involve any contingencies related to the city council's decision.

^{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.

FACTS

Angus Oil Company ("Angus") is attempting to consolidate oil activities in an area of approximately 20 city blocks. Angus' plan is to purchase oil rights in the area, abandon the existing well sites scattered over the area, and consolidate activities by drilling approximately 70 new wells on a single site.

You are the 100 percent owner of an insurance agency. Your agency insures the Huntington Beach Company ("Huntington") and has received income of \$250 or more from Huntington during the past 12 months. Huntington owns a portion of the oil rights in the area in which Angus is seeking to consolidate activities. Huntington has recently accepted an offer to sell its oil rights to Angus for approximately \$3 million. As of January 30, 1987, the sale had not been completed.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting 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 it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(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.

Section 87103(c).

In the present situation, Huntington is a source of income to you of \$250 or more. (Section 82030(a).) Accordingly, you may not participate in any decision which will have a reasonably foreseeable material financial effect on Huntington.

Huntington's failure or success in completing the sale of its oil rights to Angus will have a \$3 million effect on its

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gross revenues. Regardless of Huntington's size, this effect is considered material. (Regulation 18702.2.)^{2/}

Furthermore, we believe that if the sale of Huntington's oil rights to Angus has not been unconditionally completed at the time the city council makes its decision regarding whether to allow consolidation of oil activities, it is reasonably foreseeable that Angus will not choose to complete the purchase of the oil rights. (See, Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975); copy enclosed.)

Therefore, if the sale of Huntington's oil rights to Angus is not completed at the time the decision regarding consolidation of oil activities comes before the city council, you may not participate in the decision.^{3/} However, if the sale is completed, and if the sale does not involve any conditions related to the city council's decision, you may participate in the decision.

^{2/} Your client has advised you that the sale would not change their gross receipts because the price that would be paid for the oil rights would be no greater than the value of the oil that they fully intend to remove. However, Regulation 18702.2 looks at the effect which a decision will have on revenues "for a fiscal year." The sale of the oil rights will have a material effect on your insured's revenues for the fiscal year in which they are sold.

You have also advised us that your insured is a subsidiary of Chevron Oil Company, a Fortune 500 company. On account of this, you have concluded that the appropriate test for materiality under Regulation 18702.2 should be the test applicable to Chevron. However, you are required to disqualify from the decision if it will have a reasonably foreseeable material financial effect on either Huntington or its parent, Chevron. (See, Regulation 18706, copy enclosed.) In this case, the effect of the sale is material regardless of which test is used.

^{3/} In your letter you noted that this matter will not effect your income or that of your insurance agency regardless of what occurs. However, an effect need not be a direct one on the official himself in order to be a basis for disqualification. (See, Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; 139 Cal. Rptr. 161.)

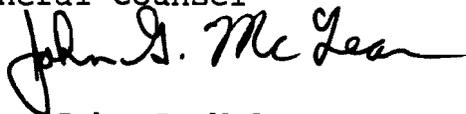
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Your January 14 letter references our advice letter to you dated January 8, 1987 (No. I-86-327) in which we provided you with informal guidance regarding potential conflicts of interest arising from your insurance business. You have asked us to review and make corrections to a diagram which you have prepared based on that letter. You have indicated that the diagram will be presented to the city attorney for use in analyzing your future activities. While we realize that the advice letter which we provided to you was general in nature, and analysis of certain issues can be complex, the letter itself, rather than a diagram of the letter provides you with a more accurate and reliable basis for analyzing potential conflicts of interest. As always, if you or the city attorney have questions regarding the advice letter or regarding specific decisions pending before the city council, we are available to provide assistance.

If you should have any questions, please contact me at (916) 322-5901.

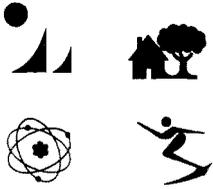
Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosure
cc: Gail Hutton, City Attorney



City of Huntington Beach

P. O. BOX 190 • 2000 MAIN STREET • CALIFORNIA 92648

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February 3, 1987

Mr. John G. Mc Lean
Counsel, Legal Division
California Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804-0807

Dear Mr. Mc Lean:

I appreciate very much your telephone call regarding Angus Petroleum Company and the item which will appear on our February 17th agenda of City Council in Huntington Beach. I have not yet received your letter, but understand that it is in the mail now, however, I did want to touch some bases based on our conversation on the telephone.

First, I am a little confused as to the reasoning for disqualification in the case of the Angus Petroleum request for consolidation of oil wells. I am sure that your letter will clarify this issue, however, I would like to discuss it a little bit at this point.

According to the information I have, if the gross receipts of the Huntington Beach Company, which owns the oil rights under that site, were not affected by more than the percentages allocated in the regulations, I would not need to disqualify. Based upon that, would this mean that if I had a letter from the Huntington Beach Company stating that they were not going to sell the oil to Angus, I would not have to disqualify?

Secondly, I understand that if the sale is consummated by the Huntington Beach Company and I receive a letter from them stating that that has been done, prior to the City Council action, again I would not have to disqualify. Is that correct?

Presumably, based upon the conversation, the only reason that I would have to disqualify would be if Huntington Beach Company has a sale agreement which is contingent upon the action of City Council. If either of the two situations above occurred, either the decision not to sell or the decision to sell and close prior to the action, with no strings, then I would not have to disqualify. If this is not absolutely accurate, please call and let me know.

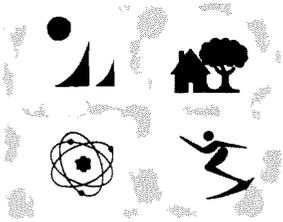
Thank you very much.

Sincerely,

Wes Bannister

WB/bu

cc: Mr. Roger Work
Huntington Beach Company



City of Huntington Beach

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January 15, 1987

Mr. John G. McLean
Counsel, Legal Division
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
P.O. Box 807
Sacramento, CA 95804-0807

Re: Request for Opinion - Conflict of Interest

Dear Mr. McLean:

You and I had the opportunity to speak last week regarding the possibility of a conflict of interest on my part as a City Councilman. The situation, as I then understood it, was as follows:

Angus Oil Company is appealing a negative ruling of their request from the Planning Commission to the City Council. The request is for permission to re-drill some seventy (70) oil wells on a single site to consolidate oil activities. The plan is to abandon the existing more hazardous well sites which currently are scattered over some twenty plus (20+) city blocks at individual locations.

My question to you, regarding conflict of interest, involved the fact that one of my insureds (clients of my insurance agency) owns some of the oil rights under the consolidation areas, so, although not involved in the request before the City, would be involved to the extent that a portion of the oil taken out at the new location would be their oil, and some of the well sites abandoned would be their well sites.

Your ruling, at that time, was that since the oil was being removed now by my insured and the same oil would be removed from the new site, the change in "gross receipts" would not be significant.

Although the request by Angus has not changed, the circumstances of my insured's involvement may have, to the extent that I must now ask for a new ruling from your office.

Mr. John G. McLean
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Angus Oil, according to information I have just received, has offered to buy the oil rights of the owners of those rights under the site.

Since hearing the "rumors", I have now met with my insured and have been advised that there has been an offer, but at this time it has not been accepted, and may not be. However, there are several very important points that need to be addressed, prior to your decision as to conflict of interest.

First, aside from the point that the "sale" is only a possibility at this point, if it did take place, my insured advises that it would not change their gross receipts. The price that would be paid for the oil rights would be no greater than the value of the oil that they fully intend to remove.

Second, even if it did change the receipts, my insured is a subsidiary of Chevron Oil Company, a "fortune 500 company", so it is highly unlikely that the change would affect my position under Regulation 18702(g) parameters.

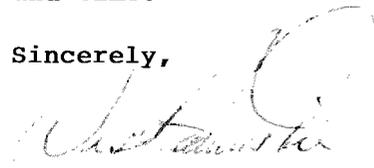
Third, anything that takes place would have no effect on my income or that of this insurance agency. Our premiums are based on payrolls, values of real property and personal property, and square footages and acreage of raw land, not on receipts (except for liquor liability) or oil reserves or rights.

So, based on your letter of January 8, 1987, I have tried to address the related rules applied and cannot see that my vote on the Angus project would have a "reasonably foreseeable material financial effect" on my agency, me, or my insured; however, I ask confirmation of that fact from you before taking action. Your letter was so complex and addressed so many areas that I am confused and, obviously, concerned.

Please issue a written opinion. Action on the item is tentatively scheduled for our February 2, 1987, meeting, so hopefully enough time is available that this does not cause you a hardship.

Thank you very much for your patience, cooperation and time.

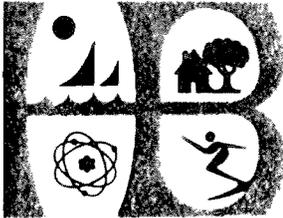
Sincerely,



Wes Bannister

WB:ebb

cc: Mrs. Gail Hutton, City Attorney



City of Huntington Beach

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February 3, 1987

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Counsel, Legal Division
California Fair Political Practices Commission
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Thank you very much.

Sincerely,

Wes Bannister

WB/bu

cc: Mr. Roger Work
Huntington Beach Company



California Fair Political Practices Commission

January 21, 1987

Wes Bannister
Bannister & Associates
15562 Chemical Lane
Huntington Beach, CA 92649

Re: 87-030

Dear Mr. Bannister:

Your letters requesting advice under the Political Reform Act were received on January 20, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, 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 letters and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *by Red*

DMG:plh