



California Fair Political Practices Commission

March 13, 1987

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. A-87-048

Dear Ms. Casey:

You have requested advice concerning the duties of San Rafael City Planning Commissioners Maynard H. Wilms, Joyce B. Rifkind and Michael J. Smith under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTIONS

You have asked whether members of the planning commission must, in the following situations, disqualify themselves from participating in decisions regarding amendments to the city's general plan:

1. Commissioner Wilms owns stock in P.G. & E. He also owns and is employed by Crowley Maritime Corporation. The planning commission may decide land use designations on property owned by P.G. & E. and Crowley.

2. Commissioners Rifkind and Smith each own over five rental units within the city limits. The planning commission will make certain land use decisions regarding each of these properties.

3. Commissioner Smith owns an interest in an undeveloped parcel of land. The planning commission may be voting on the land use designation of that parcel.

^{1/} 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.

CONCLUSIONS

1. Commissioner Wilms may not participate in any decision which will have a reasonably foreseeable material financial effect on P.G. & E. or Crowley, including consideration of amendment to the land use designations for parcels of real property owned by P.G. & E. and Crowley.

2. Commissioners Rifkind and Smith may not participate in any decision which will have a reasonably foreseeable material financial effect on their real property interests, including consideration of amendments to the land use designations on their real property interests.

3. If the decisions from which the commissioners must disqualify can be considered first without their participation, the commissioners may be able to participate in subsequent deliberations relative to other geographic areas covered by the plan.

FACTS

The City of San Rafael is in the process of amending its general plan. You have requested advice concerning the following potential conflicts for several planning commissioners:

1. Commissioner Wilms owns stock in P.G. & E. Company which has a value of between \$1,000 and \$10,000. The planning commission may decide land use designations on P.G. & E. property within the city.

2. Commissioner Wilms is employed by and owns stock worth over \$100,000 in Crowley Maritime Corporation. His ownership interest in the corporation is less than 10 percent. Crowley owns the Main Islands, which have no land use designation in the current general plan. The planning commission may be voting on designating one of the islands for low density residential use. It is contemplated that the other island will receive a conservation area designation.

3. Commissioners Rifkind and Smith each own over five rental units within the city limits. The general plan will give a specific land use designation for every parcel, a density range for residential dwelling units, and an upper limit for the ratio governing floor area. In some areas constrained by traffic, the number of evening peak trips will be limited by the plan.

4. Commissioner Smith owns a 25-percent interest in an undeveloped parcel of real property on Smith Ranch Road worth approximately \$500,000. The planning commission may be voting on the land use designation of that parcel.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her official 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 its 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.

Section 87103(a)-(d).

Commissioner Wilms

Commissioner Wilms has investment interests in P.G. & E. and Crowley. (Section 87103(a).) He is also an employee of, and receives income from, Crowley. (Section 87103(c) and (d).)

Accordingly, Commissioner Wilms may not participate in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on Crowley or P.G. & E.

It is apparent that the effect upon P.G. & E. and Crowley of the decisions involving their specific parcels will be distinguishable from the effect upon the public generally. Therefore, if a decision involving those parcels will have a material financial effect upon P.G. & E. or Crowley, Commissioner Wilms must disqualify himself from the decision.

Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in determining whether the effects of a decision will be material. It is usually necessary to estimate the dollar value of the effect of a decision on the official's interest to determine whether the effect is material. However, Regulation 18702.1 sets out certain special situations in which an effect is considered material regardless of its dollar value. It provides, in pertinent part:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if....

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or more, or in which the official is an officer, director, partner, trustee, employee, or holds any position of management, appears before the official in connection with the decision....

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

In the present situation, P.G. & E. and Crowley are considered to be named parties within the meaning of Regulation 18702.1(b)(2) when the commission is deciding on land use designations for their specific properties. Consequently, Commissioner Wilms may not participate in any decision regarding land use designations for P.G. & E. and Crowley properties. He is also prohibited from participating in any decision regarding another parcel of property if that decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on P.G. & E. or Crowley.

Commissioners Rifkind and Smith

Commissioners Rifkind and Smith have "interests in real property" within the meaning of Section 87103(b) as to each of the parcels described in your letter. The decisions before the planning commission concern the zoning of those parcels.^{2/}

Regulation 18702.1 provides:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if....

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more....

Accordingly, Commissioners Rifkind and Smith may not participate in decisions regarding the land use designations for the parcels of property in which they have ownership interests. They also are prohibited from participating in decisions regarding other parcels of property if those decisions will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their real property interests.

^{2/} The general plan law of California requires that real property zoning be consistent with the general plan for the jurisdiction. (See, Sections 65359, 65454 and 65860.) The zoning ordinance must be amended to achieve consistency if the general plan is amended. (Section 65860(c).)

Other Decisions

You indicated on the telephone that the planning commission will first make decisions regarding land use designations involving specific parcels of land. Once it has made all of these decisions, the planning commission will decide whether to recommend adoption of the overall general plan.

In the past, in certain limited circumstances, we have advised that large, complex decisions may be divided into separate decisions when an official has a disqualifying interest in one component of the decision which is not interdependent upon other components. The official may then participate as to the other components in which he or she has no financial interest. (See, Advice Letter to Jeffrey D. Huffaker, No. A-86-343, copy enclosed.) In the present situation, the commissioners who have disqualifying financial interests may participate in decisions regarding other components of the general plan if the commission adheres to the procedure outlined below. The decision to use this procedure is up to the discretion of the commission.

(1) The decision in which an official has a financial interest must be severed so that the hearing can be bifurcated.

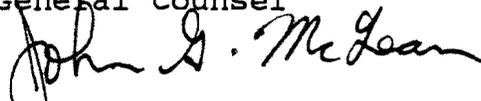
(2) That decision must be considered first, and a final decision reached by the commission without the official participating in any way.

(3) Once a decision in which the official has a financial interest has been made, the disqualified official may participate in the remaining decisions, so long as those decisions do not result in the reopening of the decision in which the official has a financial interest.

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

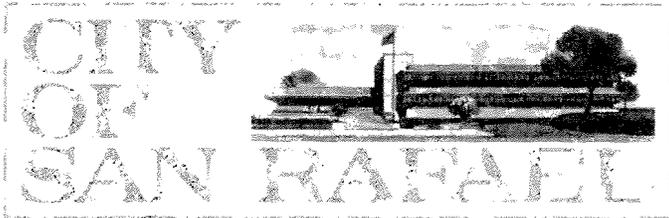
Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

JGM:km
Enclosures



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CALIFORNIA 94915 0060

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February 5, 1987

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ANDREW J. E. KEANE

CITY CLERK
COURT REPORTER
CITY ENGINEER
RECORDS CLERK
CITY MANAGER

John G. McClean, Staff Counsel
California Fair Political
Practices Commission
P. O. Box 8907
Sacramento, CA 95804-0807

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

Dear John:

Pursuant to our telephone conversation of February 4, 1986, listed below are some definitive potential conflicts that we would appreciate your analysis of, in the form of an advice letter. Please be advised that we need this information by the third week in March as the Planning Commission intends to begin deliberations on the Plan beginning in late March, 1987. We would appreciate any special attention you could provide us in this matter.

Please be advised this letter will supplement that information we have already provided you on the same subject.

Potential conflicts:

- 1(a). Commissioner Wilms owns P.G.&E. Company stock. During the General Plan deliberations, Commissioner Wilms will potentially be voting on land use designations on P.G.&E. property within the City.
- 1(b). Wilms owns Crowley stock and also receives a salary from Crowley. Crowley owns the Marin Islands, which have no land use designation in the current General Plan. Wilms will be potentially voting on designating one of the Crowley islands for low density residential use. The Plan contemplates that the other island will receive a conservation area designation.
2. Commissioners Rifkind and Smith both own over five rental units within the City limits. The Plan will give a specific land use designation for every parcel, a density range for residential dwelling units and an upper limit of floor

John G. McLean, Esquire
February 5, 1987
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area ratio. In some areas, constrained by traffic, the number of P.M. peak trips will be limited by the Plan. Limitation on the number of traffic trips is already imposed in some areas and will be imposed in other areas of the City.

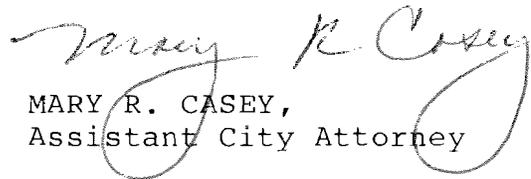
3. Smith owns a 25 percent interest in an undeveloped parcel on Smith Ranch Road worth approximately \$500,000. Smith could potentially be voting on the land use designation of that parcel. Currently said parcel is to be designated neighborhood commercial.

Please advise us as soon as is possible whether or not you will be able to provide us an advice letter on these potential conflicts. We will need adequate time to research these issues if you are unable to assist us.

Thank you again for your continuing cooperation and support in this matter.

Very truly yours,

GARY T. RAGGHIANI,
City Attorney


MARY R. CASEY,
Assistant City Attorney

MRC:em

cc: Planning Director



California Fair Political Practices Commission

February 10, 1987

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

Re: 87-048

Dear Ms. Casey:

Your letter requesting advice under the Political Reform Act was received on February 6, 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 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:plh