



California Fair Political Practices Commission

March 24, 1987

Judy Skousen
City Attorney
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Re: Your Request for Advice
Our File No. A-87-062

Dear Ms. Skousen:

You have requested advice on behalf of Morro Bay Mayor, Dale Reddell, regarding his duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} This letter confirms advice provided to you and Mayor Reddell by telephone on Wednesday, March 4, 1987.

QUESTIONS

1. Is Mayor Reddell prohibited from participating in decisions regarding a restriction on water connections in Morro Bay by virtue of his ownership interests in a construction business and approximately 12 undeveloped parcels of real property?

2. If it is determined that Mayor Reddell may not participate in any of the decisions, may he chair the meeting at which the decisions are made?

CONCLUSION

1. Mayor Reddell is prohibited from participating in the decisions currently before the city council involving the restrictions on water connections.

^{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.

2. Since he is prohibited from participating in the decisions, Mayor Reddell is also prohibited from chairing the meeting.

FACTS

The City of Morro Bay is subject to a growth restriction initiative, known as Measure F, which restricts population growth, and therefore restricts the number of building permits that can be issued each year. It does not set a minimum or require any certain number of permits to be issued.

Both Measure F and the Coastal Commission place a further restriction on water connections by requiring the city to establish and demonstrate a water conservation program that will conserve at least as much water as is awarded for new development.

In previous years, the city council has established two programs to conserve water. Based on the amount of water determined by the council to be saved under the program, water has been allocated for development.

One program, called the retrofit program, provided that a person seeking to develop (i.e. obtain a water connection) would "retrofit" a certain number of older homes (usually 12 homes for each new water connection) or businesses within the city with new water saving devices and fixtures. Usually, the toilets, showerheads and faucets would be replaced with new water saving models.

The second program, known as the water recovery or pipeline replacement program, required the city to replace old water lines with new water lines. A new water connection would be earned and thus could be awarded for each 165 feet of pipeline that was replaced.

In the past, the city council has usually awarded for development all of the equivalencies earned by the two water programs up to the maximum allowed by Measure F. For 1987, this issue has already been heard by the water advisory board and the planning commission. Their advice is to award the full number of equivalencies under Measure F.

Currently before the city council is the issue of whether the retrofit and/or pipeline replacement programs are water conservation measures and, if so, whether sufficient water is conserved to allow development as permitted by Measure F. As part of that decision, the council will determine how much

development to permit in 1987, and develop a model for how the new water connections should be earned and allocated.

Whether the council determines to continue pipeline replacement, retrofit, both, or some other water allocation method, or determines not to award any water connections at all, will affect the construction business in Morro Bay. If no water is awarded, construction, except for repairs and remodeling, will basically be halted.

Mayor Reddell owns 25-percent interests in ten lots in Morro Bay on which he hopes to build. He also is in the process of purchasing two additional lots on which he hopes to build. In order to build on these properties, he will need an award of water equivalencies to obtain building permits.

Mayor Reddell also owns and operates his own construction company, which works primarily within the City of Morro Bay. He does remodeling and repairs, but also builds both residential and commercial buildings. In the past, he has applied for and obtained building permits through the retrofit program. At the current time; he has at least one application pending with the Community Development Department which will not be granted unless the council determines to continue either pipeline replacement or retrofit or some other model of water allocation.

Although Mayor Reddell's business is an active, successful business operating in the community, it appears that his company does only a small portion of the building business in town. The interest Mayor Reddell has in this business has a value substantially greater than \$1,000 and the income derived therefrom is substantially greater than \$250.

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 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).)

Mayor Reddell has interests in numerous parcels of real property. (Section 87103(b).) He also has interests in his construction business, and his business is a source of income to him. (Section 87103(a), (c) and (d).) Accordingly, he may not participate in a decision which will have a reasonably foreseeable material financial effect on his real property interests or on his construction business.

Addressing the question of foreseeability first, 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 FPCC Ops. 198 (No. 75-089, Dec. 4, 1976), copy enclosed.) The decisions to be made by the city council will affect the amount of construction activity which will occur in Morro Bay and the extent to which building permits will be issued. It is reasonably foreseeable that these decisions will affect the value of undeveloped property in the area, and would affect the amount of business to be conducted by construction firms such as Mayor Reddell's. (See, Advice Letter to Raymond A. Amrhein, No. 77-10-068 (October 7, 1977) (copy enclosed).)

The next question is whether the impact of the city council's decisions on Mayor Reddell's financial interests will be material. We believe so. The impact of the decisions will affect the potential for building on the undeveloped lots and will have an immediate effect on construction in the area. (Regulations 18702, 18702.1 and 18702.2, copies enclosed.)

Judy Skousen
March 24, 1987
Page 5

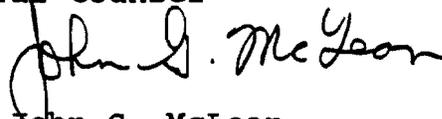
The final question is whether the effect of the decision on Mayor Reddell's financial interests will be distinguishable from the effect on the public generally. That is clearly the case. The value of undeveloped property will be materially affected by these decisions. The value of developed property will be affected to a lesser degree, and to the extent its value is affected, it would be affected differently from undeveloped property. Furthermore, the construction business will be affected by these decisions in a manner quite different from other businesses. We conclude, therefore, that Mayor Reddell may not participate in the decisions currently before the city council involving the restrictions on water connections.^{2/}

You have indicated that these decisions will be the only agenda item at the city council's meeting. Since Mayor Reddell is disqualified from participating in the decisions, he may not chair the meeting. (Biondo Opinion, 1 FPPC 54 (No. 75-036, July 2, 1975), copy enclosed.)

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

Sincerely,

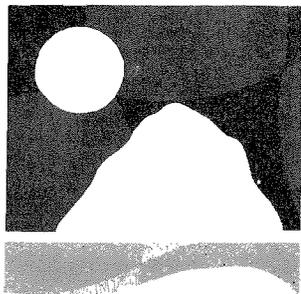
Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosures

^{2/} You have also asked whether Mayor Reddell may participate in the decisions if he discontinues doing construction work in Morro Bay. We have concluded that his interests in the construction business are not the only basis for disqualification. The undeveloped lots are also a basis for disqualification. Accordingly, Mayor Reddell may not participate even if he discontinues construction work in Morro Bay. Furthermore, sources of income to Mayor Reddell's business have not been included in this analysis because no facts have been provided regarding the customers. However, it is likely that persons or business entities who have been customers within the past 12 months will be materially affected by the decisions as well.



City of Morro Bay

A-87-062

595 Harbor St.
Morro Bay, CA 93442

805-772-1214

February 18, 1987

FEB 23 9 18 AM '87

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804

Re: Request for Formal Written Advice

Dear Ms. Griffiths:

As City Attorney for the City of Morro Bay, California, I am requesting on behalf of our Mayor, Dale Reddell, formal written advice on the question of whether a conflict of interest exists in the following fact situation.

The City of Morro Bay is subject to a growth restriction initiative, known as measure F, which restricts population growth, and therefore restricts the number of building permits that can be issued each year. It does not, however, set a minimum or require any certain number to be issued.

Both Measure F and the Coastal Commission place a further restriction on water connections by requiring the City to establish and demonstrate a water conservation program that will conserve at least as much water as is awarded for new development.

In previous years the City Council has established two programs to conserve water, and, based on the amount of water determined saved by Council, allocated water for development.

One program, called the retrofit program, provided that a person seeking to develop (i.e. a water connection) would "retrofit" a certain number of older homes (usually 12 homes for each equivalency) or businesses within the City with new water saving devices and fixtures, i.e., the toilets, showerheads and faucets would be replaced with new water saving models.

CITY HALL
595 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero

FIRE DEPARTMENT
715 Harbor Street

POLICE DEPARTMENT
850 Morro Bay Blvd.

PUBLIC WORKS
695 Harbor Street

RECREATION AND PARKS
535 Harbor Street

Ms. Diane Griffiths
February 18, 1987
Page 2

The second program, known as the water recovery or pipeline replacement program, required the City to replace old water lines with new waterlines. A water equivalency would be earned and thus could be awarded for each 165 feet of pipeline that was replaced.

In the past the City Council has usually awarded for development all of the equivalencies earned by the two programs up to the maximum allowed by Measure F. For 1987, this has already been heard by the Water Advisory Board and the Planning Commission, and their advice is for full amount of equivalency under Measure F.

Currently before the City Council is the decision whether the retrofit and/or pipeline replacement programs are water conservation measures and, if so, whether sufficient water is conserved to allow development as permitted by Measure F. Pursuant to that decision the Council will determine how much development to permit in 1987, and a model for how those water "equivalencies" should be earned and allocated.

Whether the Council determines to continue pipeline replacement, retrofit, both, or some other water allocation method, or determines not to award any water at all, will certainly have an effect on the construction business in Morro Bay. If no water is awarded, construction, except for repairs and remodeling, will basically be halted.

Therefore, it is important to be advised at this time whether a Councilmember having an interest in the construction business has a conflict of interest.

Mayor Dale Reddell owns and operates his own construction company, which works primarily within the City of Morro Bay. He does remodeling and repairs, but also builds both residential and commercial buildings. In the past he has applied for and obtained building permits through the retrofit program, and at the current time has at least one application pending with the Community Development Department which will not be granted unless the Council determines to continue either pipeline replacement or retrofit or some other model of water allocation.

Although Mayor Reddell's business is an active, successful business operating in the community, it appears that his company does only a small portion of the building business in town. The interest Mayor Reddell has in this business is substantially greater than \$1,000 and the income derived therefrom is substantially greater than \$250. Gross revenue of his business would be decreased more than one percent if no water equivalencies are awarded.

Ms. Diane Griffiths
February 18, 1987
page 3

Further, Mayor Reddell personally owns 25% interest in ten City lots on which he hopes to build, and also he is in the process of purchasing two additional lots, on which he hopes to build. In order to build on these properties he will need an award of water equivalencies to obtain building permits. Each of these lots is valued at more than \$1,000 and developing them will also substantially increase their value.

In the past his business has contracted to and done retrofit projects for other people to obtain their building permits.

Specific questions:

1. In the fact situation outlined above, does Mayor Reddell have a conflict of interest that would prohibit him from participating in a decision concerning whether the pipeline replacement and/or retrofit programs are water conservation measures?

2. In the fact situation outlined above does Mayor Reddell have a conflict of interest that would prohibit him from participating in a decision to determine how much development to permit in 1987?

3. In the fact situation outlined above does Mayor Reddell have a conflict of interest that would prohibit him from participating in a decision to determine how water equivalencies will be earned and allocated in 1987?

4. If Mayor Reddell publicly announces that he will no longer contract to do or perform retrofitting for others to obtain their building permits and then does refrain from so doing in the future, will Mayor Reddell have a conflict of interest that will prohibit him from participating in each of the three decisions outlined above in questions one through three?

5. If the business owned and operated by Mayor Reddell announces and refrains from doing any retrofit for others and also announces and refrains from doing any contracting for new development in the City of Morro Bay during his term of office, will he have a conflict of interest that would prohibit him from participating in each of the three decisions outlined above in questions one through three? In other words, does the ownership interest he has in several lots within the City constitute a conflict of interest?

Ms. Diane Griffiths
February 18, 1987
Page 4

6. If it is determined that he may participate in one decision but not another of the three listed above, may he participate in the Council discussion which will likely cover aspects of all three decisions?

7. If it is determined that he may participate in one decision but not another of the three listed above, may he chair the meeting? This will be a special meeting with only this topic on the agenda.

8. If it is determined that he should not participate in any of the decisions, may he chair the meeting?

Mayor Dale Reddell has authorized this request for formal written advice and has indicated such authorization and his address below. The meeting at which this topic will be discussed is scheduled for March 4, 1987, and it would be extremely helpful if we could receive your advice prior to that date. I have talked with Mr. John McLean of your office about this.

Thank you for your consideration in this matter.

Very truly yours,



Judy Skousen
City Attorney

I have read the foregoing and hereby authorize this request for formal written advice.



Dale Reddell
Mayor, City of Morro Bay
3360 Beachcomber
Morro Bay, CA 93442

JS:vk



California Fair Political Practices Commission

February 25, 1987

Judy Skousen
City Attorney
595 Harbor Street
Morro Bay, CA 93442

Re: 87-062

Dear Ms. Skousen:

Your letter requesting advice under the Political Reform Act was received on February 23, 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
cc: Dale Reddell, Mayor



California Fair Political Practices Commission

March 2, 1987

Commissioner Michael B. Montgomery
2460 Huntington Drive
San Marino, CA 91108

Dear Commissioner Montgomery:

We have received the enclosed letter from Judy Skousen, City Attorney for the City of Morro Bay, requesting advice on behalf of Mayor Dale Reddell. Ms. Skousen has informed us that Mayor Reddell wishes for a copy of this letter to be forwarded to you. We understand that you may have some interest in this matter.

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

Sincerely,

A handwritten signature in black ink that reads "John G. McLean".

John G. McLean
Counsel, Legal Division

JGM:plh
Enclosure