



California Fair Political Practices Commission

May 5, 1987

Tim Ryan
Livermore Valley Joint Unified
School District
685 Las Positas Blvd.
Livermore, CA 94550

Re: Your Request for Advice
Our File No. A-87-108

Dear Mr. Ryan:

You have requested advice concerning your duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

May you participate in a decision to impose school construction fees on developers of property within the Livermore city limits?

CONCLUSION

You may participate in a decision to impose school construction fees on developers of property within the Livermore city limits unless the decision would foreseeably and materially affect the fair market value of your property.

FACTS

The Livermore Joint Valley Unified School District is considering whether to impose school construction fees on developers of property within the Livermore city limits. The school construction fees are authorized pursuant to Section 53080.

^{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.

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You own 25 acres of real property in Contra Costa County, located more than 5 miles outside the Livermore city limits, and outside the city's sphere of influence. The city's sphere of influence approaches your property. Your residence and farm are located on that property.

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 the effect on the public generally, on the official or any member of his immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

You have an interest in real property which presumably is valued at \$1,000 or more. You must disqualify yourself from participating in any school board decision which would foreseeably and materially affect your real property in a manner that is distinguishable from the effect on the public generally.

An effect is considered "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, if an effect is but a mere possibility, it is not reasonably foreseeable. (Thorner Opinion, 1 FPCC Ops. 198 (No. 75-089, Dec. 4, 1975), copy enclosed.)

The decision to impose fees on developers of property within the Livermore city limits will clearly affect undeveloped real property within the city. Your property is more than 5 miles outside the city limits, however. You have informed us that the sphere of influence of the City of Livermore approaches your property, but your property is not within the sphere of influence.

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A city's sphere of influence is a plan for the probable ultimate physical boundaries and service area, as determined by the local agency formation commission in the jurisdiction. (Section 56076.) The fact that your property is not within the sphere of influence of the City of Livermore indicates that your property is not likely to be annexed to the City of Livermore in the foreseeable future. Accordingly, it is not likely that, in the foreseeable future, your property would be subject to the developer fees currently being considered by the school board.

It is not reasonably foreseeable that your property would be directly affected by the developer fees decision; however, we also must consider whether the decision would indirectly affect your property. The decision to impose developer fees on property within the city limits of Livermore could affect the value of property outside the city limits. The developer fees would make property within the city limits more expensive to develop. Depending on the additional expense involved to develop property within the city limits, property outside the city limits may become more desirable to develop. If property outside the city limits becomes more desirable to develop, the fair market value of that property would increase. We do not have sufficient facts to make this determination, thus, we must ask you to analyze whether the decision is likely to make your property more desirable to develop.

Assuming that it is reasonably foreseeable that the decision to impose developer fees on property within the city limits would affect the fair market value of property located outside the city limits, it also is necessary to determine whether the effect on the value of your property would be material. Regulation 18702(b)(2) contains guidelines for determining whether the effect of a decision on the value of an official's real property will be considered material. The regulation sets forth a sliding scale based on the current fair market value of the official's property. Under the regulation, an effect is material if it will foreseeably increase or decrease the fair market value of the property by: (1) at least \$10,000 if the current fair market value of the property is \$2,000,000 or more; (2) at least one-half of one percent if the current fair market value of the property is \$200,000 or more, but less than \$2,000,000; or (3) at least \$1,000 if the current fair market value of the property is less than \$200,000. (Regulation 18702.(b)(2)(B).)

You should examine these guidelines carefully to determine the amount of the effect on the current fair market value of your property that would be considered material. You should then determine whether there is a substantial likelihood that

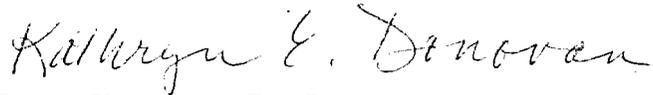
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such an effect will occur if the developer fees are imposed on property within the Livermore city limits. You may participate in the developer fees decision unless you determine that it is reasonably foreseeable that the fair market value of your real property will be materially increased or decreased as a result of the decision.

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

Sincerely,

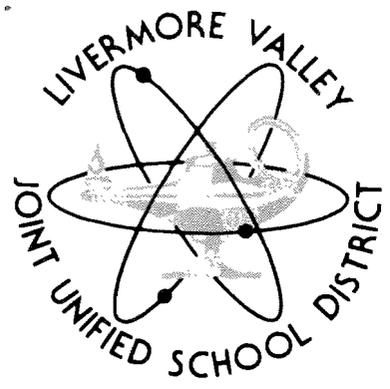
Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosure

87-108



F P P C
APR 8 8 33 AM '87
EDUCATION CENTER
685 LAS POSITAS BOULEVARD • LIVERMORE, CALIFORNIA 94550 • TELEPHONE 447-9500

March 25, 1987

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Dear Sir:

Subject: Developer's Fees (Re: City of Livermore)

In 1984 I sent a request regarding direction I might have to take in relation to our school district and some proposed major development within its boundaries (see your File #A-84-234). Given that it was your opinion at that time that, ". . . since it is reasonably foreseeable that this property could be significantly affected by the development," I may not participate in decisions affecting the development. Noting this I find myself in somewhat of a quandary now.

The Livermore School District has proposed to provide for developer fees for construction within the City of Livermore limits. Even though I live some five and one-half miles from the city's limits and in a different county, the city's sphere of influence approaches my property. Although not in the foreseeable future, it is anticipated that eventually the city will approach the boundaries of my land. When and if that occurs, it will be possible that the value of my property could be affected.

Given this, is it a conflict of interest to take positions relative to the district and the developer's fees?

Thank you for your attention to this matter.

Very truly yours,

Tim Ryan
Tim Ryan
School Board Member

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cc: Board Members



California Fair Political Practices Commission

April 9, 1987

Tim Ryan
School Board Member
Livermore Valley Joint Unified
School District
685 Las Positas Boulevard
Livermore, CA 94550

Re: 87-108

Dear Mr. Ryan:

Your letter requesting advice under the Political Reform Act was received on April 6, 1987 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh