



California Fair Political Practices Commission

August 21, 1987

Karen Tustin
Placerville City Attorney
Nielsen & Tustin
474 Main Street
Placerville, CA 95667

Re: Your Request for Advice
Our File No. A-87-173

Dear Ms. Tustin:

You have written on behalf of five members of the Placerville citizens advisory committee for revision of the city's general plan. This letter confirms advice previously provided to you by telephone.

QUESTION

Are members of the land use subcommittee of the general plan citizens advisory committee who have property interests in areas affected by the general plan revision required to disqualify themselves from decisions on land use issues?

CONCLUSION

The members of the citizens advisory committee are not public officials. Therefore, the disqualification provisions of the Political Reform Act do not apply to their actions.

FACTS

The City of Placerville is in the process of formulating a new general plan. A citizens advisory committee of 35 members has been established to assist in developing policy and to draft the new general plan. A subcommittee was formed for each of the elements (housing, open space, land use, etc.) of the general plan. There are 12 members on the subcommittee for the land use element. Five of those members have asked you to seek advice on their behalf regarding upcoming decisions on drafting of the land use element. In order to establish a general plan land use designation for each area of Placerville, the city has been divided into eight geographical areas. The five members have the following economic interests within one of those ~~areas~~:

1. Dale and Shirley Fluckey are both on the land use subcommittee. They own a house and eight acres currently used as a Christmas tree farm. The eight acres could be subdivided and developed in the future.

2. Bruce Crawford owns 40 acres of undeveloped land, most of which is not within the city limits, but is within the city's sphere of influence. He wishes to develop his property to a relatively high-density use.

3. Mary Mostert owns a single-family residence on a lot which could be split into two parcels. She is also a contractor and developer.

4. Vaughn Hintze owns no property in the area. However, he represents developers who own property in the area, and he is in the process of developing a specific plan for development in much of the undeveloped portion of the area.

The process for developing the new general plan calls for the citizens advisory committee, together with a consultant who has been retained to assist the city, to present the completed draft general plan to the planning commission and to the city council. Both of those bodies will hold public hearings. The city council will make the final decision as to approval, disapproval or modification of the proposed general plan.

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that no public official shall make, participate in making, or use his or her official position to influence the making of any governmental decision in which he or she has a financial interest. (Section 87100.) A public official is defined in the Act as follows:

"Public official" means every member, officer, employee or consultant of a state or local government

^{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.

agency, but does not include judges and court commissioners in the judicial branch of government....

Section 82048.

The members of the citizens advisory committee are not employees, officers or consultants. They are "members" of the committee, but are they members of a governmental agency? Regulation 18700 provides:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1).

The citizens advisory committee appears to be an ad hoc group appointed for a limited period of time, for a single recommendation. Consequently, there will be no "track record" by which to judge whether or not its recommendations are followed by the decision-making bodies. (See Regulation 18700(a)(1)(C).) It seems clear that the citizens advisory committee is not a decision-making body. The city council and planning commission have complete discretion to adopt, modify,

Karen Tustin
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or reject the committee's recommendations. Because of its very limited term of existence and its limited purpose, we conclude that the citizens advisory committee is not a government agency. Consequently, the members of the citizens advisory committee are not "members of a government agency" and are not public officials within the meaning of the Act. Therefore, disqualification is not required under Section 87100. (See generally, Bonfa Opinion 2 FPPC Ops. 146 (No. 76-003, Oct. 5, 1976), disapproved by Rotman Opinion, 10 FPPC Ops. 1 (No. 86-001, Aug. 18, 1977); Graff Advice Letter, No. I-87-153; and Baxter Advice Letter, No. A-86-234, altered in part by Sedell Advice Letter, No. A-86-234, copies enclosed.)

I trust that this letter adequately responds to your question. If you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosures

87-173

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KAREN TUSTIN
J. MARK NIELSEN

July 22, 1987

Diane Griffiths
General Counsel
Fair Political Practices Commission
132 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice - Conflict of Interest

Dear Ms. Griffiths:

I am the City Attorney for the City of Placerville, and am requesting the advice of the Fair Political Practices Commission with regard to a possible conflict of interest for certain members of Placerville's general plan advisory committee.

The city of Placerville is in the process of formulating a new general plan. To accomplish that goal, and to meet requirements of State law, a citizens advisory committee of approximately 35 members was formed to assist in developing policy and to draft the new general plan. A subcommittee was formed for each of the elements (housing, open space, transportation, etc.) of the general plan. The chairman and vice-chairman of each subcommittee comprise the land use committee, which is by far the most important of the many subcommittees. The subcommittees have completed the establishment of goals, policy and other recommendations for each of the elements. The focus is now on the land use committee's land use map.

In order to establish a general plan land use designation for each area of Placerville, the City has been divided into eight geographical areas. In one of the areas a question has arisen over the propriety of certain committee members participating and voting because of possible economic conflicts. These are as follows:

1. Dale and Shirley Fluckey, who are both on the land use committee, own a house and eight acres currently used as a Christmas tree farm. The eight acres could be subdivided and developed.

2. Bruce Crawford owns forty acres of undeveloped land, most of which is not within the City limits but is within the city's sphere of influence. He wishes to develop his property to a relatively high density use.

Diane Griffiths
July 22, 1987

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3. Mary Moscert owns a single-family dwelling on a lot which could be split into two parcels. She is also a contractor and developer.

4. Vaughn Hintze owns no property in the area but represents developers who own property and is in the process of developing a specific plan for development in much of the undeveloped portion of the area.

The question each of the five people listed above has is whether they should abstain from voting on all decisions within the area or whether they need to abstain only with regard to property they either own or represent. The land use subcommittee has twelve members. Therefore it can be seen that if all five members must abstain on any decisions concerning the entire area, decisions for that area will be made by a small number of people.

The general plan process is for the citizens advisory committee, together with a consultant who has been retained to assist the City, to present the completed proposed general plan to the Placerville Planning Commission and then to the City Council. Both the Planning Commission and the City Council will be holding public hearings, and the City Council has the final say on approval, disapproval or modification of the general plan.

Since the general plan land use committee hopes to complete its work by the end of August, I would appreciate a response as quickly as possible. Thank you very much for your assistance.

Yours truly,



KAREN JUSTIN

KT:dh

cc: Conrad Montgomery
Community Development Director
Ellis McClure, Chairman
General Plan Citizens Advisory Committee



California Fair Political Practices Commission

July 28, 1987

Karen Tustin
Nielsen & Tustin
474 Main Street
Placerville, CA 95667

Re: 87-173

Dear Ms. Tustin:

Your letter requesting advice under the Political Reform Act was received on July 23, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

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