



California Fair Political Practices Commission

August 10, 1987

John R. Harper, Esq.
2302 Martin Street, Suite 225
Irvine, CA 92715

Re: Your Request for Advice
Our File No. A-87-194

Dear Mr. Harper:

You have requested advice on behalf of Lake Elsinore City Councilmember James Winkler regarding his interest in serving on the executive committee of the Task Force Group for the Lake Elsinore Management Plan.

QUESTION

What conflicts of interest could arise should Councilmember Winkler be chosen as the city council representative to the executive committee of the task force group which will advise the Santa Ana Water Project Authority regarding development of a management plan for the administration of the Lake Elsinore stabilization plan?

CONCLUSION

The lake stabilization plan will have a reasonably foreseeable material financial effect upon Councilmember Winkler's financial interest in real property located in the floodplain or floodway. While the Political Reform Act (the "Act")^{1/} does not prohibit Councilmember Winkler from serving on the task force, he would be required under the Act to disqualify himself from participating in any decision of the task force relevant to development of the lake stabilization plan.

^{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

James Winkler is a member of the Lake Elsinore City Council. Councilmember Winkler would like to serve as the sole city council representative on a task force which will be advising the Santa Ana Water Project Authority regarding development of the management plan of a multimillion dollar lake stabilization project. The stabilization project has been established because changes in the lake level, from completely dry to flood conditions, have had devastating effects on the residents.

The lake stabilization plan will render floodplain and floodway properties, which were previously difficult to develop, potentially amenable to development. At present, approximately 3,000 acres, out of a total 22,624 acres in the city, are located in either the floodplain or floodway. Councilmember Winkler owns an undivided one-third interest in 272 acres of this property.

ANALYSIS

The Act 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. (Section 87100.)

According to the facts presented, Councilmember Winkler would be the city council representative on the task force. Consequently, he is a "public official" as defined in Section 82048. The Act's conflict of interest provisions apply to him. As the city council representative on the task force, he would be using his official position to influence the decisions of the Santa Ana Water Project Authority. (Regulation 18700.1(c), copy enclosed.)

The Act defines financial interest, in pertinent part, as follows:

An official has a financial interest in a decision within the meaning of Section 87100 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:

* * *

(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.

Based on the statement of economic interest filed by Councilmember Winkler in March of this year, the 272-acre parcel located within the floodplain or floodway has a current value of at least \$100,000. Therefore, the question before us is whether the decisions of the task force would have a reasonably foreseeable material financial effect on this property which is distinguishable from the effect on the public generally.

Foreseeability

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 only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The goal of the lake stabilization plan is to alleviate the flooding caused by the erratic lake conditions. As you mentioned in your letter, the dramatic changes in the lake level have had a devastating financial impact on the residents. Presumably, those residents holding an interest in property on the floodplain or floodway have suffered the most under the current situation. It is therefore quite clear that development and implementation of the stabilization plan would greatly increase the value of this property, initially simply by reducing the risk of flooding, but ultimately by increasing the ability to develop the land. An effect on the value of real property in the area is therefore foreseeable.

Materiality

Regulation 18702(b)(2) (copy enclosed) contains guidelines for determining whether the reasonably foreseeable effect of a decision on an official's real property will be considered material. These materiality guidelines vary with the value of the real property in question. According to Councilmember Winkler's most recent statement of economic interests, the real property in question is valued at more than \$100,000, but we do not know its actual value. If the fair market value of the property is \$200,000 or less, a \$1,000 increase or decrease in value would be considered material. If the fair market value is between \$200,000 and \$2,000,000, an increase or decrease of

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one-half of one percent of the value of the property would be considered material. If the fair market value of the property is \$2,000,000 or more, a \$10,000 increase or decrease in value would be considered material. (Regulation 18702(b)(2).)

You should determine the actual fair market value of the property and then decide which of these materiality tests applies. For additional guidance, you also should refer to the Commission's decision in In re Owen (1976) 2 FPPC Ops. 77 (copy enclosed). It would appear, based on Owen, that the effect on the property will be material.

Distinguishable from the Effect on the Public Generally

Having determined that the effect on Mr. Winkler's property is foreseeable and probably material, we must next determine whether the effect will be distinguishable from the effect on the public generally.

Traditionally, the Commission has considered the "public" to consist of the entire jurisdiction of the agency in question. (In re Owen, supra, at p.81. See also In re Legan (1985) 9 FPPC 1.) Under the facts presented here, the task force will be comprised of representatives from numerous local and regional interests. Unfortunately, we do not have sufficient information to determine specifically the jurisdiction which would apply to the task force. However, for purposes of this response, we will assume facts most favorable to the councilmember, and base this analysis on a definition of "public" which encompasses only the City of Lake Elsinore.

A governmental decision's effect on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703, copy enclosed.) Thus, the "public generally" exception applies only if the task force decisions will affect Councilmember Winkler's interests in substantially the same manner as they will affect all residents of the City of Lake Elsinore or a "significant segment" of the city. (Regulation 18703.)

In your letter, you assert that the entire City of Lake Elsinore will benefit from the stabilization plan; therefore, the effect of the plan on Councilmember Winkler is not distinguishable from the effect on the public generally. While we agree with your assertion that stabilization of the lake is intended to benefit the entire region, for purposes of

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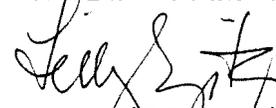
analyzing a possible conflict of interest under the Act it is necessary to determine whether some persons will be economically affected more directly than others. (See Owen, supra at p. 81.) It appears to us that land which would itself be subject to flooding in times of flood would be affected by a stabilization plan in a manner distinguishable from other land in the city. If you have factual material which you believe might lead us to conclude otherwise, feel free to submit it to us for consideration. Absent such evidence, we conclude that the effect on Mr. Winkler's property is distinguishable from the effect on property owned by residents of the city generally.

Having determined that all city residents will not be affected the same, we must finally determine if a significant segment of city residents will be affected in substantially the same manner as Mr. Winkler. Your letter indicates that the floodplain or floodway covers 3,000 acres, or approximately one-seventh of the total area of the City of Lake Elsinore. If we assume, once again based on calculations most favorable to Councilmember Winkler, that his 272-acre parcel is typical of owners of property on the floodplain or floodway, there could be a maximum of only 11 persons out of the entire population of the city whose interest would be similar to that of Mr. Winkler.^{2/} This does not constitute a "significant segment" of the public.

I trust this letter responds to your inquiry. If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Attachments

^{2/} If we assumed conversely that a large number of small parcels occupied the floodplain or floodway, the "public generally" exception would not apply either. Mr. Winkler's property, which would be much larger than other parcels, would be affected in a distinguishable manner because of its size.

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July 7, 1987

The Fair Political Practices
Commission
428 "J" Street
Suite 800
Sacramento, CA 95814

Re: Advice Summary - Conflict of Interest
JAMES WINKLER, Member of the City Council, City of
Lake Elsinore

Dear Members of the Commission:

The purpose of this letter is to formally request an advice opinion with regard to the potential for conflict of interest of James Winkler, a member of the City Council of the City of Lake Elsinore. This request is based upon the following facts:

Lake Elsinore is a small, predominantly rural community located in Riverside County, California. Included within its 32 sq. miles (22624 acres) geographical boundary and comprising approximately one-eighth of its total land area is Lake Elsinore. Historically, Lake Elsinore has been subject to dramatic changes in the lake level, from being completely dry to flood conditions, the impact of which has been devastating on residents, financially and otherwise. At present, approximately 3,000 acres of the City is located in either floodplain or floodway. In response to the historical impact of the variations in the lake level, Elsinore Valley Municipal Water District applied for and received a multimillion dollar Federal Grant to provide for future stabilization of the lake level. The effect of the lake stabilization plan will be to render properties which were difficult to develop potentially amenable to development. Council member Winkler owns an undivided one-fifth interest in 120 acres of such property.

In order to administer the lake stabilization plan, the City of Lake Elsinore, along with the United States Army Corps of Engineers, the Department of Parks and Recreation of the State of California, the Elsinore Valley Municipal Water District, the

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Riverside County Flood Control and Water Conservation District, and the Santa Ana Watershed Project Authority have entered into an agreement to prepare and finalize the management plan for Lake Elsinore. Enclosed please find a copy of the Task Force Flow Chart.

The Executive Committee will be composed of one representative from each of the participating agencies and will provide input to the Santa Ana Water Project Authority Project Committee. Council member Winkler wishes to serve as a member of that Executive Committee and would like the Commission's opinion with regard to any potential conflict of interest he might have as a consequence of owning land within the floodplain area. While it is obvious that upon ultimate implementation the plan may have positive financial impact upon Mr. Winkler's property, the plan will have the same impact on all other properties within the City's corporate boundaries, whether in the floodplain or not. Any financial impact at this point in time is obviously difficult, if not impossible to predict.

If you have further questions with regard to the factual basis for an opinion, please don't hesitate to contact either myself or councilman Winkler directly. Mr. Winkler's work number is (714) 826-5480.

Thank you for your assistance.

Yours truly,


JOHN R. HARPER

JRH:jw (L.E.#2/FPPC/p.1,2)

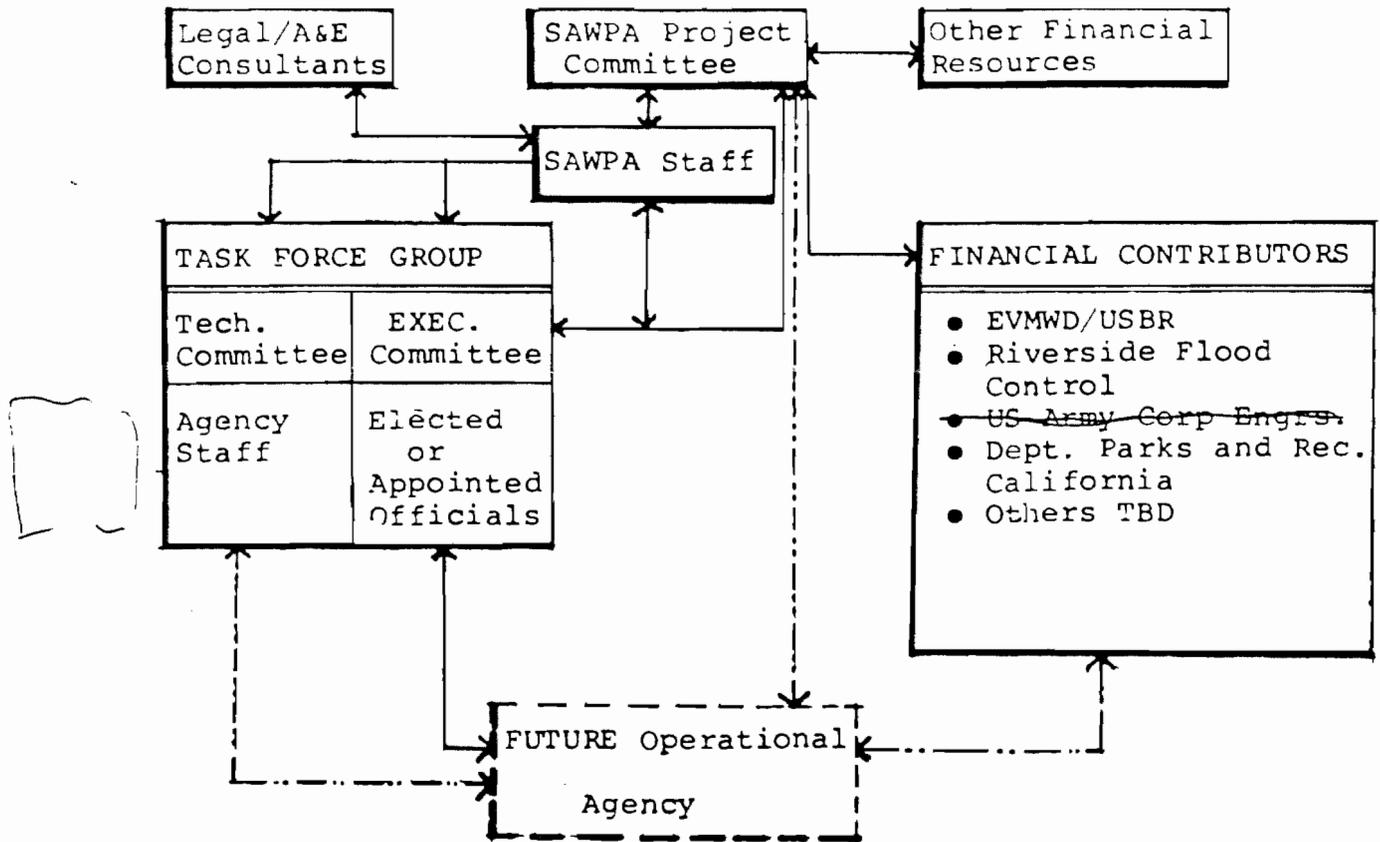
Enclosure

cc: James Winkler
City Council Member
City of Lake Elsinore

TASK FORCE FLOW CHART

FOR

LAKE ELSINORE MANAGEMENT PLAN



* Note: Upon the creation of Future Operational Agency SAWPA would relinquish all Project Authority to the Operational entity and become a member of Advisory Task Force.



California Fair Political Practices Commission

July 14, 1987

John Robert Harper
2302 Martin Street, Suite 225
Irvine, CA 92715

Re: 87-194

Dear Mr. Harper:

Your letter requesting advice under the Political Reform Act was received on July 10, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, 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,

Diane M. Griffiths
Diane M. Griffiths
General Counsel

DMG:jaj