



California Fair Political Practices Commission

October 16, 1987

Charles W. Vose
City Attorney of South Pasadena
1000 Sunset Blvd.
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. I-87-248

Dear Mr. Vose:

You have submitted for our review a memorandum which you have prepared for distribution to the South Pasadena City Council. The memorandum deals generally with the issue of whether under the Political Reform Act,^{1/} a councilmember may address the council on a decision from which he is otherwise disqualified in participating. Since the memorandum does not discuss any specific future decision, we consider the memorandum to be a request for informal assistance.^{2/}

As I indicated in our recent telephone conversation, we are in agreement with the general guidance provided by your memorandum. However, the memorandum should also reference Regulation 18700.1(b)(1) (copy enclosed) which describes the

^{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/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Your memorandum also makes reference to certain past actions of one member of the council. In confirming the general guidance which your memorandum provides to the city council, we make no conclusion regarding whether those past actions are in compliance with the Act. (See Regulation 18329(c)(4)(A).)

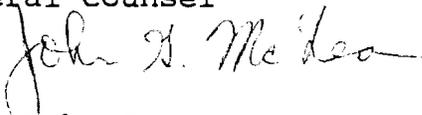
Charles W. Vose
October 16, 1987
Page 2

very limited circumstances in which a councilmember may appear before the council in the same manner as any other member of the general public to represent his or her "personal interests" regarding a matter from which the councilmember is otherwise disqualified. Regulation 18700.1(b)(1) is summarized on page 7 of the enclosed pamphlet entitled "A Guide to the Political Reform Act -- California's Conflict of Interest Law for Public Officials."

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

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosure

LAW OFFICES

OLIVER, STOEVER, BARR & EINBODEN

A PROFESSIONAL CORPORATION
1000 SUNSET BOULEVARD

LOS ANGELES, CALIFORNIA 90012

(213) 250-3043

THOMAS W. STOEVER
WILLIAM B. BARR
RONALD J. EINBODEN
CHARLES S. VOSE
ROGER W. SPRINGER

OF COUNSEL:
NORMAN G. OLIVER

September 25, 1987

John G. McLean, Esq.
Legal Counsel
Fair Political Practices Commission
428 J Street
Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Dear Mr. McLean:

As a follow-up to our most recent conversation concerning the application of the conflict of interest codes to a councilmember in the City of South Pasadena, I have prepared the attached memorandum for submittal to the South Pasadena City Council. As you will recall, the City Council requested that I contact the FPPC regarding a councilmember's participation in discussions on a matter which he had previously determined he had a conflict of interest.

I would appreciate your review of this memorandum, paying particular attention to the comments set forth on page 4. I do not want to address any phone conversations between you and councilman Wagner and any advise which is alleged to have been given.

Should you have any comments concerning this memorandum, I would appreciate your input prior to October 2, 1987. Please advise me if this opinion is not consistent with our recent phone conversation.

Thank you for your cooperation and assistance in this matter.

Very truly yours,



Charles S. Vose
of OLIVER, STOEVER, BARR & EINBODEN

CSV:ilf

LAW OFFICES

OLIVER, STOEVER, BARR & EINBODEN

A PROFESSIONAL CORPORATION

1000 SUNSET BOULEVARD

LOS ANGELES, CALIFORNIA 90012

(213) 250-3043

THOMAS W. STOEVER
WILLIAM B. BARR
RONALD J. EINBODEN
CHARLES S. VOSE
ROGER W. SPRINGER

OF COUNSEL:
NORMAN G. OLIVER

MEMORANDUM

TO : South Pasadena City Council
c/o John Bernardi, City Manager

FROM : Charles S. Vose, City Attorney

DATE : September 25, 1987

RE : Conflict of Interest -
Making or Participating in the
Making of a Governmental Decision

At a recent City Council meeting, the City Council requested that I contact the Fair Political Practices Commission to obtain information concerning the appropriate procedure to follow in situations where a councilman has determined that he has a conflict of interest. As the council will recall, at the recent meeting, I described a procedure which, in my opinion, was consistent with the conflict of interest provisions of the government code. In cases where a council member has determined that he has a conflict of interest, I recommended that the following procedure be used:

1. The particular councilmember with the conflict of interest should, prior to the meeting, inform the Mayor (or Mayor pro-tem) that he had a potential conflict of interest and that he wanted to disqualify himself prior to the particular matter being considered by the council.

2. Immediately prior to the agenda item being considered by the council, the councilmember should state that he is disqualifying himself from participating with respect to the particular item and, for the record, he should state the precise nature of his potential conflict of interest.

3. After announcing his disqualification and stating his conflict of interest, the councilmember should remove himself from the council seating area. The councilmember should not participate in the discussion of the item as a councilmember or by making a presentation to the City Council from the audience.

In addition to the above, I also indicated that the councilmember should not contact staff at any time with respect to any item in which he has a potential conflict of interest unless such contact is necessary for the councilmember to determine whether or not he in fact has a conflict of interest. The above procedure is appropriate, in my opinion, in order to fully comply with the conflict of interest codes and eliminate the appearance of participating in the governmental decision with respect to a matter in which a councilman has a conflict of interest.

At the last council meeting, a question was raised as to the validity of this procedure as it related to a particular instance in which a councilmember spoke as part of the general public on a matter which the same councilmember had determined he had a conflict of interest. As you will recall, the City Council was presented with an issue concerning the general regulation of commercial development within the City of South Pasadena. Council member Wagner announced that he had a potential conflict of interest and removed himself from the council seating area. Council member Wagner then made a presentation to the City Council from the audience and requested that the City Council adopt certain regulations concerning commercial development.

At the time that councilmember Wagner made this presentation before the City Council, I stated that a conservative approach should be followed and he should not participate in this process by making such a presentation and he should remove himself from the discussions. However, councilmember Wagner indicated that he had contacted the Fair Political Practices Commission and received an opinion stating that he could, in fact, participate in the discussions as a member of the general public and not in his capacity as a City councilmember. I indicated at that time that I had not provided Mr. Wagner with a legal opinion concerning his conflict of interest, however, I was of the opinion that a more conservative approach should be

followed and that councilmember Wagner should not participate in the discussions concerning a matter which he has determined he has a conflict of interest.

In contacting the Fair Political Practices Commission, I was advised that the FPPC had adopted administrative regulations concerning this issue. Specifically, Title 2, Division 6 of the California Administrative Code includes Section 18700(c) which states as follows:

"A public official or designated employee 'participates in the making of a governmental decision' when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantiative review, with a governmental entity or private person regarding the decisions; or

(2) Advises or makes recommendations to the decision maker, either directly or without significant intervening substantiative review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decisions; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision."

It is my opinion that a councilmember who appears before the City Council and makes a presentation in favor or against a particular matter under consideration as a member of the general public is participating in the making of a governmental decision pursuant to the above cited code provision. Therefore, such a presentation would be in violation of the conflict of interest codes unless it falls within one of the exceptions which are listed in Title 2,

Division 6 of the California Administrative Code
Section 18700(b) which states as follows:

"Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest; or

(3) Actions by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract."

I have discussed the interpretation of this section in great detail with Mr. John G. McLean, legal counsel for the FPPC. In interpreting subsection 2 of the above regulation, Mr. McLean indicated that it is only appropriate for a councilmember to make a presentation before the City Council if he or she is the sole owner of the property which may be impacted by the proposed regulation. If the councilmember owns the property or has an interest in the property, with other parties then those other parties must make the presentation and the councilmember must remove himself from the participation and discussion of the matter either as a councilmember or a member of the general public. Therefore, the presentation by the particular councilmember must be directly related to the representation of the individual's sole interest in a particular piece of property. In any other circumstance, the councilmember should not participate in the discussions of the matter which is before the City Council.

Therefore, it continues to be my opinion that the conservative course of action is for a councilmember to withdraw from the participation, directly or indirectly, from the discussions or consideration by the City Council of any matter which the councilmember has a conflict of interest.