California
Fair Political
Practices Commission

December 14, 1987

John D. Brinton
City Attorney
146 N. Grant
Manteca, CA 95336

Re: Your Request for Advice
Our File No. A-87-291

Dear Mr. Brinton:

You have requested advice on behalf of Manteca City Councilmember Albert Mezzetti concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").1/ This letter confirms the advice I provided in a telephone conversation with John Fredericks of your office on November 30, 1987.

QUESTION

May Mr. Mezzetti participate in decisions concerning a truck terminal project located within four-tenths of a mile (2,150 feet) of his real property?

CONCLUSION

Mr. Mezzetti may participate in decisions concerning the truck terminal project unless it is reasonably foreseeable that those decisions would materially affect the value of his real property. Based on the specific facts provided, a material effect on Mr. Mezzetti's real property is not reasonably foreseeable.

FACTS

Mr. Mezzetti recently purchased two and one-half acres of land situated four-tenths of a mile (2,150 feet) outside the Manteca city limits. This land is zoned for general agricultural use. A small residence is located on the land.

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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Mr. Mezzetti does not reside there, but may use it for his residence eventually.

The city council is considering approval of a truck terminal project located near the city boundary, approximately 2,150 feet from Mr. Mezzetti's real property. Trucks entering and exiting the proposed truck terminal will use a route which does not pass by Mr. Mezzetti's real property.[2/]

ANALYSIS

Section 87100 prohibits any 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, among other interests:

> (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).

As a city councilmember, Mr. Mezzetti is a public official. (Section 82048.) His real property is less than two miles outide the city boundaries; therefore, it is within the jurisdiction of the city for purposes of the Act. (Section 82035.) Presumably, his real property is worth at least $1,000. Accordingly, he must disqualify himself from participating in any decision which would foreseeably and materially affect his real property in a manner distinguishable from the effect on the public generally.

The effect of a decision 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. (In re Thorner (1975) 1 FPPC Ops. 198.)

Section 87103 also requires that the decision materially affect the official's economic interests. The Commission has adopted guidelines which specify when the effect on an

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2/ In a telephone conversation on November 20, 1987, your office provided facts which are significantly different from the facts originally presented in your letter.

official's real property interests is considered material. Specifically, Regulation 18702(b)(2) provides that a material financial effect exists if it is reasonably foreseeable that the decision will increase or decrease:

> (B) The fair market value of the property by the lesser of:
>
> 1. Ten thousand dollars ($10,000); or
>
> 2. One half of one percent if the effect is one thousand dollars ($1,000) or more.
>
> Regulation 18702(b)(2)(B)

According to information you have provided in telephone conversations concerning this matter, Mr. Mezzetti purchased his property for $120,000 in August 1987. Presumably, the purchase price serves as the property's approximate fair market value. Thus, pursuant to Regulation 18702(b)(2), an increase or decrease of $1,000 or more in the property's fair market value as a result of the truck terminal project would be a material effect.

Based on our telephone conversation with John Fredericks of your office, we conclude that such an effect is not reasonably foreseeable. Mr. Fredericks indicated that the trucks using the truck terminal will use a route that does not pass by Mr. Mezzetti's real property; therefore, increased truck noise and traffic should not affect Mr. Mezzetti's use and enjoyment of his real property. The fact that Mr. Mezzetti's property is located four-tenths of a mile from the proposed truck terminal also supports Mr. Frederick's statement. Therefore, a $1,000 effect on the fair market value of the property does not appear reasonably foreseeable. (See In re Thorner, supra.)

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

Sincerely,

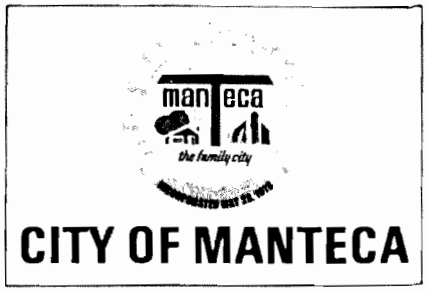
Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

CITY ATTORNEY
146 N. Grant
Manteca, California 95336
209-823-1112



November 16, 1987

FPPC
428 "J" St., Suite 800
P.O. Box 807
Sacramento, CA 95804

Dear Sir/Madam:

A member of the Manteca City Council has asked this office to request your opinion as to whether the following facts constitute a conflict of interest:

He recently purchased 2½ acres of land one (1) mile outside the Manteca city limits. An annexation to Manteca is being considered by the city council which, if approved, would extend the city limits to within 3/10 mile of the councilman's property. Is he required to abstain from participation in the annexation decision?

If you require further information please call. Time is of the essence as the action is to be considered at the council's December 2nd meetings.

Yours truly,

McFALL, BURNETT & BRINTON

John D. Brinton
Attorney at Law

JDB/JAF/ka

cc: Al Mezzetti

California
Fair Political
Practices Commission

November 18, 1987

John D. Brinton
City Attorney
146 N. Grant
Manteca, CA 95336

Re: 87-291

Dear Mr. Brinton:

Your letter requesting advice under the Political Reform Act was received on November 17, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn 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 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 by Ked

Diane M. Griffiths
General Counsel

DMG:plh
cc: Al Mezzetti

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87-291

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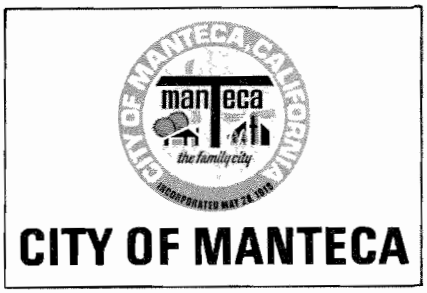

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November 16, 1987

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McFALL, BURNETT & BRINTON

John D. Brinton
Attorney at Law

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cc: Al Mezzetti