



# California Fair Political Practices Commission

December 17, 1987

Honorable Robert C. Cheasty  
Mayor, City of Albany  
1000 San Pablo Avenue  
Albany, California 94706

Re: Your Request for Advice  
Our File No. A-87-294

Dear Mayor Cheasty:

You have requested advice about the application of the Political Reform Act (the "Act") to your actions on the board of directors of Albany News, Inc.

## QUESTION

Does your position as Mayor of Albany limit your ability to participate in decisions of the board of directors of Albany News, Inc.? For example, may you participate in the board's decision to charge the City of Albany the standard rate for publishing a public notice?

## CONCLUSION

The Act does not limit your participation in the decisions of the newspaper's board of directors because its actions are not governmental decisions. Accordingly, you may participate in the newspaper's decision to charge the City of Albany the standard rate for publishing a public notice. Nevertheless, the Act may prohibit you from participating in or attempting to influence any decision before the city council or other city officials if the decision would foreseeably and materially affect the newspaper.

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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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#### FACTS

You are the mayor of the City of Albany. You also are on the board of directors of Albany News, Inc., a nonprofit Internal Revenue Code Section 501(c)(3) corporation, which publishes the Albany News. You are not paid for serving on the board. Of the five directors, four are elected or appointed public officials and the fifth has a record of public service. The directors are chosen because of their positions in the community so as to insure that the Albany News serves the public and to satisfy I.R.S. requirements for nonprofit status.

The Albany News publishes public notices for the City of Albany. The newspaper wants to charge the city the standard rate for publishing public notices. The board will be considering approval of this charge.

#### ANALYSIS

The Act prohibits a public official from making, participating in, or in any way attempting to use his official position to influence a governmental decision. (Section 87100.)

You would be participating in a governmental decision if in your authority as mayor you voted on a matter, appointed a person, committed the city council to a course of action or entered into a contract on behalf of the council. (Regulation 18700(b) through (d), copy enclosed.) Using your official position to influence a decision includes contacting city council members or other public employees or officials about a governmental decision. (Regulation 18700.1, copy enclosed.)

Although you may have been chosen to serve on the board of directors of Albany News, Inc., because you are an elected official, in this case when you act as a board member you are not acting in your authority as mayor.<sup>2/</sup> The board's decisions are not governmental decisions. The Act does not apply to your duties on the board of directors.

In fact, your duty of loyalty as a board member is to Albany News, Inc. and not the City of Albany. (See Pigeon

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<sup>2/</sup> Our present advice might differ if the City of Albany were a stockholder in Albany News, Inc., and the mayor were acting as a trustee for the city's stock holdings. (See Einboden Advice Letter, No. A-84-100, copy enclosed.)

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Point Ranch, Inc. v. Perot (1963) 59 Cal.2d 227, 233; Cal. Corp. Code Section 309(a).) For more information about your duties as a director, you may want to write to the State Department of Corporations.

On the other hand, if the Albany News were a source of income to you of \$250 or more in the past calendar year and the Albany News filed a claim for payment that the Albany City Council had to approve, you would be disqualified from voting on the claim. (Section 87103(c); Regulation 18702.1(a)(1) and (b), copy enclosed.) Voting on such a claim is a governmental decision to commit the city to pay the newspaper's claim for payment, and you would be acting within your authority as mayor and member of the city council. Moreover, you would be prohibited from communicating with city officials for the purpose of influencing the city's decision on that claim. (Regulation 18700.1, copy enclosed.) Of course, presently these restrictions do not apply because the Albany News is not a source of income to you of \$250 or more in the past year.

The provisions of Government Code Section 1090 also may apply to a decision about a contract between the city and the Albany News. The Commission does not administer this statute. We refer you to your city attorney for advice regarding Section 1090.

I hope we have answered your request for advice. Please call me at (916) 322-5901 if you have a question about this letter.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:plh  
Enclosures



# California Fair Political Practices Commission

November 24, 1987

Robert C. Cheasty  
Mayor  
1000 San Pablo Avenue  
Albany, CA 94706

Re: 87-294

Dear Mayor Cheasty:

Your letter requesting advice under the Political Reform Act was received on November 23, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

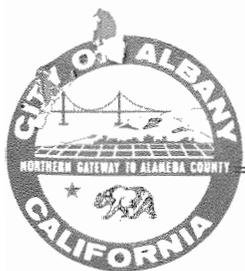
We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned 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 *by KED*

DMG:plh



# City of Albany

87-294

1000 SAN PABLO AVE. • ALBANY, CA 94706 • TELEPHONE 644-8535

## OFFICE OF THE MAYOR

NOV 23 8 49 AM '87

November 9, 1987

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

Re: Potential Conflict of Interest

To Whom It May Concern:

I am requesting a written report in connection with my service on the Board of Directors of a non-profit Corporation, Albany News Inc..

Albany News Inc., publishes a newspaper on a monthly basis called Albany News. Albany News Inc. is a non-profit 501 (c)(3) corporation which has as its Board of Directors a number of public officials and people active in the community both to ensure the public service nature of the publication and to satisfy the requirements of the I.R.S. in granting the 501 (c)(3) status.

The City of Albany regularly publishes public notices in newspapers that reach general circulation in the City. The Albany News received one such public notice and published it. The Albany News would like to charge the City the standard rate for such publication. As I am on the City Council and also on the Board of Directors of Albany News Inc., the owner of the paper, I wanted to make sure there was no problem in applying the standard charge. From the newspaper's point of view, the other interests of a member of its Board of Directors should not stand in the way of the normal business of the newspaper.

Additionally, one of the requirements of a non-profit corporation is that the the Board of Directors be "public" in some way and in considering whether to approve an application for a 501 (c)(3) the government will look to see whether members of the Board of Directors are public officials or in some way represent large public bodies. Toward that end, the Board of Directors of Albany News Inc. is comprised of five (5) people who are either elected or appointed officials with the exception of one (1) who has a record of public service and has a high public profile in the City.

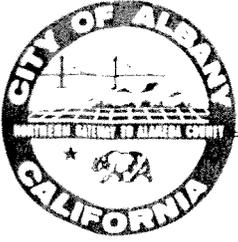
The preferred answer would be that I have no conflict of interest in serving on the Board of Directors of a non-profit corporation which charges Albany the standard rate for publishing public notices.

I would appreciate a response at your earliest convenience.

Sincerely,

  
Robert C. Cheasty  
Mayor

RCC:er



# City of Albany

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Mayor