



California Fair Political Practices Commission

February 24, 1988

Lyle L. Lopus
Assistant City Attorney
City of Fremont
39700 Civic Center Drive
P.O. Box 5006
Fremont, CA 94537

Re: Your Request for Advice
Our File No. A-88-044

Dear Mr. Lopus:

You have requested advice on behalf of City of Fremont Planning Commissioner Pauline McIvor concerning her duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Fremont Unified School District has provided more than \$250 income to Ms. McIvor. May Ms. McIvor participate in a decision which would change the residential density distribution on the school district's thirty-seven acre tract?

CONCLUSION

Ms. McIvor may participate in the decision to change the residential density distribution on the school district's property. Even though the decision will have a material financial effect on the district, that effect will not be distinguishable from the effect on the public generally.

FACTS

Planning Commissioner McIvor and her husband own and operate a hardware store in Fremont. The Fremont Unified School District has purchased more than \$250 from the hardware store in the past 12 months.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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The Fremont Unified School District has applied to the planning commission for a change in the residential density distribution on the district's thirty-seven acre tract. The district intends to sell the tract to a developer. You state in your letter that it can be assumed that the effect of the decision on the district will be material.

The boundaries of the Fremont Unified School District are coterminous with the boundaries of the City of Fremont.

ANALYSIS

Section 87100 prohibits a public official from making, participating in or using her official position to influence a governmental decision in which she knows or has reason to know she 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, any source of income of \$250 or more in value received by the official within 12 months before the decision. (Section 87103(c).)

The school district has purchased more than \$250 from Ms. McIvor's hardware store in the past 12 months. Therefore, the school district is a source of income of \$250 or more to Ms. McIvor. (Section 82030.) Accordingly, Ms. McIvor must disqualify herself from participating in any planning commission decisions which would foreseeably and materially affect the school district in a manner distinguishable from the effect on the public generally.

In your letter, you advised us to assume that the effect of the decision on the school district would be material. In fact, Regulation 18702.1(a)(1) (copy enclosed) provides that where a source of income of \$250 or more to a public official appears before her, the effect of the decision is material. Thus, if the effect of the decision on the school district is distinguishable from the effect on the public generally, Ms. McIvor must disqualify herself from participating in the decision.

The effect of a governmental decision on an official's economic interests is distinguishable from the 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.) The general public means those persons within the jurisdiction of the official's

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agency. (In re Owen (1977) 2 FPPC Ops. 77, 81, copy enclosed.) In Ms. McIvor's case, the population of the City of Fremont is the general public.

The population of the City of Fremont is the same as the population of the Fremont Unified School District, because the boundaries of the two agencies are coterminous. Therefore, in the City of Fremont, the Fremont Unified School District constitutes the public generally or a significant segment thereof. (See Taylor Advice Letter, No. A-78-086, copy enclosed.) Consequently, although the decision pending before the planning commission would have a material financial effect on Fremont Unified School District, the "public generally" exception applies and Ms. McIvor may participate in the decision.

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

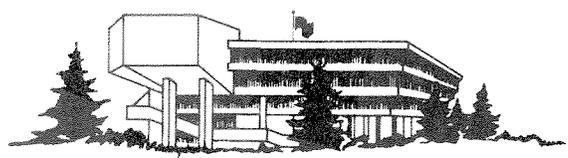
Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures



DATE 0 20 57 88

City of Fremont

City Attorney's Office
39700 Civic Center Drive
P.O. Box 5006
Fremont, California 94537
(415) 790-6620

January 21, 1988

Dianne Griffiths
General Counsel
Fair Political Practice Commission
P. O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Griffiths:

I am writing to request an advisory letter concerning the propriety of participation by City of Fremont Planning Commissioner Pauline McIvor in a matter which will be heard by the Planning Commission late next month.

The matter which prompts my request on Ms. McIvor's behalf is a proposal by the Fremont Unified School District for a change in residential density distribution on a thirty-seven acre tract owned by the District and intended for sale by it to a private developer. Although the magnitude of the financial effect of the City's decision on this proposal has not been stated, it can safely be assumed that the financial effect of the decision will be material as to the District.

The basis of Ms. McIvor's concern is that she and her husband own and operate a hardware store in Fremont from which the District has made purchases in excess of \$250 in the twelve months prior to the scheduled date of the hearing.

The boundaries of the City of Fremont and the Fremont Unified School District are identical.

From informal discussions with your staff attorneys, I have learned that the issue herein posed is regarded by your staff as similar to one raised by William Taylor, Deputy County Counsel, and addressed by the Commission staff in a letter dated July 11, 1978. Using this decision as a starting point, your attorneys have told me they believe that Ms. McIvor may participate in this matter because the effect on the School District, which is comprised of the same territory as the City, would be an effect not distinguishable from the general effect on the public.



Dianne Griffiths
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I would very much appreciate receiving an advisory letter addressing Ms. McIvor's concern.

Sincerely yours,



LYLE L. LOPUS
Assistant City Attorney

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cc: Pauline McIvor



California Fair Political Practices Commission

January 22, 1988

Lyle L. Lopus
Assistant City Attorney
P.O. Box 5006
Fremont, CA 94537

Re: 88-044

Dear Mr. Lopus:

Your letter requesting advice under the Political Reform Act was received on January 22, 1988 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. Code of Regs. 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
cc: Pamela McIvor, Planning Commissioner