



California Fair Political Practices Commission

February 29, 1988

Robert S. Bower
Rutan & Tucker
611 Anton Boulevard
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Your Request for Advice
Our File No. A-88-050

Dear Mr. Bowers:

You have requested advice on behalf of Ray Silva about application of the Political Reform Act (the "Act")^{1/} to his duties on the city council of the City of San Fernando.

QUESTION

Councilman Silva lives in a house situated in the city's survey area. He rents the house from month to month.

Is Councilman Silva disqualified from participating in a decision to add the survey area to the present redevelopment project area?

CONCLUSION

Councilman Silva's month-to-month periodic tenancy is not an interest in real property under the Act. Because he has no economic interest in the house he rents, Mr. Silva may participate in a decision to add the survey area to the redevelopment project area.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. 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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FACTS

For the past six years, Mr. Silva has lived in a house that he rents from his mother for \$600 per month. The City of San Fernando has no rent control ordinance requiring good cause eviction.

Mr. Silva's house is on a 5,000 square-foot lot situated in a 55-acre survey area recently adopted by the city. The city plans to add the survey area to its redevelopment project area. In the next few weeks, a project area committee will be set up, negotiations with the county will begin, and hearings on the redevelopment plan will take place. Eventually, the city plans to establish new boundaries for the redevelopment area and to amend the redevelopment plan.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which he has a financial interest. A leasehold with a fair market value of \$1,000 or more is an interest in real property. (Section 82033.) Nevertheless, a leasehold interest does not include a tenant's interest in a periodic tenancy of one month or less. (Regulation 18233, copy enclosed.)

Councilman Silva has a month-to-month periodic tenancy for which he pays \$600 per month. The City of San Fernando has no rent control ordinance restricting a landlord's right to evict a tenant. Therefore, pursuant to Civil Code Section 1946, Mr. Silva's mother has the right to terminate his tenancy on 30-days' notice.

Consequently, Mr. Silva's leasehold is not an economic interest for Mr. Silva. He is not disqualified from participating in decisions about amending the boundaries of the redevelopment area because of his month-to-month tenancy.

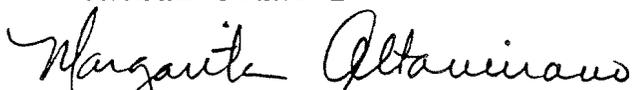
In your letter you mentioned that Councilman Silva's rent may be slightly below market. Section 82028(a) provides that a discount is a gift unless the discount is made in the regular course of business to members of the public without regard to official status. However, subdivision (b)(3) of Section 82028 exempts a parent's gift from the gift definition. Therefore, even if Councilman Silva's rent were discounted, the discount is not an economic interest under the Act.

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

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Margarita Altamirano".

By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:mk
Enclosure

RUTAN & TUCKER

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January 18, 1988

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*A PROFESSIONAL CORPORATION

Ms. Diane Griffiths, General Counsel
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Advice Letter - Conflict of Interest

Dear Ms. Griffiths:

This office acts as contract City Attorney for the City of San Fernando. On behalf of Councilman Ray Silva, we hereby request an advice letter regarding the propriety of Mr. Silva's participation in any decisions with regard to the amendment of a Redevelopment Project Area and adoption of an amended Redevelopment Plan.

The pertinent facts with regard to Mr. Silva's situation are as follows. The City of San Fernando has adopted a Survey Area in contemplation of the amendment to an existing Redevelopment Project Area (Project Area No. 1) to add all or part of the Survey Area to the Redevelopment Project Area. In the next several weeks, a Project Area Committee will be set up, negotiations with the County will occur, hearings on the Redevelopment Plan will take place, and ultimately new boundaries of the Redevelopment Area will be adopted and the Redevelopment Plan amended.

RUTAN & TUCKER
ATTORNEYS AT LAW

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Ms. Diane Griffiths, General Counsel
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Mr. Silva has lived in the Survey Area for approximately six (6) years. He rents a single family residence from his mother, who owns the residence and the land upon which it sits. The parcel is five thousand square feet (50 feet by a 100 feet), and is but one of about 200 parcels which are included in the Survey Area. The Survey Area consists of approximately 55 acres. Mr. Silva has rented the subject residence for the past six (6) years at a rental of Six Hundred Dollars (\$600.00) per month, plus utilities. The \$600.00 per month rental has not increased in the past six years and may now be slightly below market value (two bedroom apartments across the street from the residence rent for \$450.00 per month).

In light of this situation, may Mr. Silva participate in any decisions with regard to negotiations with the County, hearings on the Plan, the establishment of boundaries of the Redevelopment Area or the provisions of the Redevelopment Plan? If not, may Mr. Silva participate on the Project Area Committee in his capacity as an individual citizen of the City?

We would appreciate a response to these issues at your earliest convenience. Should you have any questions or require any additional information, please do not hesitate to contact either me or City Administrator, Donald Penman, at 818-898-1200. Thank you for your courtesy and cooperation.

Very truly yours,

RUTAN & TUCKER



Robert S. Bower
City Attorney, City
of San Fernando

RSB:ps

cc: Mr. Ray Silva, Councilmember,
City of San Fernando
cc: Mr. Donald Penman,
City Administrator, City of
San Fernando

6/102/063060-0001/02



California Fair Political Practices Commission

January 28, 1988

Robert S. Bower
San Fernando City Attorney
Rutan & Tucker
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: 88-050

Dear Mr. Bower:

Your letter requesting advice under the Political Reform Act was received on January 27, 1988 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. 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 that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Councilmember Ray Silva