



California Fair Political Practices Commission

February 26, 1988

Roger Krauel
225 Broadway, Suite 1750
San Diego, California 92101

Re: Your Request for Advice
Our File No. A-88-061

Dear Mr. Krauel:

You have requested advice on behalf of planning commissioners Napolitano and Rutter about application of the Political Reform Act (the "Act")^{1/} to their duties on the City of Coronado Planning Commission.

QUESTIONS

Planning commissioners Napolitano and Rutter are real estate brokers who own their real estate businesses and also own real property in the City of Coronado.

1. May planning commissioners Napolitano and Rutter vote on a decision to amend a zoning regulation to lower the ratio of floor area to lot size for single-family dwellings?

2. Is the effect of the decision on the planning commissioners' real estate businesses or on their homes distinguishable from the effect on the public generally?

^{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.

CONCLUSION

1. Planning commissioners Napolitano and Rutter are disqualified from participating in the zoning decision if the decision would have a reasonably foreseeable material financial effect on their real estate firms, which is distinguishable from the effect on the general public.

2. Real estate businesses are not a predominant industry, trade or profession in the City of Coronado. Consequently, a decision that foreseeably and materially affects the commissioners' firms would have an effect distinguishable from that on the general public.

Owners of single-family homes, however, are a significant segment of the general public. A decision that would have a material financial effect on owners of single-family homes would not have an effect distinguishable from the effect on the general public. Consequently, the planning commissioners would not be disqualified from participating in the decision only because they own single-family homes.

FACTS

In the City of Coronado about 21,000 residents live within a 5.1 square-mile area. The city's planning commission will be considering a zoning change to reduce the ratio of floor area of a single-family home from 75% to 50% of lot size. In a telephone conversation on February 1, 1988, you told me you are not certain but the zoning change might increase property values for single-family homes by about \$10,000.

Planning commissioners Napolitano and Rutter are real estate brokers. Each commissioner owns 100 percent of his real estate business. Most of their customers are buyers and sellers of single-family dwellings.

Real estate firms are the third most numerous business in Coronado. The city's three most numerous professions are: 1) physicians (45); 2) law firms (22); and 3) real estate firms (21).

Mr. Napolitano owns his home. Mr. Rutter owns his own home, a business condominium, an apartment complex, and a single-family dwelling where his mother lives.

ANALYSIS

Planning commissioners Napolitano and Rutter are public officials who shall not make, participate in, or attempt to

Mr. Krauel
February 11, 1988
Page 3

influence a governmental decision in which they have a financial interest. (Sections 82048 and 87100.)

A public official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on (1) the official, (2) a business entity or real property in which the official has an ownership interest worth at least \$1,000, or (3) a source of income of at least \$250 promised to or received by the official during the 12 months before the decision. (Section 87103.)

The effect of a decision is foreseeable if there is a substantial likelihood it will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed; see Downey Cares v. Downey Community Development Company (1987) 196 Cal. App.3d 983, 991, and Witt v. Morrow (1977) 70 Cal. App.3d 817.)

Decision's Effect On A Real Estate Business Entity

Planning commissioner Napolitano is a real estate broker with a 100-percent ownership interest in his real estate business. Planning commissioner Rutter also is a real estate broker with a 100-percent ownership interest in his real estate business.

Assuming each business is worth at least \$1,000, each business is an investment interest for its respective owner. (Sections 82034 and 87103(a).) Each business also is a source of income of at least \$250 to its respective owner. (Section 87103(c).) For these reasons, either planning commissioner would be disqualified from participating in the zoning decision if the decision would have a reasonably foreseeable material financial effect on his firm.

You believe the zoning decision foreseeably will increase the value of single-family homes. In a previous opinion, the Commission concluded: "When property value increases, the amount of the [real estate] commission increases." (In re Oglesby (1975) 1 FPPC Ops. 71, 80, copy enclosed.) Consequently, it is foreseeable the zoning decision will affect commission income received by the planning commissioners' real estate businesses.

Material Effect

Regulation 18702.2(g) typically applies to small businesses

Mr. Krauel
February 11, 1988
Page 4

not qualified for public sale. This regulation provides the following guidelines to determine if the effect of a decision will be material:

(g) For business entities which are not covered by (c), (d), (e) or (f) the effect of a decision will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g) (copy enclosed).

We assume that Regulation 18702.2(g) is the appropriate standard to apply to the commissioners' real estate businesses.^{2/} Accordingly a decision that results in an increase or decrease in gross revenues of \$10,000 or more in any fiscal year would be material. If so, the planning commissioners would be disqualified from participating in a decision to reduce the lot-size ratio.

Of course, determining the monetary amount of the decision's effect may be difficult. One method would be to calculate each firm's average number of sales of single-family homes in the past few years and the amount of commission income derived from those sales. Then you should get an estimate of how much property values for single-family homes would increase as a result of the decision. Then the commissioners could multiply their businesses' present average annual commission income by the percent of foreseeable increase in property values to determine the effect on gross revenues of their businesses.

Public Generally Exception

You inquired whether real estate businesses are a

^{2/} If you believe a different standard in Regulation 18702.2 applies, please contact us for more advice.

Mr. Krauel
February 11, 1988
Page 5

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While real estate firms are the third most numerous type of business in Coronado, they are not the basis of the local economy. Therefore, real estate businesses are not a significant segment of the general public for the purposes of the Act. A material financial effect on a real estate business will be distinguishable from an effect on the general public.

Effect Of The Decision On Owners of Single-Family Homes

Sellers of single-family homes in Coronado who promised to pay or paid at least \$250 in commission income to Mr. Napolitano or Mr. Rutter within 12 months of the decision also are sources of income to each commissioner. (Section 87103(c); Regulation 18704.3(d), copy enclosed.) Some of these sellers still may own single-family homes in Coronado. The zoning change foreseeably would affect the value of their property.

Mr. Napolitano and Mr. Rutter also are owners of single-family homes whose values foreseeably will be affected by the zoning change.

Nevertheless, the Commission considers persons who own three or fewer housing units to be a significant segment of the general public. (In re Ferraro (1978) 4 FPPC Ops. 62, 67; see In re Owen (1976) 2 FPPC Ops. 77, copies enclosed.) Therefore, even if the zoning change will have a foreseeable material financial effect on owners of single-family homes, the effect would not be distinguishable from the effect on a significant segment of the general public. (Regulation 18703.) Consequently, neither Mr. Napolitano nor Mr. Rutter would be disqualified only because the decision foreseeably would have a material financial effect on owners of single-family homes. (Riddle Advice Letter, No. A-87-282, copy enclosed.)

You have not given us any information about the effect of the zoning decision on the value of business condominiums and apartment complexes. For this reason, we have not analyzed the effect of the zoning decision on Mr. Rutter's ownership of a

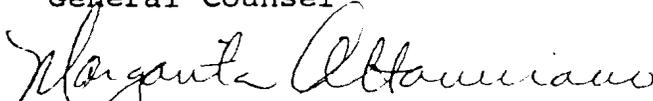
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February 11, 1988
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business condominium and an apartment complex. Please provide us with more information if you also want us to analyze the effect of the decision on those properties. We express no opinion in this letter about whether those interests might be disqualifying.

I hope this letter responds satisfactorily to your advice request. 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:mek

LAW OFFICES OF
KRAUEL & KRAUEL
CENTRAL SAVINGS TOWER
225 BROADWAY, SUITE 1750
SAN DIEGO, CALIFORNIA 92101

ROGER W. KRAUEL
FRANCESCA MECIA KRAUEL

AREA CODE 619
331-3603

February 3, 1988

Ms. Diana Griffiths
428 J Street, Ste. 800
Sacramento, CA 95814

RE: REQUEST FOR WRITTEN ADVICE (GOV. CODE §83114(b))
CITY OF CORONADO

Dear Ms. Griffiths:

As the City Attorney for the City of Coronado, I am requesting written advice pursuant to Government Code §83114(b) regarding the following matter.

BACKGROUND

The City of Coronado is a community of approximately 21,000 persons located within approximately 5.1 square miles. The Planning Commission is required to participate in the making of decisions relating to general regulations (General Plan amendments, moratoriums, rezonings) whose "area of impact" can include a large part, if not all, of the City.

Planning Commissioners Napolitano and Rutter both own real property within the City. Commissioner Rutter has financial interests in other properties to include a business condominium, an apartment complex, and another single-family dwelling. Commissioners Napolitano and Rutter each have a financial interest in different real estate businesses engaged almost entirely in handling residential property transactions (resale and new) within the City.

Neither Commissioner has made a representation or incurred an obligation to a buyer or seller of property within the City regarding the changing or retaining of a general regulation. Each Commissioner has disqualified himself when there has been a possibility of or the appearance of a direct financial relationship between a handled property and a decision pending before the Planning Commission.

Ms. Diana Griffiths
February 3, 1988
Page 2

Both Commissioners intend to abide by the law.

Real estate businesses (with approximately 21 firms) are one of the top four most numerous professions in the City (45 physicians, 22 law firms, and 17 dentists, approximately), followed by 11 jewelers, 10 insurance agencies, 8 motel owners, and 7 hotel owners.

PENDING DECISION

By an existing zoning regulation, the floor-area to lot-area ratio of all single-family dwellings in the City is limited to .75. There is now proposed an amendment to the current .75 regulation that would lower the ratio and result in the reduction in the allowable overall size and scale of residential construction.

The Planning Commission must decide upon a recommendation to the City Council regarding the proposed amendment.

ASSUMPTIONS

Assume that:

- A. The pending decision may change the market value of property generally throughout the City.
- B. That the Commissioners' real estate businesses earn income from commissions based upon the sale prices of properties.

REQUEST FOR ADVICE

1. Is it correct that: The pending decision may affect real estate businesses differently from other segments of the community but would nonetheless affect a predominant profession (significant segment) of the City. Therefore, no conflict would arise so long as the pending decision would affect all real estate businesses in substantially the same manner?
(Reference: Regulation 18703(b))

Ms. Diana Griffiths
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Page 3

2. Is it correct that: Although the Commissioners have a financial interest in one or more pieces of real property within the City, no conflict would arise from the pending decision so long as the pending decision would affect real property values within the City in substantially the same manner?
3. Assuming that a real estate business cannot be treated as a predominant profession in the City for purposes of Regulation 18703(b), is it correct that:

If the Commissioner/realtor has been retained by several owners of real property within the City to sell those properties, the Commissioner is disqualified only if it is reasonably foreseeable that the pending decision would affect the sale value of the properties being handled by the Commissioner in a manner distinguishable from the pending decision's effect on the market value of property, generally, in the City, and the reasonably-foreseeable commissions to be earned by the Commissioner's real estate business from the handling of those properties could be changed by a total of \$10,000 or more?

4. Assuming that for several years, the Commissioner/realtor has been in business almost exclusively within the City and it is expected that the Commissioner/realtor will continue to do business in the City for at least the 12 months following the decision, is it correct that:

Since the real estate business has not received or been promised income from the properties whose market values may be affected by the pending decision, whose owners have not retained or promised to retain the real estate business; those speculative property transactions are not a source of income for the real estate business and the Commissioner's financial interest in the real estate business is not affected by the pending decision in that regard. Therefore, the Commissioner would not be disqualified based upon speculative property transactions. (18704.3)

Ms. Diana Griffiths
February 3, 1988
Page 4

The Planning Commission meets on February 9, 1988, at 3:00 p.m. Your response prior to that time would be greatly appreciated; we will pay Federal Express charges. At the least, telephonic advice would be anticipated. Thank you in advance for your assistance in this matter.

Yours truly,



ROGER W. KRAUEL

RWK:mbh

HQ SERVICES & OFFICES

HEADQUARTERS COMPANIES

701 "B" STREET, SUITE 1300

SAN DIEGO, CA 92101

(619) 231-0206

TRANSMITTING FAX PHONE NUMBER

(619) 231-2918

FACSIMILE TRANSMITTAL

TO MS. DIANA GRIFFITHS

COMPANY PAIR POLITICAL
PRACTICES COMMISSION

FAX PHONE NUMBER

916 443 0805

FROM

ROGER W. KRAVEL

~~CITY~~
CITY OF CORONADO

COMPANY CITY ATTORNEY

DATE & TIME SENT

2/3/88 - 2:20

NUMBER OF PAGES (INCLUDING TRANSMITTAL)

5

SPECIAL INSTRUCTIONS

FOR MS. GRIFFITHS - notify @ phone # we left.

Diane -

Here is a new advice request for assignment. I called the requestor to inform him we could not provide written advice by 2/9, but that the attorney assigned to the letter would try to give him telephone advice by that time.
Ked

TO VERIFY RECEIPT:

TELEPHONE ~~(619) 231-0206~~

TELEX 695202 HQSDG



California Fair Political Practices Commission

February 4, 1988

Roger W. Krauel
Krauel & Krauel
Central Savings Tower
225 Broadway, Suite 1750
San Diego, CA 92101

Re: 88-061

Dear Mr. Krauel:

Your letter requesting advice under the Political Reform Act was received on February 3, 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

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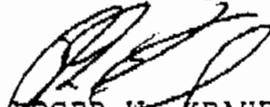
Ms. Diane Griffiths

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ROGER W. KRAUEL

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California Fair Political Practices Commission

February 26, 1988

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CONCLUSION

1. Planning commissioners Napolitano and Rutter are disqualified from participating in the zoning decision if the decision would have a reasonably foreseeable material financial effect on their real estate firms, which is distinguishable from the effect on the general public.

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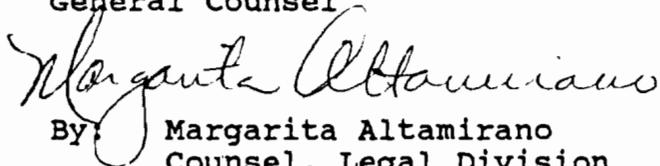
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I hope this letter responds satisfactorily to your advice request. Please call me at (916) 322-5901 if you have a question about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


BY: Margarita Altamirano
Counsel, Legal Division

DMG:MA:mek

LAW OFFICES OF

KRAUEL & KRAUEL

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Ms. Diana Griffiths
428 J Street, Ste. 800
Sacramento, CA 95814RE: REQUEST FOR WRITTEN ADVICE (GOV. CODE §83114(b))
CITY OF CORONADO

Dear Ms. Griffiths:

As the City Attorney for the City of Coronado, I am requesting written advice pursuant to Government Code §83114(b) regarding the following matter.

BACKGROUND

The City of Coronado is a community of approximately 21,000 persons located within approximately 5.1 square miles. The Planning Commission is required to participate in the making of decisions relating to general regulations (General Plan amendments, moratoriums, rezonings) whose "area of impact" can include a large part, if not all, of the City.

Planning Commissioners Napolitano and Rutter both own real property within the City. Commissioner Rutter has financial interests in other properties to include a business condominium, an apartment complex, and another single-family dwelling. Commissioners Napolitano and Rutter each have a financial interest in different real estate businesses engaged almost entirely in handling residential property transactions (resale and new) within the City.

Neither Commissioner has made a representation or incurred an obligation to a buyer or seller of property within the City regarding the changing or retaining of a general regulation. Each Commissioner has disqualified himself when there has been a possibility of or the appearance of a direct financial relationship between a handled property and a decision pending before the Planning Commission.

Ms. Diana Griffiths
February 3, 1988
Page 2

Both Commissioners intend to abide by the law.

Real estate businesses (with approximately 21 firms) are one of the top four most numerous professions in the City (45 physicians, 22 law firms, and 17 dentists, approximately), followed by 11 jewelers, 10 insurance agencies, 8 motel owners, and 7 hotel owners.

PENDING DECISION

By an existing zoning regulation, the floor-area to lot-area ratio of all single-family dwellings in the City is limited to .75. There is now proposed an amendment to the current .75 regulation that would lower the ratio and result in the reduction in the allowable overall size and scale of residential construction.

The Planning Commission must decide upon a recommendation to the City Council regarding the proposed amendment.

ASSUMPTIONS

Assume that:

- A. The pending decision may change the market value of property generally throughout the City.
- B. That the Commissioners' real estate businesses earn income from commissions based upon the sale prices of properties.

REQUEST FOR ADVICE

1. Is it correct that: The pending decision may affect real estate businesses differently from other segments of the community but would nonetheless affect a predominant profession (significant segment) of the City. Therefore, no conflict would arise so long as the pending decision would affect all real estate businesses in substantially the same manner?
(Reference: Regulation 18703(b))

Ms. Diana Griffiths
February 3, 1988
Page 3

2. Is it correct that: Although the Commissioners have a financial interest in one or more pieces of real property within the City, no conflict would arise from the pending decision so long as the pending decision would affect real property values within the City in substantially the same manner?
3. Assuming that a real estate business cannot be treated as a predominant profession in the City for purposes of Regulation 18703(b), is it correct that:

If the Commissioner/realtor has been retained by several owners of real property within the City to sell those properties, the Commissioner is disqualified only if it is reasonably foreseeable that the pending decision would affect the sale value of the properties being handled by the Commissioner in a manner distinguishable from the pending decision's effect on the market value of property, generally, in the City, and the reasonably-foreseeable commissions to be earned by the Commissioner's real estate business from the handling of those properties could be changed by a total of \$10,000 or more?

4. Assuming that for several years, the Commissioner/realtor has been in business almost exclusively within the City and it is expected that the Commissioner/realtor will continue to do business in the City for at least the 12 months following the decision, is it correct that:

Since the real estate business has not received or been promised income from the properties whose market values may be affected by the pending decision, whose owners have not retained or promised to retain the real estate business; those speculative property transactions are not a source of income for the real estate business and the Commissioner's financial interest in the real estate business is not affected by the pending decision in that regard. Therefore, the Commissioner would not be disqualified based upon speculative property transactions. (18704.3)

Ms. Diana Griffiths
February 3, 1988
Page 4

The Planning Commission meets on February 9, 1988, at 3:00 p.m. Your response prior to that time would be greatly appreciated; we will pay Federal Express charges. At the least, telephonic advice would be anticipated. Thank you in advance for your assistance in this matter.

Yours truly,



ROGER W. KRAUEL

RWK:mbh

HQ SERVICES & OFFICES

TRANSMITTING FAX PHONE NUMBER

(619) 231-2918

HEADQUARTERS COMPANIES

701 "B" STREET, SUITE 1300

SAN DIEGO, CA 92101

(619) 231-0206

FACSIMILE TRANSMITTAL

TO MS. DIANA GRIFFITHS

COMPANY PAIR POLITICAL
PRACTICES COMMISSION

FAX PHONE NUMBER

9164430805

FROM

ROGER W. KRAVEL
~~OFFICE~~
CITY OF CORONADO

COMPANY CITY ATTORNEY

DATE & TIME SENT

2/3/88 - 2:20

NUMBER OF PAGES (INCLUDING TRANSMITTAL)

5

SPECIAL INSTRUCTIONS

FOR MS. GRIFFITHS - notify @ phone # we left.

Diane -

Here is a new advice request for assignment. I called the requestor to inform him we could not provide written advice by 2/9, but that the attorney assigned to the letter would try to give him telephone advice by that time.

Ked

TO VERIFY RECEIPT:

TELEPHONE (619) 231-0206

TELEX 695202 HQSDG



California Fair Political Practices Commission

February 4, 1988

Roger W. Krauel
Krauel & Krauel
Central Savings Tower
225 Broadway, Suite 1750
San Diego, CA 92101

Re: 88-061

Dear Mr. Krauel:

Your letter requesting advice under the Political Reform Act was received on February 3, 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

LAW OFFICES OF
KRAUEL & KRAUEL

CENTRAL SAVINGS TOWER
225 BROADWAY, SUITE 1750
SAN DIEGO, CALIFORNIA 92101

ROGER W. KRAUEL
FRANCESCA MEOIA KRAUEL

AREA CODE 619
231-3603

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