



California Fair Political Practices Commission

March 24, 1988

Robert H. Burnham
City Attorney
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Your Request for Advice
Our File No. I-88-074

Dear Mr. Burnham:

You have requested advice on behalf of Newport Beach City Councilmember Phil Sansone, concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} We are treating your letter as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed) because it does not contain sufficient facts for us to provide more than a general response to your question.^{2/}

QUESTION

Councilmember Sansone is an amateur radio ("ham radio") operator and has a 22-foot radio antenna located at his residence. May he vote on a proposed zoning ordinance that restricts the height of amateur radio equipment to 75 feet when in operation and 28 feet when not in operation, and also establishes certain locational restrictions?

CONCLUSION

Councilmember Sansone may participate in the decision on the proposed zoning ordinance if there would be no measurable effect on the value of his residence or if a significant

^{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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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segment of residential property in the city will be affected by the ordinance in substantially the same manner as his residence. It seems likely that the "public generally" exception applies to these facts. However, we do not have sufficient information about the effect of the decision on real property values or the local restrictions to make these determinations. Therefore, we have provided only general guidance.

FACTS

The Newport Beach City Council is considering a zoning ordinance to regulate the height and location of amateur radio antennas. The proposed ordinance establishes a 75-foot maximum height restriction on amateur radio equipment when in operation, and a 28-foot maximum height restriction when the equipment is not in operation. The city's current zoning ordinance imposes a 24-foot height limitation on Councilmember Sansone's real property and most other residential real property in the city.

Councilmember Sansone has an amateur radio mast/antenna located in an atrium in the center of his residence. The mast/antenna is 22 feet high. It would be in full compliance with the proposed zoning ordinance.

ANALYSIS

Section 87100 prohibits a 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. A public 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 real property in which the official has an interest worth \$1,000 or more. (Section 87103(b).)

Councilmember Sansone is a public official. (Section 82048.) His interest in his residence presumably is worth \$1,000 or more. Accordingly, he must disqualify himself from participating in any decision which would foreseeably and materially affect the value of his residence, but only if the decision would affect his property in a manner distinguishable from the effect on the public generally.

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Reasonably Foreseeable Material Financial Effect

The proposed zoning ordinance will restrict the use of property in Newport Beach in certain circumstances. Councilmember Sansone's residence would be subject to the new ordinance, if adopted. Thus, it is reasonably foreseeable that the proposed ordinance will affect the permitted use of Councilmember Sansone's residence.

Pursuant to Section 87103, the effect on Councilmember Sansone's residence also must be material in order for a conflict of interest to exist. Regulation 18702.1 (copy enclosed) provides the effect of a decision is considered material if the decision will foreseeably affect the actual or permitted use of real property in which the official has an interest. (Regulation 18702.1(a)(3).) However, if there will be no financial effect on the real property in question, the effect of the decision is not material. (Regulation 18702.1(c)(3); Fox Advice Letter (No. I-87-064), copy enclosed.)

The proposed zoning ordinance would affect the permitted use of Councilmember Sansone's property. Therefore, unless there will be no financial effect on Councilmember Sansone's real property, the effect of the proposed zoning ordinance is considered material.

We do not have sufficient information to determine what effect, if any, the proposed zoning ordinance would have on the value of Councilmember Sansone's residence. You and Councilmember Sansone are in a better position to make that determination. If you decide there will be no measurable effect on the value of Councilmember Sansone's residence, Councilmember Sansone may participate in the decision on the proposed ordinance. However, if you decide the proposed ordinance will affect the value of Councilmember Sansone's residence, there is yet another issue to consider. In that case, you also must determine whether the proposed ordinance will affect Councilmember Sansone's real property in substantially the same manner as it will affect the public generally. (Section 87103; Regulation 18702.1(c)(1).) If the "public generally" exception applies, Councilmember Sansone may participate in the decision on the proposed ordinance even though his property will be affected by the decision.

The "Public Generally" Exception

Regulation 18703 (copy enclosed) specifies when the "public generally" exception applies. The exception applies only if a

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decision will affect the official's interest in substantially the same manner as it will affect a significant segment of the public. The jurisdiction of the official's agency determines what group is considered the "general public." In Councilmember Sansone's case, the residents and property owners of Newport Beach are the general public. (See, In re Owen (1976) 2 FPPC Ops. 77, 81; In re Legan (1985) 9 FPPC Ops. 1, 12, copies enclosed.)

In the Owen Opinion, supra, the Commission concluded that single-family homeowners are a significant segment of the public. Thus, if the proposed ordinance affects most residential homeowners in Newport Beach in substantially the same manner as it affects Councilmember Sansone's property, Councilmember Sansone may participate in the decision on the proposed ordinance.

Based on the facts you have provided, it seems likely that the "public generally" exception applies. However, we do not have sufficient information about the locational restrictions in the proposed ordinance to determine whether Councilmember Sansone's real property would be affected in substantially the same manner as most other residential property.

I hope this general guidance is sufficient to answer your question. Please contact me at (916) 322-5901 if you have any questions or wish to discuss additional facts.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

(714) 644-3131

F P P C
FEB 16 11 27 AM '88

February 11, 1988

Diane Griffith, Esq.
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Advice

Dear Ms. Griffith:

The City of Newport Beach is considering an amendment to our Municipal Zoning Ordinance to regulate the height and location of amateur radio (ham) antennas. Phil Sansone, a Councilmember since November, 1986, is a ham radio operator, and he is asking for advice on his ability to participate in public hearings, and vote, on the proposed ordinance.

The City's ability to regulate amateur radio broadcasting equipment has been severely restricted by a recent declaratory ruling (PRB-1) of the Federal Communications Commission. PRB-1 preempts local regulation of amateur radio equipment unless:

1. The ordinance is based on legitimate health, safety or aesthetic considerations;
2. The ordinance represents a reasonable accommodation of the rights of the amateur radio equipment operator and does not preclude reasonable use of such equipment; and
3. The restrictions constitute the least intrusive means necessary to accomplish legitimate goals of the public entity.

The current Newport Beach Zoning Ordinance establishes a number of height limitation zones within the City. The height limit in most residential districts is 24 feet and a variance would be required to exceed that height. In my opinion, the current height ordinance is probably unenforceable under the limited preemption rule announced in PRB-1.

The proposed ordinance establishes a 75 foot maximum height when the equipment is in operation. The mast and antenna must be lowered to 28 feet, or less, when not in operation. The ordinance also establishes certain locational restriction and a copy is attached for your information.

Councilman Sansone's residence is located within the 24 foot maximum height zone. His current mast/antenna is 22 feet high (including a 4 foot "mini-quad" antenna). The antenna is located in an atrium in the center of his residence and is, in all respects, in full compliance with the existing and proposed zoning ordinances.

Mr. Sansone's home is located within a block from the ocean and there is no existing, or potential future, physical obstruction in the area that would require a taller mast/antenna to achieve his desired range of communication.- His current antenna was installed in 1983 and he has no need nor desire to increase the size of the mast or change the antenna.

The cost of a new mast, antenna, and related facilities that could extend to 75 feet and lower mechanically as required by the ordinance could cost between \$3,000.00 and \$5,000.00.

Please advise if Councilman Sansone is disqualified, by virtue of the Political Reform Act, from participating in this matter.

Very truly yours,



Robert H Burnham
City Attorney

RHB/jc
Enclosures
cc: Mr. Phil Sansone

88-014



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California Fair Political Practices Commission

February 17, 1988

Robert H. Burnham
City Attorney
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: 88-074

Dear Mr. Burnham:

Your letter requesting advice under the Political Reform Act was received on February 16, 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 that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Phil Sansone