



# California Fair Political Practices Commission

May 10, 1988

John D. Flitner  
Rohnert Park City Attorney  
6750 Commerce Blvd.  
Rohnert Park, CA 94927

Re: Your Request for Informal  
Assistance  
Our File No. I-88-116

Dear Mr. Flitner:

You have requested advice on behalf of yourself and two members of the Rohnert Park Rent Appeals Board, Mr. Ralph Jones and Mr. Ron Militello, concerning the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states only a general question; it does not address a specific decision before the Rohnert Park Rent Appeals Board. Therefore, we consider your request to be a request for informal assistance pursuant to Regulation 18329(c).<sup>2/</sup>

### QUESTION

Do the Act's conflict-of-interest provisions prohibit you, Mr. Jones or Mr. Militello from participating in decisions of the Rohnert Park Rent Appeals Board?

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<sup>1/</sup> 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.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

#### CONCLUSION

Based on the economic interests discussed in your letter, neither you nor Mr. Militello are prohibited from participating in those decisions.

Mr. Jones must disqualify himself from participating in any Rent Appeals Board decision where the applicant or the subject of the decision is a person who has provided \$250 or more in commission income to Mr. Jones in the preceding 12 months.

Mr. Jones may participate in other decisions of the Rent Appeals Board unless it is reasonably foreseeable that the decisions would materially affect his economic interests in a manner distinguishable from the effect on the public generally. This includes decisions which would materially affect the rent or value of any mobile home owned by a client of Mr. Jones and decisions which would materially affect Mr. Jones' real estate business. We do not have sufficient facts to make this determination; however, the following analysis provides general guidance for Mr. Jones.

#### FACTS

In December 1987, the voters of the City of Rohnert Park enacted an initiative measure entitled Rohnert Park Mobile Home Ordinance. The ordinance freezes mobile home park rents in the city and rolls them back to the levels in existence on December 1, 1985. The ordinance provides for increasing rents either by way of a "General Annual Adjustment," which may not exceed 4-percent per annum, or by way of a petition to increase the rent based on a net operating income formula. The ordinance also provides for a five-member Rohnert Park Rent Appeals Board. The city council appoints two of the Rent Appeals Board members. The council's appointees are Mr. Jones and Mr. Militello.

Mr. Jones is a real estate broker associated with Century 21 Ralph Jones & Associates. The normal business of Mr. Jones' real estate office is listing and selling mobile homes and real property. Mr. Jones has represented buyers and sellers in each of the five mobile home parks in Rohnert Park.

Mr. Militello also is a real estate broker. He is associated with M. P. Rosen, Inc. Mr. Militello does not currently represent buyers or sellers of mobile homes. He has represented them in the past, but it has been five years since he has represented a client in such a transaction.

You are the contract city attorney for the City of Rohnert Park. In your legal practice, you represent a mobile home owner located outside of Rohnert Park. You do not represent any mobile home owners in Rohnert Park. You neither represent nor hold investments in or related to mobile home parks.

#### ANALYSIS

The conflict-of-interest provisions of the Act impose financial disclosure and disqualification requirements on public officials. (Sections 87100-87500.) These laws do not prevent a person from serving as a public official because of his private financial interests. However, the official may be required to disqualify himself from participating in decisions that could affect his private financial interests. (Sections 87100 and 87103.) Accordingly, the Act does not prevent Mr. Jones, Mr. Militello or you from serving as public officials; however, disqualification may be required in certain cases.

Section 87100 prohibits any 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. An official has a financial interest in a decision if it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

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(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (a)-(e).

As city attorney, you are a public official. Based on your letter, it appears that Mr. Jones and Mr. Militello also are public officials because of their membership on the Rent Appeals Board. (Section 82048; Regulation 18700(a), copy enclosed.) As public officials, all of you are subject to the conflict-of-interest provisions of the Act. We next apply the conflict-of-interest laws to your individual situations.

Mr. Ralph Jones

As a real estate broker who regularly represents buyers and sellers of mobile homes, we assume that Mr. Jones has received commission income of at least \$250 from one or more mobile home owners in Rohnert Park during the past 12 months. Any person who Mr. Jones represents in a real estate transaction which produces \$250 or more in gross commission income for Mr. Jones (other than commissions contractually split with agents or other brokers) is a source of \$250 or more in income to Mr. Jones. (Regulation 18704.3; In re Carey (1977) 3 FPPC Ops. 79, copies enclosed.) In addition, any person Mr. Jones' agents represent are sources of income to Mr. Jones if he receives a portion of the commission on the transaction. (Regulation 18704.3(c)(2).) Mr. Jones must disqualify himself from participating in any decision which would foreseeably and materially affect any of these clients, unless the effect on the client would be the same as the effect on the public generally. (Section 87103(c).)

Decisions concerning rent increases for mobile home owners clearly would have a foreseeable effect on mobile home owners. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.) There appear to be two types of decisions which could come before the Rent Appeals Board: (1) an appeal from a mobile home park owner or a tenant in a mobile home park concerning the rent in only one mobile home park or on only one mobile home, or (2) a general rent increase decision affecting all mobile home parks in the city.

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With regard to the first category of decisions, Mr. Jones must disqualify himself from participating in the decision if a client who has provided to him \$250 or more in commission income during the past 12 months "appears before" the Rent Appeals Board. (Regulation 18702.1(a)(1), copy enclosed.) A client "appears before" the board if he or she files an application, appeal or similar request, or if he or she is a named party in the proceeding. (Regulation 18702.1(b).) For example, if Mr. Jones' client appeals to the board to reduce his or her rent, Mr. Jones must disqualify himself from the decision. Similarly, if Mr. Jones' client lives in a mobile home park where the park owner is requesting the board's approval to increase the client's rent, Mr. Jones must disqualify himself. (In re Overstreet (1981) 6 FPPC Ops. 12, 18, copy enclosed.)

If the Rent Appeals Board were to approve a general rent increase, that decision would change the annual rent for all mobile home owners, including Mr. Jones' clients. If the change in rents materially affects one of Mr. Jones' clients, Mr. Jones is required to disqualify himself, unless the effect would be the same as the effect on the public generally.

If a decision "significantly" affects an individual who is a source of income to an official, that effect is considered material. (Regulation 18702(a) and (b)(3)(D), copy enclosed.) There are no more specific monetary guidelines which apply to this situation. However, decisions which would affect a public official's personal expenses by \$250 or more in a year are considered material. (Regulation 18702.1(a)(4).) By analogy, we advise that an effect of \$250 or more on one of Mr. Jones' clients would be considered material. (Sprague Advice Letter, No. A-86-260, copy enclosed.) Similarly, any decision of the Rent Appeals Board that would increase or decrease the value of any client's mobile home by \$1,000 or more would have a material effect on the client. (Regulation 18702(b)(2); Sprague Advice Letter, supra.) If the effect on a client is material, Mr. Jones must disqualify himself from participating in the decision, unless the client would be affected in substantially the same manner as the general public.

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The effect of a decision on an official's economic interest 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 a significant segment of the public. (Regulation 18703, copy enclosed.) For a local official, such as Mr. Jones, the "public" consists of the residents and property owners in the jurisdiction of his agency. (In re Owen (1976) 2 FPPC Ops. 77, 81, copy enclosed.) Thus, the "public generally" exception applies to decisions of the Rent Appeals Board only if a significant number of persons in Rohnert Park are affected in a manner similar to Mr. Jones' clients. (In re Overstreet, supra; Morgan Advice Letter, No. A-81-507, copy enclosed.)

Because no specific decision is pending before the Rent Appeals Board, we cannot determine whether Mr. Jones' clients would be affected in substantially the same manner as the public generally. A copy of the Piquet Advice Letter (No. A-87-233) is enclosed for general guidance on this issue.

In addition, Mr. Jones must consider whether the Rent Appeals Board decisions would materially affect the annual gross revenues of his real estate firm. A \$10,000 increase or decrease in the annual gross commission revenues of Mr. Jones' real estate business (not including commission fees contractually split with his sales agents or with other brokers) is a material effect on his business. (See Regulation 18702.2(g) copy enclosed; In re Carey, supra.)<sup>3/</sup>

Mr. Ron Militello

Mr. Militello also is a real estate broker, but he does not currently represent buyers or sellers of mobile homes. You have informed us that it has been five years since Mr. Militello last sold a mobile home for clients. If Mr. Militello's current clients do not include any mobile home owners or mobile home park owners, then he has no clients who would be materially affected by decisions of the Rent Appeals Board.

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<sup>3/</sup> The \$10,000 threshold in Regulation 18702.2(g) applies to small businesses that are not qualified for public sale in California. Please contact us if you believe a different standard in Regulation 18702.2 applies to Mr. Jones' real estate business.

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We do not have sufficient information concerning decisions of the Rent Appeals Board to determine whether those decisions would foreseeably and materially affect M. P. Rosen, Inc., the real estate firm with which Mr. Militello is associated. This firm also is a source of income to Mr. Militello. (Regulation 18704.3(c)(2)(C).) Accordingly, if the firm's gross revenues would foreseeably increase or decrease by \$10,000 or more in a fiscal year as a result of decisions of the Rent Appeals Board, Mr. Militello would be disqualified from participating in those decisions. (Regulation 18702.2(g).)

Mr. John Flitner, City Attorney

You are an attorney in private practice. One of your clients is the owner of a mobile home located outside of Rohnert Park. Presumably, this client is a source of \$250 or more in income to you, based on your pro rata ownership interests in your law firm.<sup>4/</sup> This client would not be affected by decisions of the Rent Appeals Board, since the board's jurisdiction is limited to mobile homes located within Rohnert Park. Accordingly, your representation of this client does not prevent you from participating, as city attorney, in decisions of the Rent Appeals Board.

If you have any further questions regarding this letter, or if you wish to seek advice concerning a specific decision pending before the Rent Appeals Board, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*  
By: Kathryn E. Donovan  
Counsel, Legal Division

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Enclosures

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<sup>4/</sup> Section 82030 provides that sources of income to a public official include sources of income to any business entity in which the official has a 10-percent or greater ownership interest. The amount of income attributed from the client to the official is calculated using the official's pro-rata ownership interest. For example, if you own 50 percent of your law practice, a client who had paid your law firm \$500 in the past year would be a source of income of \$250 to you.

# CITY OF ROHNERT PARK

6750 Commerce Boulevard  
Rohnert Park, Sonoma County, California 94927  
Telephone 795-2411

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March 16, 1988

Fair Political Practices Commission  
428 J Street, Eighth Floor  
Sacramento, California 95814

Gentlemen:

This will constitute a request for an opinion regarding conflict of interest.

## FACTS

On December 8, 1987, the electorate of the City of Rohnert Park enacted an initiative measure entitled Rohnert Park Mobile Home Ordinance. The ordinance freezes rents in mobile home parks in Rohnert Park and rolls them back to the December 1, 1985, levels. The ordinance sets forth a procedure for increasing rents either by way of a "General Annual Adjustment" which may not exceed 4% per annum or by way of a petition to increase the rent based on a net operating income formula.

Two members of the five (5) member Rohnert Park Rent Appeals Board, which is provided for in the initiative measure, the members of which are appointed by the City Council, are realtors. One realtor, Ralph Jones, is a real estate broker and is associated with Century 21 Ralph Jones & Associates. Mr. Jones has been licensed in the State of California since approximately 1964 and has done business in Rohnert Park since that time. He has represented buyers and sellers in each of the five mobile home parks in Rohnert Park. The normal business of Century 21 Ralph Jones & Associates is and has been listing and selling mobile homes and real property, i.e., the brokerage represented buyers and sellers of mobile homes long before Mr. Jones was appointed to his current membership on the Rohnert Park Rent Appeals Board.

Mr. Ron Militello is a real estate broker. Mr. Militello is associated with M. P. Rosen, Inc. and has been licensed in the State of California since approximately 1979. Mr. Militello has

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represented buyers and/or sellers of mobile homes in four of the five mobile home parks in Rohnert Park. It has been five years since he has sold mobile homes for clients. He no longer represents buyers or sellers of mobile homes and represents a different segment of the market.

I am City Attorney for the City of Rohnert Park and have served in that capacity since 1974. The position of Rohnert Park City Attorney is that of part-time city attorney. My compensation is a monthly retainer plus an agreed-upon unit fee for court work and court appearances.

I have never represented any of the mobile home park owners in Rohnert Park in any capacity. I do represent in my private practice a mobile home owner named Sonoma County Land Company whose principal shareholders and officers are Ernest R. Thomas and E. Richard Thomas. Neither Sonoma County Land nor either of the Thomases own a mobile home park or other property in Rohnert park. I do not hold an investments in any mobilehome park or anything connected with the mobilehome business insofar as I am aware.

Messrs. Jones and Militello and I have been challenged by mobile home park tenants in Rohnert Park for being in conflict of interest. The challenger, one Pat Case, advises he has contacted the Fair Political Practices Commission and Mr. Case intimates that at the proper time the matter of the alleged conflict will again be raised and exposed.

The purpose of this letter is to inquire as to whether, in your opinion, the positions and capacities of the individuals as outlined constitute a conflict of interest and the rationale therefore.

Thank you for your consideration in this matter.

Very truly yours,



JOHN D. FLITNER  
CITY ATTORNEY

JDF/jes



# California Fair Political Practices Commission

March 23, 1988

John D. Flitner  
City Attorney  
6750 Commerce Boulevard  
Rohnert Park, CA 94927

Re: 88-116

Dear Mr. Flitner:

Your letter requesting advice under the Political Reform Act was received on March 21, 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,

Diane M. Griffiths  
General Counsel

DMG:plh

# CITY OF ROHNERT PARK

6750 Commerce Boulevard  
Rohnert Park, Sonoma County, California 94927  
Telephone 795-2411

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March 16, 1988

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JOHN D. FLITNER  
CITY ATTORNEY

JDF/jes