



California Fair Political Practices Commission

April 21, 1988

Lester J. Marston
Rapport, Marston and Quesenberry
200 Henry Street
P.O. Box 488
Ukiah, CA 95482

Re: Your Request for Advice
Our File No. A-88-134

Dear Mr. Marston:

This is in response to your request for advice regarding the responsibilities of Willits City Councilmember Wayne Bashore under the conflict of interest provisions of the Political Reform Act ("the Act").^{1/}

QUESTION

Councilmember Bashore was paid \$141.25 by Mr. Dockins to complete a site map and application for conditional use permit. Is he prohibited from participating in decisions before the city council regarding the application and the map?

CONCLUSION

Since Mr. Dockins has paid Mr. Bashore less than \$250 in the last twelve months, he is not a "source of income" to the councilmember. Therefore, Councilmember Bashore is not prohibited from participating in decisions affecting Mr. Dockins. Absent any evidence that the decision will have a foreseeable effect on his own business, the councilmember is not required to disqualify himself from decisions regarding the application or the map.

FACTS

Wayne Bashore is a member of the City Council for the City of Willits. He also owns a private consulting business. In

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

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February 1988, Mr. Bashore contracted to prepare a site map and application form for a conditional use permit for Mr. Dockins to operate an asphalt batch plant in an industrial zone within the city limits. Mr. Dockins paid Mr. Bashore \$141.25 to do the work. Mr. Bashore owns no interest in Mr. Dockins' business and has received no other money from Mr. Dockins within the past twelve months.

Mr. Dockins intends to submit the application for a use permit along with the site map to the city council for its consideration.

ANALYSIS

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 will have a material financial effect, distinguishable from its 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....

(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....

Section 87103.

Councilmember Bashore is an officer of, and has an investment interest in his private consulting business. (Section 87103(a) and (d).) Further, because he is sole owner of the firm, income to the firm constitutes income to him. (Section 82030.) Any client who pays the firm \$250 or more within a twelve month period becomes a source of income to the councilmember.

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Therefore, Councilmember Bashore must disqualify himself from participating in decisions of the city council where it is reasonably foreseeable that such decisions would have a material financial effect (1) on his business; or (2) on clients who have paid the firm at least \$250 in the twelve months prior to the council decision.

Mr. Dockins has paid Councilmember Bashore \$141.25 for the site map and application form which will come before the city council. Since Mr. Dockins has not paid Councilmember Bashore \$250 or more in the past twelve months, he is not a source of income to the councilmember within the meaning of the Act. Therefore, Councilmember Bashore is not required to disqualify himself from participation in decisions affecting Mr. Dockins.

Please keep in mind that any payments made or promised to the councilmember, or to his business, must be aggregated over the twelve month period immediately prior to a decision of the council. Therefore, if Councilmember Bashore were to do additional work for Mr. Dockins and be paid an additional \$109 within twelve months of a decision affecting Mr. Dockins, Councilmember Bashore would have to reevaluate his situation.

At this time, the councilmember's only relevant economic interest is his private consulting firm. Thus, in order for a conflict of interest to arise the decision would have to have a foreseeable material financial effect on Councilmember Bashore's business. In order for an effect to be "foreseeable" there must be a substantial likelihood that it will occur. Certainty is not required; however, if the effect is a mere possibility it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Based on the facts presented, there are two possible effects of this decision on the councilmember's firm: (1) additional business as a consequence of approval of the map and permit, or (2) a decrease in business caused by rejection of the map and permit. In other words, if future business to the firm is contingent upon approval of these items, the decision will have a foreseeable effect on the firm. There is no indication in your statement of facts that such a contingency exists, or that the decision will have any effect on Councilmember Bashore's business. Therefore, we do not believe that he is prohibited from participating in the decisions regarding Mr. Dockins'

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application form or site map. Our advice might change if there was evidence of a foreseeable effect on his firm.

I trust this response provides sufficient guidance regarding the responsibilities of Councilmember Bashore under the Act. If you have additional questions concerning this analysis, please feel free to contact me at (916) 322-5901 for additional advice.

Sincerely,

Diane M. Griffiths
General Counsel

Lilly Spitz by DMG

By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosure

LAW OFFICES OF
RAPPORT, MARSTON & QUESENBERRY

AN ASSOCIATION
OF
SOLE PRACTITIONERS

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DAVID J. RAPPORT
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SANTA ROSA AFFILIATE
ANTHONY COHEN
920 Mendocino Ave.
Santa Rosa, California 95401
(707) 575-0225
(Not A Partner)

March 29, 1988

Fair Political Practice Commission
428 J Street, Suite 800
Sacramento, California 95814

ATTENTION: Legal Division

RE: Opinion As To Whether Public Official Has Conflict Of Interest.

To The Legal Division of the FPPC:

As City Attorney for the City of Willits, I am requesting an official opinion from the Commission on whether Wayne Bashore a Councilman for the Willits City Council has a conflict of interest within the meaning of the Fair Political Practices Act.

The facts of the case are as follows:

1. Wayne Bashore is an elected member of the Willits City Council. He also has his own private consulting business. On February 29, 1988, Mr. Bashore in his private business prepared a site map and application form for a conditional use permit for a Mr. Dockins to operate a asphalt batch plant in an industrial zone within the City limits. Mr. Dockins paid Mr. Bashore \$141.25 to complete the application and to prepare the map.

2. Mr. Dockins intends to submit the application for a use permit along with the site map to the City Council for its consideration. The approval of the use permit is discretionary and the City Council can impose whatever reasonable conditions it wants in approving the permit.

3. Mr. Bashore owns no interest in Mr. Dockins business and has received no other money from Mr. Dockins within the last 12 months.

As the City Attorney for the City of Willits I would request that you render a formal written opinion to Mr. Bashore, sent to him in care of me, advising him as to whether he has a conflict of interest prohibiting him from voting on the Dockins application.

This matter will be coming before the Willits City Council

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sometime in April. I would appreciate your rendering an opinion within the next two weeks. If the Commission has a problem rendering an opinion before that time deadline I would appreciate if you could give me a call to let me know.

If you need any additional information in order to act on this request, please contact me, rather than Mr. Bashore at the address or telephone number on the above letterhead. Your assistance and cooperation in this matter is greatly appreciated.

Yours very truly,



LESTER J. MARSTON
City Attorney for the
City of Willits

LJM*kab
*willits*ltrs*fppc

cc: Wayne Bashore



California Fair Political Practices Commission

April 5, 1988

Lester J. Marston
City Attorney
Rapport, Marston & Quesenberry
P.O. Box 488
Ukiah, CA 95482

Re: 88-134

Dear Mr. Marston:

Your letter requesting advice under the Political Reform Act was received on April 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, 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: Wayne Bashore, Councilmember