



# California Fair Political Practices Commission

June 10, 1988

William R. Galstan  
City Attorney  
City of Antioch  
City Hall  
PO Box 130  
Antioch, CA 94509-0504

Re: Your Request for Advice  
Our File No. I-88-144

Dear Mr. Galstan:

This is in response to your letter on behalf of Antioch Planning Commissioner Neal Draper, regarding his responsibilities under the Political Reform Act (the "Act").<sup>1/</sup> Because of the general nature of your question, we treat your request as one for informal assistance.<sup>2/</sup>

## QUESTIONS AND CONCLUSIONS

1. If a client of Mr. Draper's real estate brokerage business, for whom Mr. Draper has done work outside the jurisdiction of the planning commission, comes before the planning commission regarding a development project with which Mr. Draper is in no way involved, may Mr. Draper participate in decisions affecting the project? Does a lapse of time between the prior transaction and the application have any effect?

Conclusion: Since Mr. Draper is 100-percent owner of his brokerage business, when a client of the business, who has paid or promised to pay at least \$250 and who does business in the City of Antioch, comes before the planning commission, Mr. Draper is prohibited from participating in the decisions

---

<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 Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<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).)

affecting the client. This prohibition remains in effect for twelve months after income is received from the client.

2. Can Mr. Draper, after participating in a decision of the planning commission regarding a land use application, provide brokerage services to the applicant relative to another piece of property? Does a lapse of time between the land use approval and the contract for services have any significance?

Conclusion: The Act prohibits participation in governmental decisions by public officials who have a financial interest in the decision. There is nothing in the Act to prohibit a public official from contracting with an individual who has appeared before him. Once Mr. Draper contracts to provide the services, however, the developer becomes a source of income to him. For twelve months after income is received and services provided, Mr. Draper must disqualify himself from decisions affecting the developer.

3. Would the advice relative to questions 1 and 2 change if Mr. Draper's brokerage business were structured as a partnership or corporation?

Conclusion: So long as Mr. Draper holds a 10-percent or greater share in his brokerage business, clients of the business are potential sources of income to him. If Mr. Draper brings co-owners into the business, a pro-rata share of the income from the client to the business would accrue to Mr. Draper, rather than 100 percent of the amount paid by the client. Thus, in order to meet the \$250 threshold for a source of income, a client would have to pay \$500 if Mr. Draper owned 50 percent of the business, or \$1000 if Mr. Draper owned 25 percent of the business, and so forth.

In the event that Mr. Draper's ownership interest in the firm drops below 10-percent, he still must disqualify himself if any person who has provided to him gross commission income totalling at least \$250 in a twelve month period appears before him.

Moreover, the firm remains an investment interest, a partnership interest, and a source of income. All three economic interests would require disqualification where the decision of the planning commission could foreseeably have a material financial effect on the brokerage firm itself.

4. Can Mr. Draper, after participating in a decision regarding a land use application, enter into a partnership with the applicant to purchase other properties, either within or outside of the jurisdiction?

Conclusion: As was explained with regard to Question #2, the Act only prohibits participation in governmental decisions by public officials who have a financial interest in the decision. There is nothing in the Act prohibiting business activities of public officials. However, once Mr. Draper enters into a partnership with another individual, he has an economic interest in the partnership. Therefore, he must disqualify himself should a decision of the planning commission have a foreseeable material financial effect on the partnership.

Furthermore, if the formation of such a business relationship is a reasonably foreseeable result of the decision at the time of the decision, disqualification might be required.

Finally, the partnership you describe would be involved with the purchase of real property. Once such property is acquired, Mr. Draper would also have to disqualify himself if a decision before the planning commission could have a material financial effect upon the value of the property.

#### DISCUSSION

Neal Draper is a member of the City of Antioch Planning Commission. He is also a licensed real estate broker. His practice involves almost exclusively the brokering of large, undeveloped parcels of land for residential and commercial development. His brokerage business is a sole proprietorship.

Scenario #1: Mr. Draper has a client who has developed property in another jurisdiction. The same client proposes to develop property in Antioch. Mr. Draper is not the broker for that property.

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.

(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 ... 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 (a)-(d).

Mr. Draper is a public official as a consequence of his position as planning commissioner. (Section 82048.) He has an investment interest and serves in a position of management in his brokerage business, which is also a source of income to him. (Section 87103 (a), (c) and (d).) Because he is sole owner of his real estate brokerage firm, any clients providing gross income to the firm of \$250 or more and doing business in the City of Antioch, are also sources of income to him. (Section 82030(a).)<sup>3/</sup> Accordingly he must refrain from participating in any governmental decision where it is reasonably foreseeable that the decision would have a material financial effect on his brokerage firm or a client providing \$250 or more in income to the firm, if the effect is distinguishable from the effect on the public generally.

In the scenario outlined above, Mr. Draper has not done work for the client within the city. However, since the client would be bringing an application to the planning commission, he is clearly "doing business" within Mr. Draper's jurisdiction, and is, therefore, a source of income to Mr. Draper. Regulation 18702.1 (copy enclosed) provides that a public official shall not participate in a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

Regulation 18702.1(a)(1).

---

<sup>3/</sup> Since it is common practice for real estate brokerage firms to operate on a "commission income" basis, you may assume that all references to "income" may be read "commission income" whenever Mr. Draper, in fact, operates on a commission income basis. We will address other elements of commission income which are relevant to your situation under scenario #3, at page 5.

Thus, where Mr. Draper has received or been promised \$250 in income from a client who comes before the planning commission, he is prohibited from participating in the decisions affecting the client for twelve months.

Scenario #2: Assume Mr. Draper has voted to approve a land use application. After that vote, the developer of the property which was subject to the vote requests Mr. Draper to provide brokerage services for another piece of property, either within the city limits of Antioch, or outside the jurisdiction.

Analysis: The Act prohibits participation in governmental decisions by public officials who have a financial interest in the decision. In this scenario, at the time of the governmental decision Mr. Draper has no economic relationship with the applicant. If Mr. Draper has not done work for the applicant within the past twelve months, and has not been promised income from the applicant at the time of the governmental decision, the applicant is not a source of income to him, and he would, therefore, not have a financial interest in the decision. (Advice Letters to Lempell, No. A-85-145 and Kimbrell, No. A-87-279, copies enclosed.)

Once Mr. Draper does contract to do work for the applicant totalling \$250 or more, however, he would be required to disqualify himself from all decisions materially affecting the client or his firm for a twelve month period thereafter.

Scenario #3: Assume that the brokerage firm is a partnership or corporation rather than Mr. Draper's sole proprietorship.

Analysis: Section 82030 defines income to include a pro-rata share of any income of any business entity in which the public official owns a 10-percent or greater interest. Thus, in the analysis for scenario #1, we noted that since Mr. Draper is sole owner of his firm, all clients of \$250 or more in income to the firm, within a twelve month period, are sources of income to him.

If Mr. Draper had a less than 100-percent interest, but more than a 10-percent interest, we would apply a pro-rata formula to the gross income received from the client to the firm. For example, assume Mr. Draper had a 50-percent interest in the firm. A client would have to provide gross income of at least \$500 to the firm in order to be a "source of income" to Mr. Draper. If Mr. Draper had a 20-percent interest in the firm, the client would have to provide gross income of at least \$1,250 to the firm in order to be a "source of income" to

William R. Galstan  
June 10, 1988  
Page 6

Mr. Draper. (See Winnie Advice Letter, No. I-85-228, copy enclosed.)

If we assume Mr. Draper has a less than 10-percent interest in the firm, all of the clients of the firm would not necessarily be sources of income to Mr. Draper. Regulation 18704.3 (copy enclosed) describes the various sources of income to public officials who provide services on a commission basis. Since most real estate brokers operate on a commission basis, we would assume that Mr. Draper does as well, and his sources of income would include his clients and the clients of other salespeople who operate under his authority. (Regulation 18704.3(c)(2).) Furthermore, the full gross value of any commission income he receives for a specific transaction is attributed to each source of commission income in that transaction. (See, In re Carey (1977) 3 FPFC Ops. 99, copy enclosed.)

Moreover, the brokerage firm remains a source of income, as well as his investment and partnership interest. Consequently, Mr. Draper would also be required to disqualify himself from decisions before his agency which could foreseeably have a material financial effect on the brokerage firm. Regulation 18702.2 (copy enclosed) provides guidelines for determining whether a decision will have a material financial effect on a business entity. (See also, Maddow Advice Letter, No. A-88-108, copy enclosed.)

Scenario #4: Assume Mr. Draper has voted on a land use application. After such vote, could Mr. Draper enter into a partnership with the applicant to purchase other properties, either within or outside of the jurisdiction?

Analysis: As was explained in scenario #2, the Act restricts activities of public officials only where there is a financial interest at the time of the governmental decision. We are assuming, once again, that Mr. Draper has no history of economic involvement with the applicant which would cause disqualification, and no promise of economic involvement at the time of the decision. Thus, Mr. Draper would need to concern himself as to any governmental decision made only after the partnership has been established.

It is important to emphasize that where it is planned at the time of the decision that a partnership will be established, the public official would have a foreseeable economic interest in the party appearing before him, and might be prohibited from participating.

William R. Galstan  
June 10, 1988  
Page 7

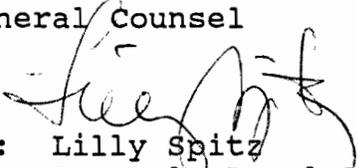
Once a partnership has been established, Mr. Draper would have an investment and partnership interest in the business entity, and the partnership itself would be a source of income to him as well. If the partnership comes before the planning commission for a decision directly affecting its interests, Mr. Draper would be required to disqualify himself pursuant to Regulation 18702.1. If the partnership could be indirectly affected by a decision of the planning commission and it is foreseeable that the decision will materially affect the partnership, Mr. Draper would be required to disqualify himself pursuant to Regulation 18702.2.

Because your scenario notes that the partnership would be for the purpose of purchasing real property, Mr. Draper would have to be aware of another basis for disqualification. If it is foreseeable that a decision of the planning commission could have a material financial effect on any real property interest of the partnership, Mr. Draper would be prohibited from participating in such a decision. Section 82033 provides that Mr. Draper has an interest in real property held by a business entity in which he has a 10-percent or greater interest. Regulation 18702(b) sets out the guidelines for determining whether a decision will have a material financial effect on a real property interest. (See, In re Oglesby (1975) 1 FPPC Ops. 71, In re Brown (1978) 4 FPPC Ops. 19, Advice Letters to Skousen, No. A-87-062, and Romney, No. I-87-134, copies enclosed.)

I trust that these guidelines will assist you in counseling Mr. Draper as to his responsibilities under the Act. If you have any questions, please contact me at (916) 322-5901.

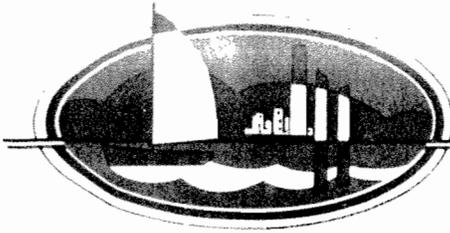
Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

LS:plh

Enclosures



ANTIOCH CA

CITY HALL • P O 130 • ANTIOCH CA 94509 0504 • (415) 778 3502

APR 13 8 57 AM '88

WILLIAM R. GAISTAN  
MAYOR

April 12, 1988

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

Re: Request for General Guidance

Dear Sir or Madam:

Antioch Planning Commission member Neal Draper has authorized and requested me to seek general guidance under the Political Reform Act on the issues related herein.

#### FACTS

Mr. Draper, a resident at 2363 Peachtree Drive, Antioch, CA 94509 is a member of the Antioch Planning Commission. He may also become a candidate for City Council. In either capacity, he would be faced with making a number of land use decisions.

Mr. Draper is a licensed real estate broker. His practice involves almost exclusively the brokering of large, undeveloped parcels for residential and commercial development. His brokerage business is a sole proprietorship.

#### ISSUES

A number of scenarios concern Mr. Draper, as listed below:

Scenario #1. Suppose Mr. Draper has a pre-existing business relationship with a client who has developed property in another jurisdiction. If the same client proposes to

Fair Political Practices Commission  
April 12, 1988  
Page two

develop property in Antioch, and assuming Mr. Draper is not the broker for that property, may he vote on the project? Does a lapse of time between the prior transaction and the in-jurisdiction application have any effect?

Scenario #2. Suppose Mr. Draper votes to approve a land use application. At some point after that vote, the developer of property which was subject to the vote requests Mr. Draper to provide brokerage services for another piece of property, either within Antioch or outside its jurisdiction. May he accept such assignment? Does the passage of time between the land use approval and the assignment for the new property have any significance?

Scenario #3. Would your general advice on either of the above scenarios be different if Mr. Draper's brokerage was structured as a partnership or corporation?

Scenario #4. Assume that Mr. Draper has voted on a land use application. After such vote, could Mr. Draper enter into a partnership with the applicant to purchase other properties, either within or outside of the jurisdiction?

Your general advice on the above questions will be very much appreciated by both Mr. Draper and by my office.

Very truly yours,



WILLIAM R. GALSTAN  
City Attorney

WRG/kw  
cc: Neal Draper



# California Fair Political Practices Commission

April 14, 1988

William R. Galstan  
City Attorney  
P.O. 130  
Antioch, CA 94509-0504

Re: 88-144

Dear Mr. Galstan:

Your letter requesting advice under the Political Reform Act was received on April 13, 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).)

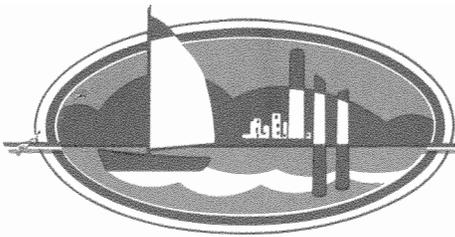
You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Neal Draper, Planning Commissioner



ANTIOCH CA

CITY HALL • P. O. 130 • ANTIOCH, CA 94509-0504 • (415) 778-3502

APR 13 8 57 AM '88

WILLIAM R. GALSTAN  
City Attorney

April 12, 1988

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

Re: Request for General Guidance

Dear Sir or Madam:

Antioch Planning Commission member Neal Draper has authorized and requested me to seek general guidance under the Political Reform Act on the issues related herein.

#### FACTS

Mr. Draper, a resident at 2363 Peachtree Drive, Antioch, CA 94509 is a member of the Antioch Planning Commission. He may also become a candidate for City Council. In either capacity, he would be faced with making a number of land use decisions.

Mr. Draper is a licensed real estate broker. His practice involves almost exclusively the brokering of large, undeveloped parcels for residential and commercial development. His brokerage business is a sole proprietorship.

#### ISSUES

A number of scenarios concern Mr. Draper, as listed below:

Scenario #1. Suppose Mr. Draper has a pre-existing business relationship with a client who has developed property in another jurisdiction. If the same client proposes to

Fair Political Practices Commission  
April 12, 1988  
Page two

develop property in Antioch, and assuming Mr. Draper is not the broker for that property, may he vote on the project? Does a lapse of time between the prior transaction and the in-jurisdiction application have any effect?

Scenario #2. Suppose Mr. Draper votes to approve a land use application. At some point after that vote, the developer of property which was subject to the vote requests Mr. Draper to provide brokerage services for another piece of property, either within Antioch or outside its jurisdiction. May he accept such assignment? Does the passage of time between the land use approval and the assignment for the new property have any significance?

Scenario #3. Would your general advice on either of the above scenarios be different if Mr. Draper's brokerage was structured as a partnership or corporation?

Scenario #4. Assume that Mr. Draper has voted on a land use application. After such vote, could Mr. Draper enter into a partnership with the applicant to purchase other properties, either within or outside of the jurisdiction?

Your general advice on the above questions will be very much appreciated by both Mr. Draper and by my office.

Very truly yours,



WILLIAM R. GALSTAN  
City Attorney

WRG/kw  
cc: Neal Draper