



California Fair Political Practices Commission

May 12, 1988

John R. Harper
City Attorney
City of Lake Elsinore
2302 Martin Street, Suite 225
Irvine, CA 92715

Re: Your Request for Advice
Our File No. I-88-145

Dear Mr. Harper:

You have requested advice on behalf of John Matson about application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to Mr. Matson should the Lake Elsinore City Council appoint him to the joint powers agency that oversees the Lake Elsinore Management Plan.

We are treating your request as one for informal assistance pursuant to Regulation 18329(b)(8)(D) because you have requested general, hypothetical advice, rather than advice about a specific decision.^{2/}

QUESTIONS

The city council is considering appointing Mr. Matson to the joint powers agency that oversees the Lake Elsinore Management Plan area. Mr. Matson is a real estate broker. The following questions assume the city council has appointed Mr. Matson to the joint powers agency.

1. Would the Act prohibit Mr. Matson from representing real estate clients or acquiring property in the lake management plan area?

^{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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2. Would the Act prohibit Mr. Matson from representing real estate clients before the Lake Elsinore City Council?

3. If Mr. Matson became involved in real estate development in the lake management plan area, would the Act prohibit him from representing himself or real estate clients before the city council?

CONCLUSION

The Political Reform Act would not prohibit Mr. Matson from representing real estate clients in the lake management plan area, or from acquiring property in the plan area, or from representing himself or clients before the city council. However, Mr. Matson must not act as a representative of the joint powers agency when he appears before the city council on behalf of himself or on behalf of any client.

In addition, Mr. Matson would be disqualified from participating in a decision before the joint powers agency that would have a reasonably foreseeable material financial effect, different from the effect on the general public, on:

- (1) Mr. Matson's business,
- (2) Any of his interests in real property worth \$1,000 or more, or
- (3) A source of \$250 or more in income.

FACTS

Mr. Matson has been a member of the Lake Elsinore City Council. His term of office ended on April 19, 1988. He will not run for reelection. Mr. Matson also is a real estate broker.

The City of Lake Elsinore will be entering into a joint powers agreement with Riverside County, the Elsinore Valley Municipal Water District, the Santa Ana Watershed Project agency, the Army Corps of Engineers, and the State of California. The joint powers agency will oversee site planning and construction of a federally funded program to stabilize Lake Elsinore. Stabilization of Lake Elsinore potentially will result in reclamation of presently unusable property and an increase in the value of shoreline property.

The city council will appoint two persons to the joint powers agency. One appointee will be a member of the city

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council. The city council is considering Mr. Matson as the second appointee because of his expertise and experience. Over the telephone on April 18, 1988, you explained that Mr. Matson would be a public member of the joint powers agency, and not the city council's representative.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest.

If Mr. Matson were appointed to the joint powers agency, he would be a public official and could have conflicts of interest in governmental decisions. (Section 82048.) However, private contracts are not governmental decisions. (Regulation 18700(b) and (c), copy enclosed.) Therefore, the Act would not prohibit Mr. Matson from representing clients who own property in the lake management plan area. Nor would the Act prohibit Mr. Matson from acquiring property within the lake management plan area.^{3/}

Decisions Before The City Council

If appointed, Mr. Matson would be serving on the joint powers agency as a public member and not as a representative of the city's interests. The joint powers agency would be an independent agency, separate from the city council. Consequently, because the two agencies are independent entities, Mr. Matson would be able to represent his interests and that of his real estate clients before the city council.

Nevertheless, subdivision (c) of Regulation 18700.1 (copy enclosed) prohibits Mr. Matson from attempting to use his official position to influence a decision before another government agency, such as the city council. Mr. Matson would be using his official position if he purported to act on behalf of or to represent the joint powers agency before the city

^{3/} The provisions of Government Code Section 1090 may apply to a decision about a contract between the joint powers agency and a source of income to Mr. Matson. The Commission does not administer this statute. Other state laws also may restrict Mr. Matson's business activities within the jurisdiction of the joint powers agency. We refer Mr. Matson to the attorney for the joint powers agency for advice regarding Section 1090 and other state laws.

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council. Prohibited activities include using official stationery. Therefore, while Mr. Matson could appear before the city council to represent himself or a client, he could not appear claiming to represent the joint powers agency.

Joint Powers Agency Decisions That Affect Mr. Matson's Business and Real Property Interests

Mr. Matson may be disqualified from joint powers agency decisions that affect his investments or sources of income to him. An official has a disqualifying financial interest in a decision if it is reasonably foreseeable the decision will have a material financial effect, different from the effect on the general public, (1) on a business entity in which an official has an investment worth \$1,000 or more, or (2) on real property in which the official has a direct or indirect interest worth \$1,000 or more, or (3) on a source of \$250 in income promised to or received by the official within 12 months before the decision. (Section 87103(a), (b), and (c).)

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, 206-207, copy enclosed; see Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App.3d 983, 991, and Witt v. Morrow (1977) 70 Cal. App.3d 817.)

In regard to Mr. Matson's real estate business, the effect of a decision would be material if it increased or decreased the gross revenues of his business by \$10,000 or more in a fiscal year, or increased or decreased his business expenses by \$2,500 or more.^{4/} (Regulation 18702.2(g), copy enclosed.) For example, if it is foreseeable that a decision would increase the value of property owned by clients whom Mr. Matson was representing in sales transactions, it is foreseeable that the decision would affect the amount of commission income Mr. Matson would receive from the sales in the area. (In re Oglesby (1975) 1 FPPC Ops. 71, 80, copy enclosed.) If the increased values would result in an increase of \$10,000 or more in annual gross revenues to Mr. Matson's business, he would be disqualified from participating in the decision.

^{4/} Regulation 18702.2(g) applies to small businesses that are not qualified for public sale. Please let us know if you believe a different subdivision of Regulation 18702.2 applies to Mr. Matson's business.

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If Mr. Matson acquires property or becomes involved in real estate development projects in the lake management plan area, he also may be disqualified from governmental decisions that will have foreseeable and material effects on his direct and indirect interests in real property worth \$1,000 or more. Regulation 18702(b)(2) provides guidelines for determining whether an effect on real property is material. These guidelines are based on the property's fair market value. If the fair market value of the property is less than \$200,000, an increase or decrease in value of \$1,000 or more is material. (An effect of less than \$1,000 is never material.) If the fair market value is at least \$200,000, but less than \$2,000,000, an increase or decrease in value of one-half of 1 percent or more is material. If the fair market value is \$2,000,000 or more, an increase or decrease in value of \$10,000 or more is material.

Joint Powers Agency Decisions That Affect A Source Of Income

We assume Mr. Matson owns his own business and income to his firm is derived from commissions. Regulation 18704.3(d) (copy enclosed) provides guidelines for determining whether disqualification is required because of commission income:

(d) For purposes of determining whether disqualification is required under the provisions of Sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

Sources of commission income to a real estate broker are (1) the person whom the broker represents, (2) the person represented by an agent working under the broker's auspices, (3) the business entity through which the broker conducts business, and (4) any person receiving a finder's or other referral fee for referring a party to the transaction to the broker. (Regulation 18704.3(b)(2).)

Therefore, if a real estate client promised to pay or paid Mr. Matson at least \$250 within 12 months before a decision, Mr. Matson would be disqualified if the decision would have a foreseeable and material effect on that client. Regulation 18702(b)(3) and Regulation 18702.1(a)(1) (copies enclosed) provide guidance for determining whether the effect of a decision on a source of income is material.

We refrain from providing advice about future agency decisions because we have no information about specific decisions. Nevertheless, we hope Mr. Matson will contact us if

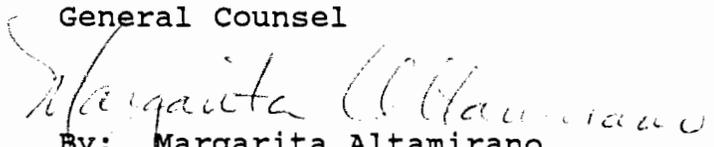
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he has a specific question about a future decision. In the meantime, we have enclosed copies of Regulations 18702, 18702.1 and 18702.2, which provide guidelines to determine when the effect of a governmental decision would be material.

I hope this letter satisfactorily answers your advice request. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:plh

Enclosures

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April 7, 1988

The Fair Political Practices
Commission
428 "J" Street
Suite 800
Sacramento, CA 95814

Re: REQUEST FOR FORMAL OPINION LETTER

Dear Members of the Commission:

The purpose of this letter is to request, on behalf of the City of Lake Elsinore and the Lake Elsinore Redevelopment Agency, in my position as City Attorney and Redevelopment Agency Counsel, a formal letter of Opinion with regard to prohibited conflicts under the following fact situation:

John Matson, a City Council member, has served as a City Councilman and Redevelopment Agency member for the past four years. His term will expire on April 19, 1988 and he has chosen not to seek re-election. The City of Lake Elsinore is in the possess of entering into a Joint Powers Agreement with the County of Riverside, the Elsinore Valley Municipal Water District, the Santa Ana Watershed Project agency, the Army Corps of Engineers and the State of California to oversee the site planning and construction of the Federally funded Lake Stabilization Program. The impact of the Program should be both the potential utilization of presently unuseable properties and a potential increase in value of current shoreline property.

In the anticipated Joint Powers Agency, the City of Lake Elsinore will have two appointees. One of those appointees will be a member of the current City Council. The City Council would like to appoint Mr. Matson as its other representative in order to take advantage of his expertise and experience.

Mr. Matson is a real estate broker and might potentially represent property owners in Lake Elsinore generally and specifically in the area affected by the Lake Management Plan.

Based on the foregoing, please kindly respond to the following questions:

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1. Will Mr. Matson be precluded from representing real estate clients within the properties impacted by the Lake Management Plan?

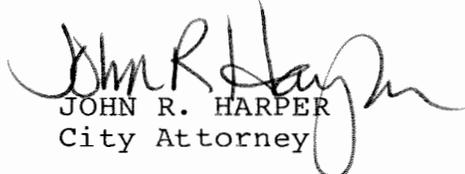
2. Would Mr. Matson be precluded from representing real estate clients before the City Council for Lake Elsinore?

3. Would Mr. Matson, should he become involved in real estate development within the affected area, be precluded from representing himself and/or other clients generally or before the City Council?

4. Would Mr. Matson be precluded from the acquisition of property within the affected area?

Thank you for your consideration, and if I can provide you with any other information, please don't hesitate to give me a call.

Yours truly,


JOHN R. HARPER
City Attorney

JRH:jw (L.E.#6/FPPC/p.4,5)

cc: Ron Molendyk

John Matson



California Fair Political Practices Commission

April 14, 1988

John R. Harper
City Attorney
City of Lake Elsinore
2302 Martin Street, Suite 225
Irvine, CA 92715

Re: 88-145

Dear Mr. Harper:

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 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
cc: John Matson, Councilmember