



California Fair Political Practices Commission

May 4, 1988

Ms. Hazel Himeline
5985 Barton Road
Loomis, CA 95650

Re: Your Request for Advice
Our File No. A-88-149

Dear Ms. Himeline:

You have asked for written confirmation of my telephone advice to you on April 14, 1988.

QUESTION

What restrictions apply to you, as a planning commissioner who is disqualified under the conflict-of-interest provisions of the Political Reform Act, in your role as a private citizen when expressing your views on various planning issues currently being publicly debated?

CONCLUSION

There are no restrictions on your communications with members of the public or the media. In dealing with agencies other than the planning commission and planning staff, you may not purport to speak on behalf of the planning commission. With respect to the planning commission, you may appear only to represent your own interests.

FACTS

You are a planning commissioner in the Town of Loomis. You own property in the town. On February 1, 1988, in response to your request for advice, we advised that you must disqualify yourself from official participation in a pending land-use decision before the Loomis Planning Commission. Disqualification was required because you had a financial interest in the decision within the meaning of the Political Reform Act (the "Act").^{1/} Specifically, the property which was

^{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.

the subject of the land-use decisions was across the street and within a few hundred feet of your own property. In addition, there existed the potential for a water rights dispute between you and the project's proponent if the project was approved.

In accordance with our advice, you have disqualified yourself from participation in consideration of the matter before the planning commission. We also advised that you could address either the planning commission, or the town council, on the issue as an affected property owner, so long as you spoke only on your own behalf as any other member of the public. You elected not to exercise that prerogative.

The town council subsequently approved the land-use request. Now a citizens' group has circulated a referendum measure to try to overturn the council's action. You are concerned about what role you may play as a private citizen in the public debate over the referendum.

ANALYSIS

Under the conflict-of-interest provisions of the Act, a public official may not make, participate in, or use her official position to influence, a governmental decision in which she has a financial interest. An official makes a governmental decision when she votes, commits her agency to action, enters into a contract or appoints someone. (Regulation 18700(b), copy enclosed.)

A public official participates in the making of a governmental decision when, acting within the authority of her position, she negotiates or renders recommendations directly to the decision maker without significant intervening substantive review. (Regulation 18700(c).) However, this does not preclude an official from appearing, as a member of the general public, before an agency to represent solely her own interests. (Regulation 18700 (d)(2).)

A public official uses her official position to influence a governmental decision if she attempts to influence the decision of her own agency (i.e., the planning commission or planning staff) or another agency subject to her appointive or budgetary control. (Regulation 18700.1, copy enclosed.) However, this does not preclude appearances, as a member of the general public, before an agency to represent solely her own interests. (Regulation 18700.1(b)(1).) Nor does it preclude communications with the general public or the press. (Regulation 18700.1(b)(2).) Consequently, you may, in your private capacity, communicate with the general public or the press. It is only communications with other governmental agencies or officials which are subject to any restrictions.

Ms. Hineline
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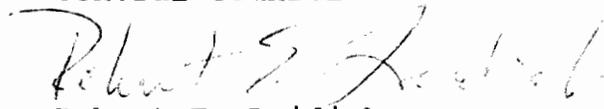
With respect to communications with agencies other than the planning commission and the planning staff those communications are subject to the restrictions in Regulation 18700.1(c). You may not purport to speak on behalf of the planning commission in any of those communications. Among other things, this restriction expressly precludes use of planning commission stationery.

Once the matter is before the voters in the form of a referendum, there is no longer a "governmental decision" involved and you are free to make your views on that subject known to one and all. You are also free to engage in whatever non-governmental activities you wish relative to the referendum campaign. However, once the referendum vote has occurred, if the matter comes before the planning commission or city council again, our previous advice would still apply.

I trust that this letter has adequately responded to your questions. Should you have further questions regarding its contents, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



Robert E. Leidigh
Counsel, Legal Division

REL:da

April, 15, 1988

Robert Leidigh, Esq.
Fair Political Practices Commission
428 J Street
Sacramento, California 95814

F P P C
APR 19 2 17 PM '88

Re: Conflict of Interest Finding dated February 1, 1988
Concerning Hazel Hineline, Loomis Planning
Commissioner.

Dear Mr. Leidigh:

I would like to thank you for taking the time to explain my rights as a private citizen in our community concerning the issue of my conflict of interest. The F.P.P.C. ruling dated February 1, 1988 defines guidelines concerning my participation in governmental decisions in my capacity as a Planning Commissioner for the Town of Loomis. However, I would like to have more clearly defined, my rights as a private citizen on this issue.

I am requesting a letter from the F.P.P.C. advising me of any restrictions concerning my role as a private citizen on this issue, as per your advice during our April 14th, 1988 telephone conversation.

I would appreciate your timely response addressing this matter. Thank you for your cooperation and helpful assistance.

Sincerely,



Hazel Hineline
5985 Barton Road
Loomis, California 95650
(916) 652-6010

cc: John Ireland
Mayor
Town of Loomis



California Fair Political Practices Commission

April 21, 1988

Hazel Himeline
5985 Barton Road
Loomis, Ca 95650

Re: 88-149

Dear Ms. Himeline:

Your letter requesting advice under the Political Reform Act was received on April 19, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, 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
Diane M. Griffiths
General Counsel

DMG:plh