



California Fair Political Practices Commission

June 17, 1988

Howard Mankins
200 Hillcrest Drive
Arroyo Grande, CA 93420

Re: Your Request for Advice
Our File No. A-88-187

Dear Mr. Mankins:

You have requested advice about application of the Political Reform Act (the "Act")^{1/} to your duties as Mayor and member of the City Council of the City of Arroyo Grande.

QUESTION

You own stock in Mid-State Bank. You also are a co-trustee for a family trust that owns Mid-State Bank stock, but you are not a beneficiary of the trust. Mid-State Bank has loaned money to the developers of the Royal Oaks residential project. May you participate in city council decisions concerning the Royal Oaks project?

CONCLUSION

Because you own stock in Mid-State Bank, you are disqualified from participating in any decisions concerning the Royal Oaks project if the decision will have a foreseeable and material financial effect on Mid-State Bank. For example, if a

^{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.

decision concerning Royal Oaks would result in an increase or decrease of \$150,000 or more in the value of Mid-State Bank's assets or liabilities, you would be disqualified from participating in the decision.

Your position as a co-trustee of a family trust does not create any additional economic interest for you in Mid-State Bank. Therefore, the co-trustee position would not create conflict of interest problems for you in a decision about Royal Oaks.

FACTS

You became a member of the City Council of the City of Arroyo Grande on December 2, 1986. You also own stock with a fair market value of \$1,000 or more in Mid-State Bank.

You also are co-trustee with your aunt of the Brisco Family Trust. You are not a beneficiary of the trust. You make no decisions about investments and are not paid for your services. The trust owns 2.5% of Mid-State Bank's stock.

Mid-State Bank has assets of \$488,180,477 and pre-tax income for the past fiscal year of \$9,670,964.^{2/} Bank stock is traded through McGuire Investments in Santa Maria.

Before you took office, the city approved three different plans for developing a specific site, but developers never began construction. In an issue paper of January 12, 1987, the city manager pointed out that the most recently approved project--Oak Knoll--could be modified and developed by new developers under the name Royal Oaks, without further city council approvals. Finally on May 5, 1987, the city council approved a tentative map for the Royal Oaks project. On June 24, 1987, the city council approved the grading plan. Royal Oaks developers have two years from tentative map approval to submit the final map for approval to the city council.

After June 24, 1987, you learned that Mid-State Bank had loaned money to the developers of the Royal Oaks project.

^{2/} This information is based on the prospectus for the bank. We obtained the information on June 9, 1988, in a telephone conversation with the secretary for Mr. Pruitt at Mid-State Bank.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way using his official position to influence a governmental decision in which he has a financial interest. You would have a disqualifying financial interest in a decision that would foreseeably and materially affect a business entity in which you have an investment interest worth \$1,000 or more. (Section 87103(a).)

Your stock in Mid-State Bank is an investment interest valued at \$1,000 or more. (Section 82034.) Mid-State Bank has loaned money to developers for the development of Royal Oaks. Consequently, you would be disqualified from participating in a decision concerning Royal Oaks if the decision would have a foreseeable and material financial effect on Mid-State Bank. (Section 87103(a).)

To require disqualification, the effect of a decision must be foreseeable. 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.)

To require disqualification, the effect of a decision also must be material. Regulation 18702.2 (copy enclosed) provides guidelines for determining whether the effect of a decision on a business entity will be material. The amount of Mid-State Bank's assets and pre-tax income show the bank meets the standards for listing on the New York Stock Exchange. Therefore, pursuant to subdivision (f) of Regulation 18702.2, you should apply the following subdivision (d) guidelines to determine whether the effect of a decision will be material:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

Regulation 18702.2(d).

Howard Mankins
June 17, 1988
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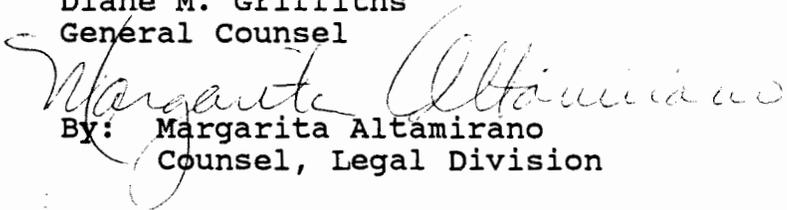
Pursuant to subdivision (d)(3), an increase or decrease of \$150,000 or more in the value of Mid-State Bank's assets or liabilities would be considered material. Usually, banks list outstanding loans as assets. You should examine each city council decision concerning the Royal Oaks project to determine whether the decision would affect the value of Mid-State Bank's loan. You would be disqualified from participating in a decision that would have a \$150,000 effect on Mid-State Bank's assets.

In your letter, you mentioned that you are co-trustee of the Brisco Family Trust, which has an investment in Mid-State Bank. You also stated that you are not a beneficiary of and you receive no income from the Brisco Family Trust. Because you have no beneficial interest in the trust, you do not have an economic interest in Mid-State Bank through the family trust. (Section 82034; Regulation 18234(d), copy enclosed.) The trust's ownership of stock in Mid-State Bank would not create conflict of interest problems for you in any decision about Royal Oaks.

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

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Encl.

MAY 13 2 23 PM '88

200 Hillcrest Drive
Arroyo Grande, Cal. 93420

May 14, 1988

Fair Political Practices Commission
428 J. Street, Suite 800
Sacramento, Calif. 95814

Dear Sir:

I am the Mayor of the City of Arroyo Grande. I am writing to seek your advice concerning my continued participation in a Housing Development in the City of Arroyo Grande as a voting member of the City Council based on the following facts:

1. I took office December 2, 1986.
2. In 1978 a prior Council approved a project called "Halcyon Hills", which proposed 288 residential lots. The E.I.R. was accepted, but the developer never proceeded.
3. 1980, the prior Council approved a project called "Knollwood" which proposed 412 units, but the developer never proceeded.
4. In 1984, a project called "Oak Knoll" proposed 370 units, but never proceeded.
5. January 12, 1987, issue paper to Council from City Manager (copy attached) pointing out the following facts:
 - a. The project can legally be constructed and developed without further approvals of Council.
 - b. Royal Oaks project, new name, developers are William Lackey and Don McHaney.
 - c. Project did not increase the number of units.
 - d. Donated 10 acres to the school for a school site rather than a 10 acre park site, however contributed \$20,000 to City Park Fund.
 - e. Reduced the amount of grading.
 - f. Requested a Y.M.C.A. site and possible elder care facility. (these were not approved by Council and must be submitted again at time of development for full hearing process and approval)
6. Modification to an already approved plan "Oak Knolls" were then approved by the Council. Modifications which were improvements and of more benefit to the City.

Additionally, the developer was required to extend West Branch Street for the City at an estimated cost of \$780,000, and set aside large areas of oak trees as a preserve. In addition, the developer has given acreage to the County who in turn has given 5 acres to the City.

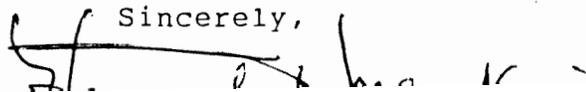
7. May 5, 1987, the City Council approved the Tentative map.
8. June 24, 1987, the City Council approved the grading plan.
9. The developer has two (2) years from tentative map approval to submit the final map for approval, --May, 1989.
10. Subsequent to the last Council action on this project, I became aware of rumors that Mid-State Bank is a possible lender to the developer in this project. Before this time, I had no knowledge of any possible involvement of Mid-State Bank in this project.
11. I am a stockholder in Mid-State Bank. My wife and I hold 62/100's of 1% of the Banks 1,773,400 shares. Last years dividend was 80/100's of 1% of my gross income.
12. My Uncle Brisco passed away October 8, 1987; my Aunt became the sole beneficiarie to the family estate.
13. I became a co-trustee with my aunt for the Brisco Family Trust at the death of my uncle.
14. My Aunt & Uncle have a holding of 2½% of Mid-State Stock.
15. On April 19, 1988, I talked with a Bank officer and he confirmed that the Bank is involved in the project. He informed me that information concerning Bank loans are confidential. Shareholders are not informed who gets loans in any Bank report to the Shareholders and that it is kept confidential information. I was not given any information as to amount or terms from the Bank Officer. The Banks name never appeared on any map or document furnished to the City Council for action or in any of the application process required by the City.
16. I have never had any financial ties whatsoever to the developer of this project.

During the hearing process, the developer, Mr. Lackey, complained of the new conditions he was having to pickup and suggested on occassion that he was going back to the original approved plan.. The City did obtain a great deal more benefit from the modification hearings to the approved plan than if the project was built as originally approved.

My question is, now that I know a Bank I have shares in and am a co-trustee of shares of stock, should I disqualfy myself from further participation involving this project, such as approval of the Final Map. If so, what steps should I take to accomplish this disqualification.

Please advise if you need any further information concerning this request.

Sincerely,



Handwritten mark

ISSUE PAPER

January 12, 1987

TO: (CITY COUNCIL)
FROM: CITY MANAGER *Am*
SUBJECT: ROYAL OAKS DEVELOPMENT

On February 10th, you will likely receive a new proposal for the development of Royal Oaks and conduct a public hearing. Past Councils have approved plans for Oak Knolls, which has been renamed to Royal Oaks. The Oak Knolls plans can legally be constructed and developed without further approvals of Council.

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The question becomes, are the new plans for Royal Oaks an improvement over the Oak Knolls plans? The Royal Oaks plans, represented by William Lackey and Don McHaney, do not increase the two hundred and ~~twenty~~²³ approved residential units on the site, include a school site, rather than park site, and reduce the amount of grading. The Royal Oaks plans add a Y.M.C.A. site and other possible developments, such as an elderly care facility.

The plans have basically been reviewed by the Planning Commission and will likely be recommended for approval, with conditions, on January 20th. Stan Eisner declared a conflict of interest on the project when plans were submitted. McHaney is involved in financing on Eisner's private home in Pismo Beach. Rob Strong, a private planning consultant from San Luis Obispo, and former San Luis Obispo Planning Director, was retained to process these plans and represent the City at public hearings.

One of the important conditions of Royal Oaks is a requirement for Royal Oaks to extend West Branch Street across South County Regional Center property.

The developers state that they wish to commence grading and construction on the proposal project this coming construction period.

Field Trip: We have scheduled a field trip to the Royal Oaks site at 3:30 p.m. on Thursday, January 29th, for all parties to this correspondence, to become familiar with the proposal project on the site. Council members will receive the most recent plans and Planning Commission proposed conditions after the January 20th meeting and prior to the field trip. All others have access to these materials at the Planning Department. If you have an alternative date, please advise me.

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- CC: Planning Commission Chair
- Public Works Director
- Planning Director
- Fire Chief
- Police Chief
- School District Superintendent
- Chief Building Inspector
- City Attorney
- Rob Strong
- Press



California Fair Political Practices Commission

May 20, 1988

Howard D. Mankins
200 Hillcrest Drive
Arroyo Grande, CA 93420

Re: 88-187

Dear Mr. Mankins:

Your letter requesting advice under the Political Reform Act was received on May 18, 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

MAY 13 2 25 PM '88

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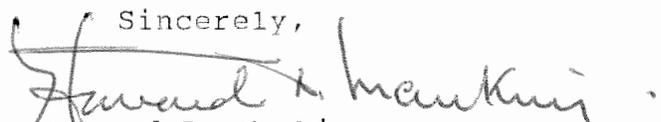
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W. Hill

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- School District Superintendent
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