



# California Fair Political Practices Commission

September 1, 1988

Honorable Nell L. Farr  
Supervisor  
Tuolumne County  
P.O. Box 97  
Twain Harte, CA 95383

Re: Your Request for Advice  
Our File No. A-88-264

Dear Supervisor Farr:

This is in response to your letter requesting advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTIONS

1. Can ownership of a home be a basis for disqualification from participating in board of supervisors deliberations and votes on land use matters?

2. Your husband serves on the board of directors of a homeowners' association, of which you are also a member. Are you required to excuse yourself from participating in issues before the board of supervisors which involve the homeowners' association?

3. If you are prohibited from participating in board decisions involving the homeowners' association, are you entitled to information about what transpired in closed sessions, even if not announced to the public?

## CONCLUSIONS

1. Ownership of a home can be a basis for disqualification if the decision before your agency will have a foreseeable and material effect, distinguishable from the effect on the public generally, on the fair market value of your home.

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<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.

Honorable Nell L. Farr  
September 1, 1988  
Page 2

2. Under the Act, neither you nor your husband have an economic interest in the homeowners' association. Therefore, you are not prohibited from participating in decisions involving the homeowners' association.

3. Public officials who must disqualify themselves from governmental decisions because of a conflict of interest are not entitled to any information about what transpired in closed session unless such information is also available to the public.

#### FACTS

You are the Third District Supervisor in Tuolumne County. You and your husband are members of the local homeowners' association, which has approximately 400 family memberships. Your husband is currently on the board of directors of that organization. He receives no compensation as a member of the board of directors.

The dues for the homeowners' association are \$10.00 per year. These annual fees are used to pay for periodic newsletters which are published by the association. The association has, on several occasions, sued the county with respect to land use decisions. Attorney costs are raised by voluntary contributions. Any excess funds raised for legal fees are kept in an association bank account.

The association recently won a lawsuit against the county in the superior court. The court awarded attorney fees to the association. The board of supervisors met in closed session to discuss the possibility of pursuing an appeal. You were advised by county counsel to refrain from participation in the decisions regarding the lawsuit because of your connection with the homeowners' association.

#### ANALYSIS

As a member of the Tuolumne County Board of Supervisors you are a public official. (Section 82048.) Consequently, the Act requires that you not participate in any governmental decision in which you have a financial interest. (Section 87100.) 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.

Honorable Nell L. Farr  
September 1, 1988  
Page 3

(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, 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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Section 87103(a)-(e).

### Real Property Interest

Since the value of your residence is more than \$1,000, Section 87103(b) requires that you refrain from participating in a decision if it is reasonably foreseeable that it will have a material financial effect on the value of your residence, distinguishable from its effect on the public generally.

The effect of a decision is reasonably foreseeable if there is 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.)

The standard for determining whether the effect of a governmental decision on real property is material is set forth in Regulation 18702(b)(2)(B). A decision is material if it will increase or decrease:

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

Honorable Nell L. Farr  
September 1, 1988  
Page 4

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

For example, an effect of less than \$1,000 on the fair market value of real property is never material. 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. If the fair market value is \$200,000 or more, but less than \$2,000,000, an increase or decrease in value of one-half of one percent of the fair market value 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.<sup>2/</sup>

We do not have information regarding the present fair market value of your home, nor specific facts regarding the land use issues being brought before the board of supervisors. You are in the best position to calculate whether these land use decisions will have a material financial effect on your real property interest. If, at some future time you would like advice regarding a specific land use decision, we will be happy to respond with an appropriate analysis.

#### The Homeowners' Association

Based on the facts you presented, it does not appear that the homeowners' association is a source of income to you or your husband. Since the association is not an enterprise operated for profit it does not meet the definition of business entity necessary to invoke disqualification under Subsections 87103(a) or (3). Finally, we have no facts to indicate that the association has been the source of a gift to you of \$250 or more within the last twelve months.

We conclude, therefore, that you do not have a disqualifying financial interest, generally, in issues involving the homeowners' association. However, if the homeowners' association and the county are involved in a lawsuit or other proceeding which could foreseeably affect the fair market value of your home sufficiently to meet the materiality standard, you would be required to disqualify yourself from participation in those decisions.

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<sup>2/</sup> The Commission recently approved a new regulation which defines material financial effect on real property. (Regulation 18702.3, copy enclosed.) We anticipate that the new regulation will become effective sometime in October.

Honorable Nell L. Farr  
September 1, 1988  
Page 5

If you determine that you do have a disqualifying interest in an issue before the board of supervisors you must refrain from participating in that governmental decision, and you may not use your position to influence the decision. Regulations 18700 and 18700.1 (copies enclosed) specify what actions constitute participation in a governmental decision or using one's official position to influence a governmental decision. Excepted from the listing of prohibited activities are:

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests....

Regulation 18700(d)(2).

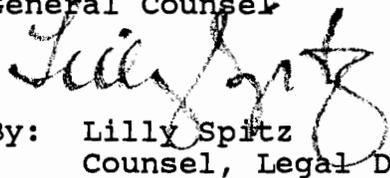
An official's "personal interests" include real property wholly owned by the official and his or her immediate family. (Regulation 18700.1(b)(1)(A).) Thus you may appear before the board of supervisors as a member of the general public for the sole purpose of representing your interests as a homeowner. You may not act as a representative of the homeowners' association, however.

In addition to appearing before the agency as a private citizen solely to represent his or her personal interests, a disqualified public official may have access to all public documents related to the governmental decision. He or she may not, however, have access to information which is not available to the general public. Thus, a disqualified public official does not have a right to information regarding sessions closed to the public, unless the public also may obtain that information.

If you have any questions regarding this analysis, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:plh

Enclosures

NELL L. FARR

POST OFFICE BOX 97, TWAIN HARTE, CA 95383 (209) 586-6071

July 7, 1988

Fair Political Practices Commission  
428 J St., Suite 800  
Sacramento, California 95814

Re: Conflict of Interest

Dear Commissioners:

I am the Third District Supervisor in Tuolumne County, and a resident of the unincorporated village of Twain Harte. My husband and I are members of the local homeowners association, which has approximately 400 family memberships. My husband is currently on the board of directors of that organization. Aside from the ownership of our home, we have no real property interest within the county boundaries.

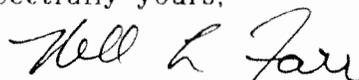
It has been my understanding that ownership of a home is not a basis for disqualification from participating in board deliberations and votes in land use matters. I would appreciate your clarification of this issue.

On several occasions the Twain Harte Homeowners Association has sued the county with respect to land use decisions. A judgment was recently handed down on a Superior Court case which was heard before I took office on January 20, 1988. Attorney fees were awarded by the court, and this week the board considered whether to pursue an appeal. Upon advice of County Counsel, I did not participate in the closed session (and do not know what action the remaining board members took.) Am I required to recuse myself from all cases involving this association? If so, am I entitled to information about what transpired in the closed session even if it is not announced in public following that closed session?

If the financial arrangements of the homeowners association have any bearing on your decision, the dues are ten dollars (\$10.00) per year. Attorney costs are raised by voluntary contributions, never by special assessment.

would greatly appreciate your direction in these matters. I will send any correspondence to my residence address as shown on this letterhead. Thank you.

Respectfully yours,



NELL L. FARR, Supervisor