

88-373-A

**A GUIDE TO  
THE POLITICAL REFORM  
ACT OF 1974**

**CALIFORNIA'S CONFLICT OF  
INTEREST LAW FOR PUBLIC  
OFFICIALS**

**CALIFORNIA FAIR POLITICAL  
PRACTICES COMMISSION**

Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, California 95804

Legal Division 916/322-5901  
Statements of Economic Interests 916/322-5662  
Enforcement Division 916/322-6441

## May a public official ever make a decision in which he or she has a disqualifying financial interest?

The law recognizes a type of “rule of necessity” for those rare situations in which a public official is legally required to make or participate in a decision, even though the official has a disqualifying financial interest.<sup>59</sup> This rule is different from the common law “rule of necessity.” It applies only when no one else has the *legal authority* to make or participate in the decision.<sup>60</sup> In such a case, the Political Reform Act allows the official to make or participate in the decision, so long as the existence and nature of the official’s financial interest is put on the public record, and the official does not try to influence the decisions of others.<sup>61</sup>

An official is *not* legally required to make or participate in a decision simply because the official’s vote is needed to break a tie, or because the official is needed for a quorum as a result of some other official’s absence.<sup>62</sup> However, if so many members of an agency are disqualified *because of conflicts of interest* that no decision is possible because a quorum of qualified members cannot be convened, there is a procedure for allowing some officials who have a disqualifying financial interest to vote. In that case, the additional number of officials necessary to constitute a quorum may be selected by drawing lots, or through some other method of random selection.<sup>63</sup> The officials selected may vote, but must not otherwise act to influence the decision of the other members of the agency, such as by making statements or asking questions.<sup>64</sup>

\* \* \*

## What are the penalties for violation of the conflict of interest provisions of the Political Reform Act?

The Fair Political Practices Commission can bring an administrative action against an official who has violated the disclosure or disqualification requirements of the Political Reform Act, and may impose administrative penalties of up to \$2,000 for each violation.<sup>65</sup> An official who violates the Act may be subject to a civil lawsuit, in which a court may impose a fine.<sup>66</sup> A willful violation of the Act is also a misdemeanor, punishable by a fine and/or by imprison-

ment; it also may result in the official being ineligible to run for public office for four years.<sup>67</sup> The fine for a willful conflict of interest violation may be up to \$10,000; the fine for willfully failing to disclose an economic interest may be up to \$10,000 or three times the amount not disclosed, whichever is greater.<sup>68</sup>

These penalties apply to violations of the disclosure requirements of the Act by any public official.<sup>69</sup> However, they do not apply to violations of the disqualification provisions of the Act by the Governor, other constitutional officers or members of the Legislature.<sup>70</sup> They do apply to disqualification violations by all other public officials.

\* \* \*

## How can a public official find out if he or she has a conflict of interest?

When a public official suspects that he or she may have a conflict of interest in an upcoming decision, the attorney for the official’s agency should be consulted. The official can also ask the Legal Division of the Fair Political Practices Commission for advice. Requests for written advice are generally answered within 21 working days,<sup>71</sup> although written or telephone advice may be given more quickly in urgent situations. If an official poses a question which is unusually complex, significant or unique, the full Commission may issue an opinion, although this process takes longer.<sup>72</sup> The Commission provides advice only about the Political Reform Act; the Commission will not answer questions about Government Code Section 1090 or other laws which are not part of the Political Reform Act.

If the Commission advises an official in writing that disqualification is not necessary, and the official has truthfully provided all material facts, the official is provided with immunity against any administrative action brought by the Commission arising from the same conflict of interest charges. The written advice also serves as evidence of good faith conduct in any civil or criminal proceeding based on the same charges.<sup>73</sup>

The Commission may only issue opinions or give advice regarding conflicts of interest to the official who may have to be disqualified, or to the official’s authorized representative.<sup>74</sup> Advice about specific situations will not be given to members of the public, or to other persons who are interested in whether or not an official should be disqualified from the specific decision.



# CITY OF IRWINDALE

5050 NORTH IRWINDALE AVENUE · IRWINDALE, CALIFORNIA 91706  
(818) 962-3381

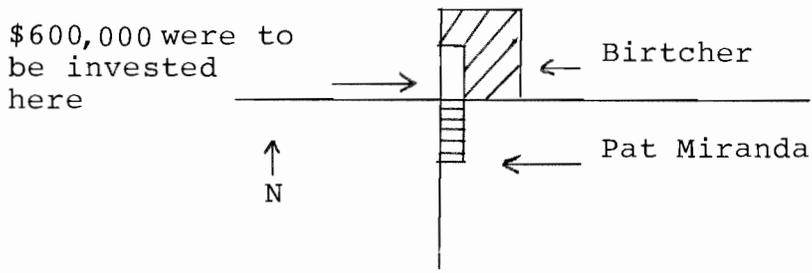
September 27, 1988

Ms. Kathryn E. Donovan, Counsel  
Legal Division  
California Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: File # I 88 253

Dear Ms. Donovan:

You wrote in your letter dated August 9, 1988, page 5, second paragraph (copy enclosed) "However, if the City Council decisions to develop parcels #2 and #3 are "linked" to development of parcel #1, you may be required to disqualify yourself from the decisions to develop parcel #2 and #3."



Birtcher has developed most of parcel "1" which is across from my commercial property. Birtcher has bought property on parcel "3", which is about 3 miles from my property. The City of Irwindale also bought property in parcel "3" (map of parcel 3 enclosed). Birtcher wanted to develop more property in parcel "1". Birtcher needed \$600,000.00. About 3 months ago Birtcher sold to the City of Irwindale a piece of property in parcel "3" for \$600,000 (I abstained) which they were to invest in parcel "1". Now Birtcher wants to develop parcel "3" using their property and the City of Irwindale's property.

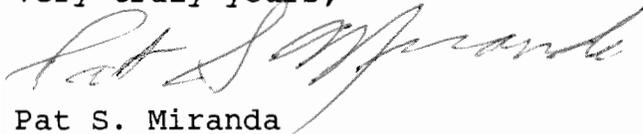
In your opinion is this considered "linked"? If it is "linked", there will probably be three councilmen who could not vote for Birtcher to develop parcel "3". We are five councilmen.

September 27, 1988  
Ms. Kathryn E. Donovan  
Page 2

Mr. Charles Martin, our city attorney, gave me page 12 from "A guide to the Political Reform Act of 1974" (copy enclosed).  
"May a public official ever make a decision in which he or she has a disqualifying financial interest?"

- 1) Is the "linked" paragraph a conflict in my voting?
- 2) If it is a conflict, do we draw lots as suggested on page 12?
- 3) Do we get another developer where more than three councilmen can vote?
- 4) Other opinions on this matter.

Very truly yours,



Pat S. Miranda  
Mayor  
City of Irwindale

/cd

Honorable Pat Miranda  
August 9, 1988  
Page 5

Based on the facts provided in your letter, we conclude that decisions concerning parcel #1, which is located across the street from your commercial property, generally will have a foreseeable and material effect on the value of your commercial property. Similarly, because of the size of parcel #4 and its proximity to your commercial property, decisions concerning development of parcel #4 generally will have a foreseeable and material effect on the value of your commercial property.

The distance between your property and parcels #2 and #3 is much greater. Therefore, absent unusual circumstances, the development of those parcels is unlikely to have a foreseeable material effect on your commercial property. The fact that Birtcher owns both those parcels and parcel #1 does not automatically prevent you from participating in decisions to develop parcels #2 and #3. However, if the city council decisions to develop parcels #2 and #3 are linked to development of parcel #1, you may be required to disqualify yourself from the decisions to develop parcels #2 and #3.

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

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*  
by *DMS*

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh

Enclosures

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