



California Fair Political Practices Commission

December 12, 1988

Honorable Edward M. Phelps
City Councilmember
City of La Canada Flintridge
1204 Homewood Lane
La Canada Flintridge, CA 91011

Re: Your Request for Advice
Our File No. A-88-429

Dear Councilmember Phelps:

This is in response to your request for advice regarding your responsibilities as a city councilmember under the conflict-of-interest provisions of the Political Reform Act. ("the Act")^{1/}

QUESTIONS

1. Under what circumstances are you prohibited from participating in city council decisions directly affecting real property located 285 feet from your home?
2. If you are prohibited from participating in city council decisions regarding real property located 285 feet from your home, are there any provisions of the Act which prohibit you from speaking as a member of the public before the city council, or any other city agency with regard to these decisions?

CONCLUSIONS

1. Unless you can establish that the decisions regarding the real property within 300 feet of your home will have no financial effect on your real property interest, you are prohibited from participating in such decisions.

^{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. If you are disqualified from the decision concerning the property near your home, you may address the city council or any other city agency as a member of the general public, to represent only your own interests.

FACTS

A large home located in a residential neighborhood was left to the City of La Canada Flintridge following the deaths of Frank and Lloyd Lanterman. This building is located approximately 285 feet from your residence. As one of five alternative uses identified in the environmental impact report, the city is considering converting the house into a museum.

The city attorney has recommended that you declare a conflict-of-interest, and refrain from participating in decisions regarding use of the Lanterman property. You have done so.

The deputy city attorney further recommended that you not participate as a private citizen in discussions regarding the Lanterman property. He feels that your participation would risk a legal challenge by the proponents of the museum project, who insist that all input from you be cut off. Thus far, you have agreed to comply with this recommendation.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. 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 or her immediate family, or on:

* * *

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

As a member of the city council, you are a public official within the definition of the Act. (Section 82048.) For purposes of this analysis we will assume that you have an ownership interest in your home, and that your home is valued at more than \$1,000. Thus, you must disqualify yourself from

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any governmental decisions which could foreseeably have a material financial effect on your home, distinguishable from the effect on the public generally.

Foreseeable Material Financial Effect

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.)

Because of the proximity of the Lanterman property to your home, we conclude that it is foreseeable that the decisions regarding use of this real property will have a financial effect on your real property interest different from the effect on the public generally. It is necessary, therefore, to next determine whether the effect on your real property interest will be material.

Regulation 18702.3 (copy enclosed) provides specific guidelines for determining whether the effect of a governmental decision indirectly affecting real property interests of a public official is material. The effect is material if:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

Regulation 18702.3(a)(1).

Your real property is located within 300 feet of the parcel which will be before the city council. Thus, you are prohibited from participating in a decision regarding use of the Lanterman property unless you can demonstrate that the decision will have no financial effect upon your real property interest.

In your letter, you have asked about the possibility of obtaining an appraiser's opinion concerning the magnitude of the effect of the decision on the value of your property. Should you or the city obtain a real estate expert's opinion that decisions on use of the Lanterman property could have no financial effect on your home, you would be able to participate in the decisions regarding those uses. Conversely, a

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determination by a real estate expert that decisions directly affecting the Lanterman property could have any financial effect on the value of your home would require your disqualification.

In your letter, you also have asked whether you are disqualified from the decision if it is likely that certain uses of the Lanterman property will change the character of the neighborhood because of effects on traffic, noise levels or air emissions. These types of effects are included within the presumption of Regulation 18702.3(a)(1). Converting a single family residence into a public museum certainly would have such an effect on nearby properties. Thus, based on the facts you have presented, and absent an expert's opinion to the contrary, we conclude that you have a financial interest in decisions about the Lanterman property and that you should not participate in those decisions.

Participating in Making a Governmental Decision

We understand your concern regarding the recommendation of the deputy city attorney that you not appear before the city council or any other city agency as any member of the general public to represent your personal interest in decisions about the Lanterman property. As you noted in your letter, Regulations 18700 and 18700.1 (copies enclosed) provide public officials who are disqualified from participating in governmental decisions in their official capacities, with options for voicing their concerns on issues affecting their personal interests.

Regulation 18700(d) and Regulation 18700.1(b) allow public officials to appear, as any 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. A "personal interest" includes an interest in real property wholly owned by the official or members of his or her immediate family.
(Regulation 18700.1(b)(1)(A).)

Regulation 18700.1(b)(2) further allows a disqualified public official to communicate with the general public or the press. Thus, the Act allows you to comment at public meetings, forums, hearings or to the press on issues related solely to the effect of the decision on your home. Your comments should be made under the same procedures applicable to comments from members of the public. For example, you are required to address the city council from the audience, rather than from your city council seat.

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Actions Taken in Accord with the Commission's Formal Written
Advice

Finally, Section 83114(b) provides that any person who has disclosed truthfully all material facts in a request for written advice, and acts in accord with that advice, shall have a complete defense in any enforcement proceeding initiated by the Commission regarding such action. The Act further provides that actions taken by the public official based on such advice can be used as evidence of good faith in any other civil or criminal proceeding.

I hope this clarifies for you your responsibilities under the Act. If I can be of further assistance, please don't hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosure

FPPC

Nov 7 1 30 PM '88

Edward M. Phelps
1204 Homewood Lane
La Cañada Flintridge, California
91011
(818) 841-2900

November 3, 1988

General Counsel
California Fair Political Practices Commission
Suite 800
428 J. Street
Post Office Box 807
Sacramento, CA 95804-0807

Re: Conflict of Interest

Dear Sir:

I am a member of the City Council of the City of La Cañada Flintridge. I have a question about whether I have a conflict of interest. The matter from which the conflict may arise is currently pending before the Planning Commission and may come before the City Council by December.

Background

A large home located in a residential neighborhood was left to the City of La Cañada Flintridge following the deaths of Frank and Lloyd Lanterman. Frank Lanterman was a State Senator. This home is located approximately 285 feet from my home, although it is down the street and around the corner (the "Lanterman House").

The City is considering opening the house as a museum. This is one of five alternative uses identified in the Environmental Impact Report.

When the question of a conflict of interest arose I requested that the City have an appraiser determine if there would be any material financial impact on my residence. The City has failed to do this.

The Deputy City Attorney and City Manger advised me that proponents of the museum contacted, or were about to contact, the

General Counsel
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District Attorney about bringing charges against me if I did not immediately declare a conflict of interest. The City Attorney recommend that I declare such a conflict of interest. I took such advice and have not participated in any of the proceedings before the Council.

The Deputy City Attorney further recommended that I not participate as a member of the public; for if I did so, I ran the risk of prosecution because the proponents of the museum project were insistent that all input from me be cut off.

Based on this comment I have not participated in any public comment on the proposed project. However, I did write, in my personal capacity, to several concerned persons in the community and encouraged them to appear and participate in the proceedings since I had been instructed by the Deputy City Attorney not to personally participate.

Need For Prompt Response

This matter is currently pending before the City Planning Commission. A vote approving the Conditional Use Permit for museum purposes is expected in the next two weeks. I anticipate that there may be an appeal of any decision by the Planning Commission to the City Council. This could occur as early as December. I therefore request that you respond to this letter as soon as possible.

Do I Have a Conflict of Interest?

From my review of §18702.3 of the Commission's regulations it appears that there are certain factual assumptions which may be necessary for you to make to respond to my question. Please consider the following situations.

In addition, if there are other suggested factual situations which appear from the circumstances presented above, please identify such situations to clarify the application of the law and regulations to the issues which I face.

Situation No. 1: Suppose, that I, or the City, obtain a MAI appraiser's opinion that there is no material financial impact on the value of my home from any of the proposed uses of the Lanterman House. Do I have a conflict of interest?

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Situation No. 2: Same as No. 1, but the appraiser determines that there will be a financial impact on the value of my home. Do I have a conflict of interest?

Situation No. 3: Suppose it is reasonably foreseeable that if certain uses were allowed at the Lanterman House there would be a change in the character of the neighborhood from effects on traffic, noise levels or air emissions in my neighborhood. Do I have a conflict of interest?

Do I Have A Right to Speak?

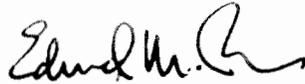
I find the comments of the Deputy City Attorney regarding the risks associated with my participation in any proceeding before the City Council or any other City agency to be an infringement on my 1st Amendment right of free speech. Are there any provisions of the Fair Political Practices Act, or regulations thereunder, which prohibit me from speaking before the City Council or any other City agency as a member of the public? Are there any restrictions or guidelines imposed in connection with such participation, if such speech is allowed under §18700(b)(2)?

Is Your Response Binding?

Please advise me if your response to this letter will be binding upon the Commission or any agency which enforces the provisions of the applicable law. If it is binding, please indicate the extent to which it is binding.

Thank you for your professional courtesy. If you need any further information please call. I look forward to your response.

Very truly yours,



Edward M. Phelps,
La Cañada Flintridge
City Councilmember

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Nov 7 1 30 PM '88

Edward M. Phelps
1204 Homewood Lane
La Cañada Flintridge, California
91011
(818) 841-2900

November 3, 1988

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Thank you for your professional courtesy. If you need any further information please call. I look forward to your response.

Very truly yours,



Edward M. Phelps,
La Cañada Flintridge
City Councilmember



California Fair Political Practices Commission

November 8, 1988

Edward M. Phelps
1204 Homewood Lane
La Canada Flintridge, CA 91011

Re: 88-429

Dear Mr. Phelps:

Your letter requesting advice under the Political Reform Act was received on November 7, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, 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,

Kathryn E. Donovan
Diane M. Griffiths *for*
General Counsel

DMG:plh