



# California Fair Political Practices Commission

January 11, 1989

Honorable John H. Schreiber  
Supervisor, First District  
P. O. Box 253  
Cedaraville, CA 96104

Re: Your Request for Advice  
Our File No. A-88-459

Dear Mr. Schreiber:

This is in response to your request for advice concerning whether the Political Reform Act (the "Act")<sup>1/</sup> prevents you from participating in decisions of the Modoc County Board of Supervisors that relate to the Modoc County library system.

This letter concerns only your ability to participate in future decisions of the board of supervisors. We make no comment on your past conduct regarding any board decisions.

## QUESTIONS

1. Your spouse is an employee of the Modoc County library system. Are you permitted to vote on the opening or closing of the library system?
2. Are you permitted to appoint a representative from your district to the library board?

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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.

3. Will you be able to participate in discussions with the library board concerning the library?

4. Are you permitted to participate in the budget process as it pertains to volunteer or paid branch librarians?

5. If you are not permitted to participate in library decisions made by the board of supervisors, are you permitted to address these issues in your capacity as a private citizen at meetings of the board of supervisors?

6. Does the voters' passage of a special library tax affect your ability to participate in decisions concerning the library system?

#### CONCLUSIONS

1. You are not permitted to vote on the opening or closing of the library system.

2. You are permitted to appoint a representative from your district to the library board.

3. To the extent that questions concerning the hiring or firing of your spouse do not arise, you will be permitted to participate in discussions with the library board concerning the library.

4. To the extent that questions in the library budget process will not potentially affect the hiring or firing of your spouse, you are permitted to participate in the budget process as it pertains to volunteer or paid branch librarians.

5. If you are not permitted to participate in library decisions in your capacity as a county supervisor, you also are not permitted to address these decisions in your capacity as a private citizen before the board.

6. The voters' passage of a special library tax affects your ability to participate in decisions concerning the library system only to the extent that it may remove decisions from the board of supervisors that will affect the hiring or firing of your spouse.

#### FACTS

You are a member of the Modoc County Board of Supervisors. Your spouse is employed for nine hours a week as a branch librarian with the Modoc County library system. She receives a salary of \$200 per month for her work but receives no fringe benefits such as health insurance coverage. She has been employed with the library system for approximately 15 years.

Several issues concerning the county library system are now before the board of supervisors. Foremost among these issues is the question of the library system's budget and whether the county has sufficient funds to operate a library and its branches. Recently, Modoc County voters approved a special tax which provides funds for the operation of a library. You have informed us that this tax measure will go into effect in July 1989, after which there will be sufficient funds to operate a library. You have also informed us that, under the terms of the tax measure, each county supervisor will appoint a person to a library board which will advise the supervisors on library matters.

#### ANALYSIS

Section 87100 sets forth the general rule concerning potential conflicts of interest confronting public officials. It states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

As a member of the Modoc County Board of Supervisors you are a public official. (Section 82048.)<sup>2/</sup> As a public official you clearly "participate" in decisions of the board of supervisors. The focus of this analysis is upon whether you have a financial interest in decisions concerning the Modoc County library system. If you have a financial interest in decisions concerning the library system you may not be permitted participate in decisions concerning the library system.

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<sup>2/</sup> Regulation 18700(a) states that under Section 87100, a "public official at any level of state or local government" includes salaried or unsalaried members of boards with decision-making authority and consultants who provide information, advice or counsel under contract.

Section 87103 defines "financial interest in a decision" within the meaning of Section 87100. It states that a public official has the requisite financial interest if it is reasonably foreseeable that the decision will have a material financial effect on the official or a member of his or her immediate family.

Section 82029 includes the official's spouse in his "immediate family." Therefore, if it is reasonably foreseeable that decisions concerning the library system will have a material financial effect on your spouse, then you may not participate in those decisions.

Since the board of supervisors directly governs the library, it is reasonably foreseeable that decisions of the board will have an effect on library employees, including your spouse. We next consider, therefore, whether the board's decisions have a material financial effect on your spouse.

Regulation 18702 sets forth the general approach to the question of whether the effect of a decision is material. If the decision affects an official's immediate family then the question of materiality is analyzed under Regulation 18702.1.

Subdivision (a) of Regulation 18702.1 states that the "effect of a decision is material if" ..."

(4) ... The decision will result in the ... income ... of the official or his or her immediate family increasing or decreasing by at least \$250.

However, subdivision (c) of Regulation 18702.1 states:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(1) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position  
....

(Emphasis added.)

In applying these provisions to the questions posed above, we believe that, while board decisions concerning the opening or closing of the library affect the salary your spouse receives from a government agency, they could lead directly to the hiring or firing of your spouse. Therefore, we do not believe that Regulation 18702.1(c)(1) applies to permit you to participate in such decisions. On the other hand, board decisions concerning appointment of members to the library board are not budgetary decisions that could lead to the hiring or firing of your spouse.

Your participation in decisions concerning interaction with the library board and the library budget process, whether or not it affects volunteer or paid branch librarians, is also generally permitted. However, it will not be permitted if, as described above, the decisions could lead to the hiring or firing of your spouse. In this regard, it is important to distinguish between a decision that could affect the amount of your spouse's salary, where participation is permitted, and a decision that could determine whether your spouse will be employed at all, where participation is not permitted. (Regulation 18702.1(c)(1).) The same can be stated about the general effect of the passage of the special library tax. The passage will affect your ability to participate in library decisions before the board only where its provisions could potentially involve you in a decision that could lead to the hiring and firing of your spouse. If this issue does not arise, then your participation in the decision will be permitted.

Finally, you cannot address or otherwise use your influence with the board of supervisors in your capacity as a private citizen on library matters in which you otherwise cannot participate. This is prohibited by subdivision (a) of Regulation 18700.1, which defines "attempt to use his official position to influence a governmental decision" in Section 87100 as follows:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence, include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

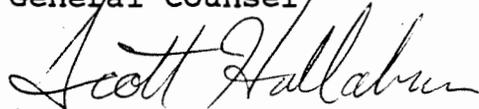
John H. Schreiber  
January 11, 1989  
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Under this definition, any appearance before or attempt to influence the board, regardless of the official's capacity in making the appearance, is not permitted under Section 87100.

We hope that this response has been helpful to you. If, however, you have additional questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Scott Hallabrin  
Counsel, Legal Division

DMG:SH:ld

JOHN H. SCHREIBER  
1st District

MELVIN "Andy" ANDERSON  
2nd District

LESLEY J. CHACE  
3rd District

M.W. "Mick" JONES  
4th District

JOHN L. COULSON  
5th District

MAXINE MADISON  
County Clerk  
and  
Clerk of the

BOARD OF SUPERVISORS  
Box 131  
ALTURAS, CALIFORNIA 96101  
(916) 233 3939 ext. 201

*Modoc County*  
*Board of Supervisors*

12-7-88

To: Diane Griffith

From: John Schreiber  
Modoc County Supervisor

DEC 9 8 57 AM '88  
FPPPC

I have a couple problems, I need clarification on. I made a call to The Fair Political Practice, they referred me to you. My wife works 9 hrs. a week without benefits for a County Branch Library. I would like to know, how to conduct myself on the decision process.

1. May I vote on opening or closing of the whole Library System?
2. Each Supervisor will appoint a representative from their District, to sit on the library board. Will I be able to discuss all things concerning the Library System, with the appointed Board?
3. Will I be able to vote on the budget process of volunteer or paid Branch Librarians?
4. Am I aloud to go in the audience and speak as a citizen? If I cannot speak as a Supervisor on the Board?
5. The people voted a special Library tax. Does that change anything to decision making?

My next Board of Supervisor's meeting will be Dec. 19, I hope you can help me before then.

Thank You

Sincerely,

  
John H. Schreiber

P.O. Box 253  
Cedarville, Ca.  
96104

(916) 279-2256



# California Fair Political Practices Commission

December 12, 1988

John H. Schreiber  
Modoc County Supervisor  
P.O. Box 253  
Cedarville, CA 96104

Re: 88-459

Dear Mr. Schreiber:

Your letter requesting advice under the Political Reform Act was received on December 9, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin, 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

88-454

JOHN H. SCHREIBER  
1st District  
MELVIN "Andy" ANDERSON  
2nd District  
LESLEY J CHACE  
3rd District  
M.W. "Mick" JONES  
4th District  
JOHN L. COULSON  
5th District

MAXINE MADISON  
County Clerk  
and  
Clerk of the  
BOARD OF SUPERVISORS  
Box 131  
ALTURAS, CALIFORNIA 96101  
(916) 233-3939 ext. 201

# Modoc County Board of Supervisors

12-7-88

To: Diane Griffith  
From: John Schreiber  
Modoc County Supervisor

DEC 9 8 51 AM '88  
FPPC

I have a couple problems, I need clarification on. I made a call to The Fair Political Practice, they referred me to you. My wife works 9 hrs. a week without benefits for a County Branch Library. I would like to know, how to conduct myself on the decision process.

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Thank You

Sincerely,



John H. Schreiber  
P.O. Box 253  
Cedarville, Ca.  
96104  
(916) 279-2256

TO: Fair Political Practices Commission  
1100 K Street Building  
P.O. Box 807  
Sacramento, CA 95814

SUBJECT: REQUEST FOR ISSUANCE OF OPINION OR ADVICE (GOVT. CODE § 83114)

I request the FPPC to issue [an opinion] (or) [written advice] (line out the one that does not apply) with respect to my duties under the Department of Transportation's Conflict of Interest Code in conjunction with Title 9 (Political Reform) of the Government Code.

I am making this request on behalf of:  
(name(s) of all persons, class or group of employees, organization, etc. - e.g. myself and PEGC - sought to be protected by the opinion or advice)

FPPC  
DEC 12 8 33 AM '88

\*The material facts which underly this request are as follows:  
I am a right of way agent in the appraisal function. I appraise right of way for highways. I wish to bid on properties declared excess by the State. I will not be bidding on any property with which I have had personal experience, or contact, in connection with my work.

\*The questions which are based on the above mentioned facts are as follows:

1. Must I request permission to bid on each parcel individually:
2. Should I register each bid with someone: If so, Whom?
3. What specific criteria should I apply to any parcels on which I wish to bid: (Disqualifying criteria)

I declare that I have requested this opinion/advice from the Commission in good faith and disclosed truthfully all the material facts underlying this request.

DATED: December 3, 1988

Richard D. Rogers  
SIGNATURE

Please send the written opinion or advice to: (Type or Print)

Please send carbon copy to:

E. R. Kirwan,  
Deputy District Director  
Right of Way  
P.O. Box 85406  
San Diego, CA 92138-5406

Richard D. Rogers  
NAME  
4070 Goldfinch St, Suite B  
ADDRESS  
San Diego, CA 92103  
CITY STATE ZIP  
(619) 294-9679  
TELEPHONE

\* Additional pages may be added if needed.