



California Fair Political Practices Commission

January 25, 1989

Lyle L. Lopus
Assistant City Attorney
City of Fremont
39100 Liberty Street
P.O. Box 5006
Fremont, CA 94536

Re: Your Request for Informal
Assistance
Our File No. I-88-460

Dear Mr. Lopus:

This is in response to your letter requesting advice regarding the duties and responsibilities of the members of the general plan citizen advisory committees for the City of Fremont under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance pursuant to Regulation 18329(c)(3)(D) and (F) (copy enclosed).^{2/}

QUESTION

Are general plan citizen advisory committee members "public officials" subject to the disclosure and disqualification provisions of the Act?

CONCLUSION

Because the general plan citizen advisory committee is not a decision-making board or commission, its members are

^{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/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

not "public officials" as defined by the Act. Consequently, the members are not subject to the disclosure and disqualification requirements of the Act.

FACTS

The City of Fremont has determined it will comprehensively update its general plan and will seek public participation in the process through citizen advisory committees. These committees will consist of citizens who will represent various interests in the community. It is anticipated that at least some committee members will have personal financial stakes in the general plan update.

Your letter also stated that these committees will be charged with formulating substantive suggestions for the planning commission and city council as to how the general plan should be updated. These suggestions must be considered by the planning commission and city council, but they need not be accepted. Therefore, you believe that the citizen advisory committees are not decision-making boards or commissions, but solely advisory in nature.

Moreover, the planning commission and city council are required by law to exercise their independent judgment on the general plan. The citizen advisory committees cannot compel or prevent their ultimate decisions.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. A "public official" is defined in Regulation 18700(a)(1) (copy enclosed) as follows:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee, or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission has decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

According to the information you have provided, members of the general plan citizen advisory committees will have no decision-making authority. You have stated they will formulate suggestions for the planning commission and city council, but cannot compel or prevent them from ultimately exercising their independent judgment. While the planning commission and city council must consider the committees' suggestions, they need not accept them. In addition, since the committees have yet to be created, there is no history of verbatim approval of the committees' suggestions by the city council or planning commission, which would qualify as decision-making authority under Regulation 18700(a)(1)(C).

Consequently, since the members of the general plan citizen advisory committees are not members of a decision-making board or commission, they are not "public officials" within the meaning of Section 87100, and are not subject to the disclosure and disqualification provisions of the Act. (Miller Advice Letter, No. A-77-272, and Graff Advice Letter, No. I-87-153, copies enclosed.) However if in the future, a committee's substantive recommendations should be regularly approved without significant amendment or modification by the planning commission or city council over an extended period of time, then the members of the committee will qualify as public officials within the meaning of Regulation 18700(a)(1)(C). At that time the disclosure and disqualification requirements of the Act would apply.

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I trust this clarifies application of the law to your situation. Should you require further advice as the advisory committees begin operation, please do not hesitate to contact this office for follow-up advice.

Sincerely,

Diane M. Griffiths
General Counsel



By: John W. Wallace
Counsel, Legal Division

DMG:JWW:plh

Enclosure



City of
Fremont

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FPPC

Dec 9 9 00 AM '88

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December 8, 1988

Ms. Cathy Donovan
Attorney at Law
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Applicability of Conflict of Interest Law to Citizen
Advisors for General Plan Amendments

Dear Ms. Donovan:

The City of Fremont has determined it will comprehensively update its general plan. It is estimated this major undertaking will require eighteen months for completion.

As you are aware, responsibility for general plan updates and general plan amendments is vested by State law in the City Council, as well as in the Planning Commission, which acts in a recommendatory capacity to the City Council. You are also aware that State law requires the general plan process to be made open to citizen participation. In this regard, the State General Plan Guidelines promulgated by the Office of Planning and Research provide, in pertinent part, as follows:

CITIZEN PARTICIPATION

Citizen participation plays an important role in formulating a general plan. State law specifies that "During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate" (Government Code section 65351).

In preparing the housing element, the law requires local governments to "...make a diligent effort to achieve public participation of all economic segments of the community..." (Government Code section 65583).

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Following the adoption of the general plan, the planning agency must also "...Consult and advise the public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan" (Government Code section 65013[e]).

All of these are minimum requirements. As a practical matter, the general plan will be an effective guide for future development only if it has been prepared with the active involvement of the public and adopted with the support of broad public consensus. Because citizen participation is so central to the plan's successful development and implementation, cities and counties should consider going well beyond the minimum requirements.

In designing a program to secure citizen participation, public officials must be clear on what is to be accomplished. In general, the program should have at least four objectives:

- ° Identify the major issues and opportunities in the plan.
- ° Identify community goals that will serve as the foundation of the plan.
- ° Give the public opportunities to evaluate alternative plans and to participate in choosing the preferred alternative.
- ° Create an atmosphere in which conflicting demands for limited community resources can be resolved.

Fremont has determined it will satisfy the statutory mandate for seeking public participation in the general plan process at least in part through the formation of citizen advisory committees which will be charged with formulating, over a period of many months, substantive suggestions as to how the general plan should be updated. It is anticipated that at least some committee members will have strong, personal financial stakes in the outcome of the general plan update. For example, the City may include representatives of the building industry among the diverse group of people it will invite to serve as committee members.

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Because of the personal financial interest at least some committee members will probably have in the outcome of the general plan update, there has been some concern that these citizens may run up against the conflict of interest provisions of the Political Reform Act. I have reviewed the Act and the regulations promulgated pursuant to it, and I have concluded that even committee members having definite financial stakes in the outcome of the general plan update will not be constrained in their committee activities by the Act's conflict of interest provisions. I believe this to be so because the role of the committee members will be to formulate suggestions which the Planning Commission and City Council need not accept but need only consider--before they exercise their independent judgment on the general plan as they are required to do by State law.

Under these facts, it seems clear to me that committee members will not fall within the definition of "public official" set out in § 18700 of the Regulations, and therefore that no committee member will be restrained in any way by the Act's conflict of interest provisions.

I hope my above-stated legal conclusion as to the non-applicability of the Act's conflict of interest provisions to the participation in the general plan process by members of City advisory committees is correct. If I am correct, I request that you provide me with a confirming letter. If I am not correct in my legal analysis, or if I have not provided you with sufficient facts on which to make a determination, please so advise.

Sincerely yours,



LYLE L. LOPUS
Assistant City Attorney

gp

cc: C. Woodward
A. Willits

