



California Fair Political Practices Commission

March 21, 1989

Jeffrey K. Rahbeck
P. O. Box 5566
Stateline, Nevada 89449

Re: Your Request for Advice
Our File No. I-88-480

Dear Mr. Rahbeck:

You have requested advice on behalf of your client, Mr. Hubert Bruns, regarding Supervisor Chris Gansberg's duties under the Political Reform Act (the "Act").^{1/} In particular, you are requesting reconsideration of our earlier advice to Supervisor Gansberg, Advice Letter No. A-88-447, based on additional facts that you have provided. This letter confirms the advice given to you about the first week of February.

Your letter does not indicate that you have been authorized by Supervisor Gansberg to request reconsideration of our earlier advice. In addition, on January 27, 1989, Mr. Henry Murdock, Alpine County District Attorney, informed me that Supervisor Gansberg was no longer on the Board of Supervisors. Therefore, we believe the issue is moot. Accordingly, we decline to reconsider our earlier advice to Supervisor Gansberg, Advice Letter No. A-88-447.

^{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.

Jeffrey K. Rahbeck
March 21, 1989
Page 2

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

Sincerely,

Diane Griffiths
General Counsel

Jeevan S. Ahuja

By: Jeevan S. Ahuja
Counsel, Legal Division

JEFFREY K. RAHBECK
A PROFESSIONAL LAW CORPORATION
P.O. BOX 5566
STATELINE, NEVADA 89449
(702) 588-5602

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December 22, 1988

California Fair Political
Practices Commission
PO Box 807
Sacramento, CA 95804

Re: Your File No. A-88-447

Gentlemen:

This letter is to advise you that the undersigned is legal counsel for Hubert Bruns. Mr. Bruns has made application to Alpine County to operate a gravel pit. The purpose of this letter is to request that you reconsider your position regarding the opinion you issued on December 16, 1988. I am enclosing a copy of said opinion with this letter.

It is my further understanding that Margarita Altamirano, the counsel who wrote the opinion, is no longer with your commission.

I believe that your opinion was based upon an erroneous set of facts. The opinion reached by you was that Mr. Gansberg should be disqualified from participating in any decision regarding the rezoning application which was being applied for by my client. In my review of your opinion letter, it would appear that this opinion was based upon a conversation between Ms. Altamirano and Mr. Chris Gansberg, wherein Mr. Gansberg advised Ms. Altamirano that he felt the rezoning would affect his father's ranch by decreasing the value of the ranch property by at least \$10,000.00. In making this request for reconsideration, I am providing you with information that I do not believe you were are of.

My client, Hubert Bruns, owns a ranch located in Alpine County, State of California. Chris Gansberg is on the Board of Supervisors for Alpine County. Mr. Gansberg's father and his father's brother own a cattle ranch directly adjacent to the ranch owned by my client, Mr. Bruns.

California Fair Political
Practices Commission
December 22, 1988
Page 2

For a number of years, there has been an existing gravel pit on the property owned by my client. My client has made application to Alpine County to place another gravel pit on his property directly adjacent to the existing gravel pit. In order to accomplish this, my client will need to have the property rezoned from agricultural to industrial use, and also obtain a special use permit from Alpine County.

To date, there have been various hearings regarding my client's proposed project before the Planning Commission for Alpine County and the Board of Supervisors for Alpine County. The existing gravel pit has been properly permitted by Alpine County and can remain as such basically forever or until the supply of rocks is exhausted. The proposed new gravel pit will have a life of no longer than ten (10) years when the property must be reclaimed and placed into some type of usable pasture land. A bond will be posted with Alpine County at the time the special use permit is issued in order to guarantee that the property is reclaimed to usable agricultural land. Although the property is presently zoned as agricultural, it is unusable as agricultural land (see the appraisal report enclosed herewith).

During the course of the hearings before Alpine County, I introduced expert opinion testimony that the operation of a gravel pit would not have an impact in property values upon neighboring properties. Enclosed with this letter is a copy of that written opinion from Thran Appraisal Service dated September 19, 1988. No other expert testimony by either the county or persons in opposition to my client's proposed operation was offered at the hearings.

The true state of facts is that my client's application to Alpine County to operate another gravel pit on his property will not have any economic impact on the surrounding properties. It is not uncommon for ranchers to have gravel pit operations on their properties. These gravel pit operations do not impact ranch operations. The existing gravel pit would have the same impact on surrounding properties as the new proposed gravel pit. Therefore, if Mr. Gansberg feels that the value of his properties may be decreased, then this has already occurred by reason of the existing gravel pit. The situation is one where either the gravel pit will have no economic impact or the economic impact has already occurred by reason of the existing

gravel pit. Likewise, since under my client's application, the property will be reclaimed to usable agricultural property, there is not a foreseeable material financial effect upon the Gansberg ranch. I believe that when your opinion was rendered, you were not aware of all the surrounding facts. Under the true facts as they exist, Mr. Gansberg should not be disqualified from participating in the rezoning application.

It is hereby requested that you reconsider your opinion, and issue a new and different opinion indicating that Mr. Gansberg does not have a conflict of interest.

A couple of other items alluded to in Ms. Altamirano's letter which should be discussed are the water rights question and the purchase of rocks from the Gansbergs. There is a statement in the letter of December 16, 1988 that Mr. Gansberg felt there might be a 20% chance that the Gansberg ranch would sell water or rocks to Mr. Bruns if Mr. Bruns' application was approved. Although I cannot change the statement that Mr. Gansberg said to Ms. Altamirano, I can provide you with factual information to show you that there is not a reasonable foreseeable likelihood that either a sale of water rights, water or rocks would occur.

With regard to the water question, Mr. Bruns receives 30% of the water in the stream in question and the Gansberg ranch receives 70% of the water. To Mr. Bruns' knowledge, this stream has never dried up. This would include almost a 100 year period that Mr. Bruns or his family have owned their ranch. Since records have been kept regarding stream flows, one of the driest years occurred in 1977. According to the United States Geological Service, the 1977 drought flow figure can be considered a 30-year drought estimate for the stream in question. Even during the year 1977, there was more than sufficient flow in the stream to serve the proposed gravel pit operation without the necessity of having to purchase water rights from anyone else. Under Mr. Bruns' application to operate the gravel pit, it is estimated that approximately 15,000 gallons per day of water will be needed. In 1977, the lowest flow showed that Mr. Bruns would be entitled to over 100,000 gallons per day as his percentage of the stream flow. Therefore, since Mr. Bruns' application will basically involve a 10-year use, and by reason of the fact that even during one of the driest years of record, there was more than sufficient flow in the stream, there is not

California Fair Political
Practices Commission
December 22, 1988
Page 4

even a remote likelihood that water rights will be needed to be purchased from the Gansberg ranch.

I am also enclosing copies of two pages from the environmental impact report which verify the water information that I have provided you with in this letter.

Another question that was raised, but not necessarily answered, was whether Mr. Bruns will be purchasing any rocks for the gravel pit operation from the Gansberg ranch. Under Mr. Bruns' application, the property will be reclaimed to agricultural property approximately ten years after the use permit is issued or sooner reclaimed if the rock supply at the new site is exhausted.

Additionally, the Gansberg ranch does not have any type of permits which would allow some type of mining operation on their property. Mr. Bruns would not be purchasing any rocks from the Gansberg ranch for any or all of the following reasons:

(1) They do not have a permit that would allow mining operations;

(2) If the supply of rocks at the Bruns' gravel pit is exhausted, then under his permit, he must reclaim the property and would no longer be allowed to have a mining operation.

I believe that once you have seen the true facts in this case, that you will see that Mr. Gansberg has no conflict of interest whatsoever in participating in my client's application process to obtain a zoning change and special use permit. Mr. Gansberg and/or the Gansberg ranch will not be affected any differently than any other member of the general public.

It would be greatly appreciated if you would review this letter at your earliest possible convenience and advise what your position will be in this matter.

California Fair Political
Practices Commission
December 22, 1988
Page 5

Thank you for your cooperation and courtesies
concerning this matter. Kindest personal regards.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Rahbeck". The signature is stylized with a large, looped initial "J" and a cursive "Rahbeck".

JEFFREY K. RAHBECK

JKR/r
enclosures
cc: Hubert Bruns
(w/enclosures)



California Fair Political Practices Commission

December 29, 1988

Jeffrey K. Rahbeck
A Professional Law Corporation
P. O. Box 5566
Stateline, NV 89449

Re: 88-480

Dear Mr. Rahbeck:

Your letter requesting advice under the Political Reform Act was received on December 27, 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
Kathryn E. Donovan
Acting General Counsel

KED:ld

cc: Hubert Bruns