



California Fair Political Practices Commission

March 21, 1989

Robert S. Nielsen
Executive Director
California Transportation Commission
1120 N Street, P. O. Box 942873
Sacramento, CA 94273-0001

Re: Your Request for Advice
Our File No. A-89-152

Dear Mr. Nielsen:

You have requested advice on behalf of Joseph Duffel, Chairman of the Transportation Commission, regarding his responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter raises questions under other provisions of law, such as Government Code Section 1090. We do not provide advice concerning laws other than the Act. Please consult with your agency's attorney or the Attorney General's office regarding other applicable laws which may have an impact on your choice of lodging for the commissioners.

This letter applies only to Chairman Duffel's future conduct. We make no comment as to whether or not his past conduct was in compliance with the requirements of the Act. (Regulation 18329(c)(4)(A), copy enclosed.)

QUESTION

Under the Act, may Chairman Duffel's hotel provide overnight accommodations to transportation commissioners who make full payment for their accommodations?

^{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.

CONCLUSION

Under the Act, Chairman Duffel's hotel may provide overnight accommodations to transportation commissioners who make full payment for their accommodations. We reach no conclusion about the Chairman's ability to participate in past decisions of the Transportation Commission to approve arrangements for accommodations at this hotel.

FACTS

The California Transportation Commission will meet in Newark, California, on April 19-20, 1989. On the night of April 19, 1989, the commissioners will lodge at the Newark Fremont Hilton hotel. Joseph Duffel, Chairman of the California Transportation Commission, is the owner of the aforementioned hotel. The commissioners will be charged the lowest published rate of the hotel for their accommodations, which rate amounts to \$79 per room.

ANALYSIS

The Political Reform Act prohibits public officials from making, participating in making, or attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) The Chairman of the Transportation Commission is a public official. (Section 82048; Regulation 18700(a)(1), copy enclosed.)

The Act restrict Chairman Duffel from participating in governmental decisions in which he has a financial interest. The hotel operations are not governmental decisions. (See Regulation 18700.) Accordingly, the Act does not prevent Chairman Duffel's hotel from selling accommodations to members of the Transportation Commission.

The Transportation Commission's decision to contract with the hotel for accommodations or meeting rooms would be a governmental decision. (Regulation 18700(b)(4).) In your letter, you state that the Transportation Commission already has approved selection of the hotel for the upcoming meeting. As stated above, we do not provide advice concerning the propriety of an official's past conduct. Therefore, we express no opinion concerning whether disqualification was required. However, this type of situation should be analyzed in the future to determine if disqualification is required since this type of decision is a governmental decision which may require disqualification under some circumstances. Should the situation recur, you may contact us for advice in advance of the decision and you may wish to review the enclosed copy of Regulation 18702.1, which sets forth the conflict-of-interest guidelines applicable to this type of situation.

Robert S. Nielsen
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If the Transportation Commission is faced with a decision on a contract and questions about conflicts of interest arise, it is possible that Government Code Section 1090 would impose additional restrictions on the transportation commissioners. Section 1090 is not part of the Act; therefore, the Commission has no authority to interpret or enforce that statute. (See Section 83111.) Please consult your agency's attorney or the Attorney General's office for advice on Section 1090.

Should you have any further questions, do not hesitate to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Blanca M. Breeze
Counsel, Legal Division

DMG:BMB:ld

Enclosures

J.T. (TOM) HAWTHORNE, Chairman
JOE DUFFEL, Vice Chairman
WILLIAM T. BAGLEY
MARGIE HANDLEY
STANLEY W. HULETT
KEN KEVORKIAN
WILLIAM E. LEONARD
JOE LEVY
BRUCE NESTANDE

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN
GOVERNOR



CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, P.O. BOX 942873
SACRAMENTO 94273-0001
(916) 445-1690

ROBERT S. NIELSEN, Exec. Director

March 3, 1989

Mr. G.W. Baugher
Executive Director
California Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

Dear Mr. Baugher:

Please be advised that the California Transportation Commission will be meeting in Newark, California on April 19-20, 1989.

On the night of April 19, Commissioners will be staying at:

Newark/Fremont Hilton
3990 Balentine Drive
Newark, CA 94560

This hotel is owned by Mr. Joseph Duffel, Chairman of the California Transportation Commission. Commissioners will be charged \$79 each for their rooms - this is the lowest published rate of the Hilton.

This is part of our decision to move the monthly Commission meetings to different locations throughout the state, in order to increase legislative and local input. I selected this location and hotel some six months ago, and the selection was approved by the Commission at a subsequent meeting.

I would appreciate your written response that this does not represent a conflict of interest for Chairman Duffel.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert S. Nielsen".

ROBERT S. NIELSEN
Executive Director

RSN:lar:B19
11:LR1

cc Chairman Joseph Duffel



California Fair Political Practices Commission

March 10, 1989

Robert S. Nielsen
California Transportation Commission
1120 N Street
P.O. Box 942873
Sacramento, CA 94273-0001

Re: Letter No. 89-152

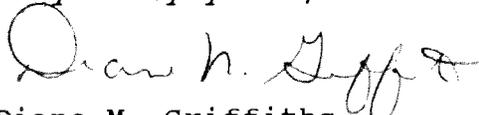
Dear Mr. Nielsen:

Your letter requesting advice under the Political Reform Act was received on March 8, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze 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,


Diane M. Griffiths
General Counsel

DMG:plh