



California Fair Political Practices Commission

May 22, 1989

Councilmember Jan McMillan
Del Mar City Council
203 12th Street
Del Mar, CA 92014

Re: Your Request for Informal Assistance
Our File No. I-89-171

Dear Ms. McMillan:

This is in response to your request for advice as to whether the Political Reform Act ("the Act")^{1/} prohibits you from participating in decisions by the City of Del Mar concerning the construction of a new civic center. Since your letter does not refer to a specific governmental decision, we are treating your request as one for informal assistance under Regulation 18329(c)(4)(D).^{2/}

QUESTION

Does the location of your residence within 300 feet of the new civic center planned by the City of Del Mar (the "city") prevent you, as a city councilmember, from participating in all city decisions concerning the planning and construction of the civic center?

CONCLUSION

You may only participate in city decisions concerning the civic center that have no financial effect on your real property or that have the same effect upon your property as on a significant portion of other residential property located in the city.

^{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).)

FACTS

You are a councilmember for the city of Del Mar.

The city is currently considering the master planning and construction of a new civic center. As part of this process, the city council will be required to make numerous decisions, including selection of design consultants, methods of financing, size of the facility and its rooms, utilization of space, parking configuration and architectural themes.

Your residence is located within 300 feet of the site of the new civic center.

ANALYSIS

Section 87100 sets forth the general rule concerning conflicts of interest under the Act. 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.

Section 87103 defines the term "financial interest" as used in Section 87100. Section 87103 states, in pertinent part:

An official has a financial interest in a decision within the meaning of Section 87100 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 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 Del Mar City Council, you are a public official. (Section 82048.) Also, since you own real property presumably worth \$1,000 or more located a short distance from the proposed civic center, it is reasonably foreseeable that certain decisions made by the city will have an effect on your property. The question, therefore, is whether these decisions will have a "material financial effect" on your property.

Any city decisions concerning the civic center will have, at most, an indirect effect upon your residence. Regulation 18702.3 sets forth the criteria to determine whether a decision has a material financial effect upon real property that, like yours, may be indirectly affected by the decision.

Subdivision (a) of Regulation 18702.3 states:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest ... if any of the following applies:

(1) The real property in which the official has an interest, or any part of that 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.

(Emphasis added.)

Based on this regulation, you may not participate in any city decision concerning the proposed civic center if the decision could have a discernable financial effect upon your property. However, if the decision will have no financial effect, you are permitted to participate in it.

Finally, as stated above, Section 87103 permits an official to participate in decisions which materially affect his or her economic interests if the effect upon the official's interests is not different from the effect on the public generally. Essentially, this means that even if a city decision has a financial effect upon your property, you may participate in it if it has substantially the same effect on a significant segment of the public. (Regulation 18703.)

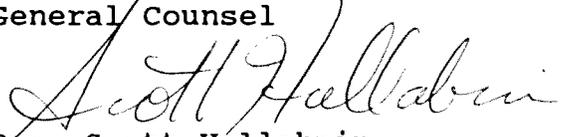
The Commission's opinion in In re Owen (1976) 2 FPPC Ops. 77 (copy enclosed) offers an example of how this exception applies to residential property affected by a governmental decision. In Owen, the public official owned a home across the street from one boundary of an area in which the city was considering expansion of commercial facilities. This opinion held that residential home owners in the immediate vicinity of the affected area constituted a "significant segment" of the public and that the government decision would have a substantially similar impact on all of their properties. Also significant was the fact that the decision had no peculiar impact on the public official's property.

Therefore, you may participate in city decisions concerning the proposed civic center if it can be shown that the decision has the same financial effect upon your property and a significant portion of the other residential properties located in the city.

I hope that this reply has been of assistance. If, however, you have any questions or require additional information, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

Enclosure

FPDC

203 12th Street
Del Mar, CA 92014

Mar 20 11 25 AM '89

March 17, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

Ladies and Gentlemen:

Pursuant to Government Code Section 83224(6) I am requesting the written advice of this Commission with respect to my duties under the Political Reform Act of 1974.

I am a City Councilperson of the City of Del Mar and my mailing address (residence) is stated above: 203 12th Street, Del Mar, CA 92014. The City of Del Mar has adopted a Conflict of Interest Code, which incorporates by reference the Political Reform Act of 1974 and its administrative regulations.

My full-time residence is located within the City of Del Mar, less than 300 feet from the boundary of the existing City Hall. The City is currently considering the master planning and implementation of a new civic center at the site of this existing City Hall.

It is anticipated that numerous decisions on various subjects will be required throughout this process. A sampling of the decisions anticipated are: selection of design consultants, methods of financing, square footage of space, utilization of space, parking configuration, architectural themes, etc., ad infinitum.

The Political Reform Act precludes my participation in the decision-making process if the decision would be material as to real property which I own. The Act further states that if the property owned is within 300 feet of the boundaries of the property that is the subject of the decision, the decision is material, unless it will have no financial effect upon my property.

A literal interpretation of these regulations would seem to require that prior to participating in any decision relating to the proposed civic center project, I must have an appraisal to determine if said decision will have any financial effect upon my residence. This would require numerous appraisals, each being made in relation to the particular decision under consideration.

The necessity of such numerous appraisals is expensive, impractical, and does not appear to be the intended effect of the Act.

Your advice as to how I should proceed in this matter would be appreciated.

Sincerely



Jan McMillan



California Fair Political Practices Commission

March 22, 1989

Honorable Jan McMillan
Councilmember
City of Del Mar
1050 Camino Del Mar
Del Mar, CA 92014

Re: Letter No. 89-171

Dear Ms. McMillan:

Your letter requesting advice under the Political Reform Act was received on March 20, 1989 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,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh