



California Fair Political Practices Commission

May 25, 1989

Honorable Jim Bowman
Councilmember, City of Ontario
222 West Caroline Court
Ontario, CA 91762

Re: Your Request for Advice
Our File No. I-89-253

Dear Councilmember Bowman:

This is in response to your request for advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ It confirms the telephone advice provided to you. Since your request is in the nature of general assistance, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

You are working in a fire department in a neighboring community. Would a conflict of interest exist if you apply for the position of Division Chief in the City of Ontario fire department?

CONCLUSION

The Political Reform Act does not prohibit you from applying for the position of Division Chief in the City of Ontario Fire Department. However other provisions of the law may have an important bearing on your situation. You should contact your city attorney as to those matters.

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 with the City of Ontario (hereafter "city"). You have worked in the fire department of a neighboring community for 19 years. The city has an opening for a Division Chief in its fire department. You expect to apply for the position. The selection will probably be by open competitive examination.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision 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 a member of his immediate family,³ or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103, (copy enclosed).

³ An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

You are a public official. (Section 82048.) Therefore, you may not make, participate in making, or in any way attempt to influence a decision in which you have a financial interest. (Section 87100.) Accordingly, you may not make, participate in making, or in any way use your official position to attempt to influence the decision to select a Division Chief for the city fire department.

Although public officials must generally refrain from participating in decisions which will have a material financial effect on sources of income to them (Section 87103(c)), salary from a federal, state, or local government agency is not "income" under the Act. (Section 82030(b)(2).) Therefore, any salary you may receive, should you be selected to the position of Division Chief, would not give rise to a conflict of interest under Section 87103(c). You must determine on a case by case basis whether you must disqualify yourself from certain governmental decisions.

Our advice to you is limited to the provisions of the Political Reform Act. Other provisions of the law such as Section 1090 of the Government Code or the general doctrine of incompatible offices may have some bearing on your situation.⁴ Please contact your city attorney for advice as to these matters.

I trust this letter has provided you with the guidance you requested. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED:JA:aa
Enclosures

⁴ As I mentioned to you during our telephone conversation on May 24, the Attorney General's opinion at 68 Op. Atty. Gen. 337 (1985), (copy enclosed), addresses some of the issues pertaining to your question about holding two offices simultaneously. However, the issues raised therein are beyond the scope of the Act. You should check with the city attorney for advice as to those issues.

ONTARIO COUNCILMAN

JIM BOWMAN

222 West Caroline Court • Ontario, California 91762

Mr Jeevan Ahuja,
Fair political practice commission
428 Jst Suite 800
P.O. Box 807
Sacramento, Calif 95804
April - 26 - 1989

Dear Mr. Ahuja,

With regard to our telephone conversation of April - 26 - 1989 I have requested your assistance to determine if a conflict might exist if I an elected official of the city were to apply for a staff opening with the Ontario fire department.

this position. (Division chief) will most likely be by open competitive examination.

I had also mentioned that I have been in the fire service for 19 years and currently work for a neighboring community.

You had stated that in your opinion you saw no conflict existing. However, indicated that there might be occasions that I would have to abstain from voting relative to fire dept. approvals.

Also as you will recall I requested some form of written confirmation reflecting your opinion as soon as possible. a summary of your conclusion would be greatly appreciated.

Thank you for your professional assistance

Sincerely,
Jim Bowman

P.S. please send summary to
222 W. Caroline St
Ontario, Calif 91762



JIM W. BOWMAN
Councilman

CIVIC CENTER
303 East "B" Street
Ontario, California 91764
(714) 986-1151

mission

may 2, 1989

Honorable Jim W. Bowman
Councilmember
222 W. Caroline Court
Ontario, CA 91762

Re: Letter No. 89-253

Dear Mr. Bowman:

We received your letter requesting confirmation of advice under the Political Reform Act on April 28, 1989. Your letter has been assigned to our Technical Assistance and Analysis Division for response. If you have any questions, you may contact that division directly at (916) 322-5662.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

Kathryn E. Donovan

Kathryn E. Donovan
General Counsel

KED:plh:confadv1

92-253



CITY OF IRWINDALE

5050 NORTH IRWINDALE AVENUE • IRWINDALE, CALIFORNIA 91706
(818) 962-3381

June 28, 1988

Kathryn E. Donovan
Counsel
Legal Division
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Ms. Donovan:

I had a lunch stand (Pudgy's Burgers and Tacos) at the southeast corner of Irwindale Avenue and Arrow Highway (marked 1 in red on the map). I leased the property to Irwindale Associates. They have knocked the building down and what is left is a vacant lot. I hear they want to build fast for the building to lease. I understand that if Irwindale Associates brings any request before the Council I have to abstain.

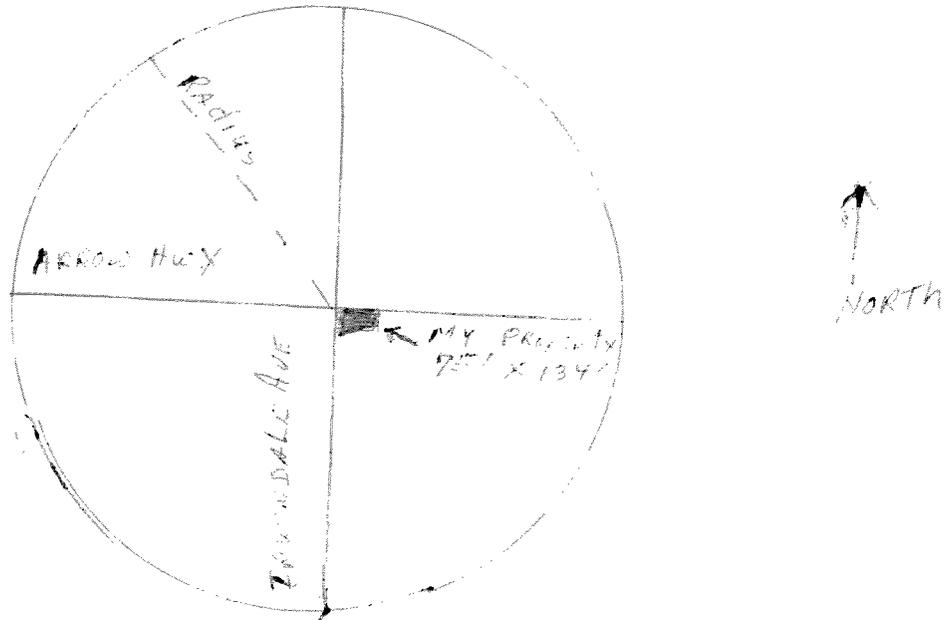
Birtcher Development Co. has developed the northeast corner of Irwindale Avenue and Arrow Highway (marked 2 in red on the map). I have abstained on the Birtcher Development because our City Attorney, Mr. Charles Martin, said it could affect the value of my property. If Birtcher develops other areas (such as areas #4 and #5 on the attached map), do I have to abstain on those areas because Birtcher has the development across the street from my commercial property at the corner of Irwindale Avenue and Arrow Highway.

CalMat has dug out the rock and sand from the land marked 3 in red on the map. It is a pit. They are putting in inert material to fill it up. When they fill the pit to where they can build they will come before the Council to develop that area (about 100 or more acres). The northeast corner of that pit is about 800 feet from my commercial property at Irwindale Avenue and Arrow Highway.

Ms. Kathryn E. Donovan
June 28, 1988
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I would like to know if you could give me an idea as to how far from my commercial property I should abstain on my vote. Such as a radius as to how far I am affected in voting. I am sending you 2 maps; one for you to keep and one so that you could indicate what radius from my commercial business I should abstain from voting.

1 inch = 1620 FEET (ON THE MAP)



Numbers on map in red:

- 1) My property (Pudgy's Burgers and Tacos) which is now vacant land
- 2) Birtcher Development
- 3) CalMat dug up pit. Future possible development

Very truly yours,


Pat S. Miranda
Mayor, City of Irwindale



California Fair Political Practices Commission

July 6, 1988

Honorable Pat S. Miranda
Mayor, City of Irwindale
5050 North Irwindale Avenue
Irwindale, CA 91706

Re: 88-253

Dear Ms. Miranda:

Your letter requesting advice under the Political Reform Act was received on July 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, 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