



California Fair Political Practices Commission

May 24, 1989

Joseph A. Forest
City Attorney
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Re: Your Request for Advice
Our File No. A-89-276

Dear Mr. Forest:

This is in response to your letter requesting advice on behalf of Councilmember Robert Maxfield concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. May Councilmember Maxfield participate in a building permit decision concerning real property that is within 185 feet of real property the councilmember owns?
2. May Councilmember Maxfield participate in the determination of public water and sewer fees concerning real property that is within 185 feet of real property the councilmember owns?

CONCLUSIONS

1. The councilmember may not participate in the building permit decision, unless there will be no reasonably foreseeable financial effect on his real property interest.
2. The councilmember may not participate in the determination of Calistoga Mineral Water Company's fee rates for public water and sewer facilities unless there will be no reasonably foreseeable financial effect on his real property interest.

^{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.

FACTS

The Calistoga City Council is currently considering two proposals concerning land owned by the Calistoga Mineral Water Company (the "company"). The first proposal is for a building permit for a new 60,000 square foot warehouse on the company's property. The site currently serves as the company's main processing plant. The company has requested a building permit for a new warehouse to increase their storage capacity.

The second proposal concerns the amount of fees the company must pay for public water and sewer service. The city council is concerned that the company has been paying less than what their actual use has been ever since the plant was constructed.

Councilmember Maxfield was elected to the city council in 1988. The councilmember owns a 47 acre tract of undeveloped land that is 185 feet from the company's property that is the subject of the decisions before the city council.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more.

Section 87103(b).

As a member of the Calistoga City Council, Councilmember Maxfield is a public official. (Section 82048.) The councilmember's interest in his real property is undoubtedly greater than \$1,000. Thus, Councilmember Maxfield is prohibited from making or in any way participating in decisions which would have a reasonably foreseeable, material financial effect on his property that is distinguishable from the effect on the public generally.

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPCC Ops. 198, copy enclosed.)

The effect of a decision on real property in which an official has a direct, indirect or beneficial ownership interest, is material if:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or 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 interests.

Regulation 18702.3(a)(1) (copy enclosed).

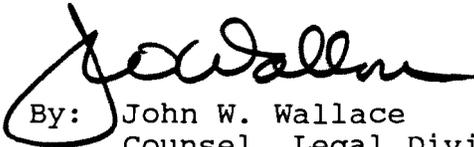
Councilmember Maxfield's real property is within 185 feet of the company's property that is the subject of the decision. You have told us that the addition of the warehouse to the existing plant facilities will probably not change the character of the surrounding area. Nonetheless, with property in such close proximity to the property which is the subject of the decision, the councilmember may not participate in the decision unless it will have no financial effect on his real property.

Similarly, if the decisions concerning water and sewer fees will affect the manner in which the company's property is developed, the councilmember must disqualify himself from participating in the decisions unless there will be no financial effect on his real property and the decision can be separated and dealt with independent of the building permit decision. (Huffaker Advice Letter, No. A-86-343, copy enclosed.) If the decisions cannot be separated, the councilmember must disqualify himself from participating in both decisions if either will have a financial effect on his real property.

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

CITY OF CALISTOGA

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1232 WASHINGTON STREET • CALISTOGA, CALIFORNIA 94515 • (707) 942-5188

May 3, 1989

California Fair Political
Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice Letter

Gentlemen:

Please consider this letter as a request for formal written advice pursuant to Government Code Section 83114 and Section 18329 of the Fair Political Practices Commission Administrative Regulations.

I am making this request, as the City Attorney of Calistoga, on behalf of and as the authorized representative of Councilman Robert Maxfield of the City of Calistoga, whose mailing address is 1137 Mitzi Drive, Calistoga, CA 94515.

ISSUE: Succinctly stated, does Councilman Maxfield have a conflict of interest by participating in a governmental decision under the following circumstances?

FACTS: Councilman Maxfield owns a large undeveloped tract of land in the City of Calistoga consisting of approximately 47 acres. This property has been under his ownership for approximately 15 years.

During the years 1984 to the present, the Calistoga Mineral Water Company has developed a production and warehouse facility on land which is approximately 185 feet from Councilman Maxfield's property (as the crow flies).

In April of 1988 Mr. Maxfield was first elected to the Calistoga City Council. Presently there are several matters

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pending before the City regarding the Calistoga Mineral Water Company development.

First, there are matters relating to the use of (alleged over-use of) the public water and sewer facilities. The issues relate back to whether Calistoga Mineral Water paid appropriate water and sewer development fees at the time the use permit was issued for their project in 1984. Those fees are significant in that Calistoga Mineral Water paid approximately \$14,000, whereas their actual use would warrant fees in the hundreds of thousands of dollars.

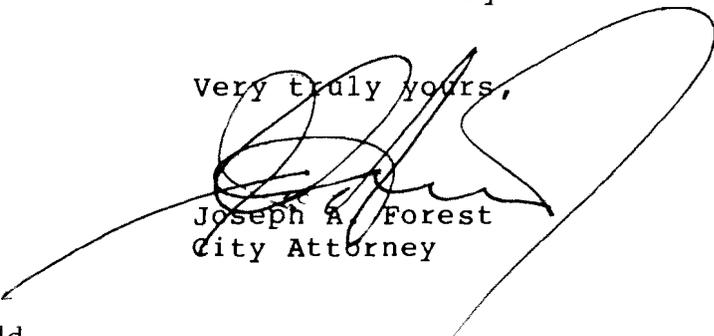
Second, the use permit itself may be subject to review regarding compliance with the several conditions which were attached to that permit at the time of approval. The use permit included several phases of implementation, including construction of the bottling plant, installation of a pipeline from the geothermal well to that plant, and the construction of a 60,000 sq. ft. warehouse. Neither the pipeline nor the warehouse has yet been constructed, although Calistoga Mineral Water has a pending application before the City for a building permit.

Third, the property which Councilman Maxfield owns is presently under an option to purchase by a party which intends to develop his property with an outdoor recreational vehicle park. That option will expire in September of 1989.

With that background in mind, the question is whether or not Councilman Maxfield can participate in the decision making process regarding a review of the fee payments and a review of the use permit conditions issued to the Calistoga Mineral Water Company, without being in conflict with the California Political Reform Act and specifically Section 87100 of the Government Code?

Your immediate attention to this request would be most appreciated.

Very truly yours,

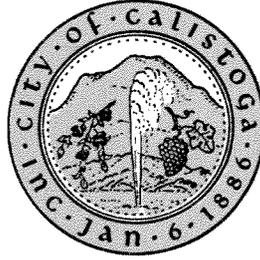


Joseph A. Forest
City Attorney

JAF:lm
CC: Councilman Maxfield

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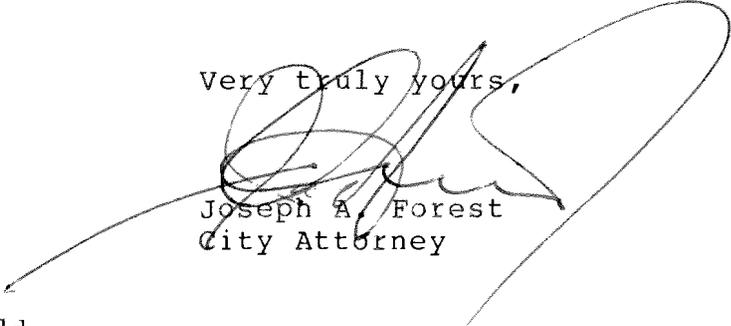
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Your immediate attention to this request would be most appreciated.

Very truly yours,



Joseph A. Forest
City Attorney

JAF:lm
CC: Councilman Maxfield



California Fair Political Practices Commission

May 9, 1989

Joseph Forest
City Attorney
1232 Washington Street
Calistoga, CA 94515

Re: Letter No. 89-276

Dear Mr. Forest:

Your letter requesting advice under the Political Reform Act was received on May 8, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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 that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh