



# California Fair Political Practices Commission

June 28, 1989

Carl O. Waggoner  
Law Offices of Kroll, Loeffler  
and Waggoner  
611 Thirteenth Street  
P.O. Box 3489  
Modesto, CA 95353-3489

Re: Your Request for Informal Assistance  
Our File No. I-89-284

Dear Mr. Waggoner:

You have requested advice on behalf of the mayor and three members of the City Council of Patterson concerning their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter does not request advice regarding any particular decision. Accordingly, we are treating your request as one for informal assistance.<sup>2/</sup>

#### QUESTION

May the mayor and city councilmembers participate in decisions regarding the City of Patterson's new general plan?

#### CONCLUSION

Councilmembers Halseth and Ielmini may not participate in the decision on whether to include Patterson Foods' parcel of land in the planning area or in any other decision which will have a reasonably foreseeable material financial effect distinguishable from the effect on the public generally on Patterson Foods.

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<sup>1/</sup> 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.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329 (c)(3).)

Councilmember Klein may not participate in any decision which will have a reasonably foreseeable material financial effect distinguishable from the effect on the public generally on his parcels of land.

Mayor Bingham may not participate in any decision which will have a reasonably foreseeable material financial effect distinguishable from the effect on the public generally on Pacoast, Del Puerto Supply, or any other source of income of \$250 in the 12 months before a decision.

### FACTS

#### The General Plan

The City of Patterson has contracted with a consultant to prepare a revised general plan for the city. In the course of its work, the consultant has produced a document entitled Public Review Draft, Background Report. The report contains eight chapters. These are: Land Use; Housing; Population; Economic Conditions and Fiscal Considerations; Transportation and Circulation; Public Facilities and Services; Recreational and Cultural Resources; Natural Resources; Health and Safety; Scenic Resources and Urban Design. The report describes existing conditions and trends in the City of Patterson. The planning commission held a public hearing at which each of the chapters were discussed in some detail.

The consultant then prepared for the planning commission a document entitled Public Review Draft, Issues and Options Report. This report contained 20 listings as follows: future role and character of Patterson; amount of mix of new development; direction of future growth; rate of new development; new residential development; new commercial/office development; downtown; new industrial development; urban form; speculation; civic center facility; hospital/health facilities expansion; parks, park standards and recreation facilities; drainage; water supply and distribution; alternate modes of transportation; airports; agricultural lands; historic preservation and architectural themes; child care.

The planning commission reviewed each of the issues in some detail with public input being given at numerous public meetings, and concluded with recommendations to the city council.

During the proceedings of the planning commission on the Issues and Options Report, there was presented to the commission a letter from an attorney representing an owner of a large parcel of farm land lying westerly from the City of Patterson requesting that the general plan area be enlarged to add the subject property, along with adjoining property to the scope of study. That owner was Patterson Frozen Foods.

You see the role of the planning commission at this stage of the proceedings to be advisory to the city council. The planning commission does not have the authority to decide the content of the final general plan. The city council is now prepared to go ahead with its own series of public meetings on the issues described in the Issues and Options Report. One of the primary issues the city council will be deciding is the direction of growth which will lead to the establishment of a planning area. You see the role of the city council at this point as being advisory, by way of providing general parameters to the general plan consultant.

You are requesting our advice regarding whether the mayor and three city councilmembers may participate in deliberations and voting on the adoption of the general plan as well as providing input to the general plan consultant. The economic interests which have given rise to this request are described below.

Councilmember Leo Halseth

Councilmember Leo Halseth prior to his retirement was engaged in the agricultural harvesting business. Mr. Halseth was a stockholder in a corporation through which he conducted his harvesting activities. Mr. Halseth owns a 30% interest in the corporation. After Mr. Halseth and the corporation ceased harvesting activities, it sold its equipment to Patterson Frozen Foods and took back a note from which principal and interest payments are made and disbursed to the stockholders every three months.

Patterson Frozen Foods owns approximately 475 acres of real property in the area which may or may not be included in the new sphere of influence of the City of Patterson as well as a part of its general plan. If the real property is included in the general plan and the sphere of influence, you believe that it can be safely assumed that the property belonging to Patterson Frozen Foods will increase in value in excess of \$10,000. What is uncertain is whether or not including the property in the so-called planning area at this juncture in the proceeding will have any effect on valuation whatsoever.

Mr. Halseth is also an ex-employee of Patterson Frozen Foods and participates in the group health insurance plan provided its employees. Mr. Halseth pays all of the premium on the policy.

Councilmember Angelo Ielmini

Councilmember Angelo Ielmini is a stockholder in Patterson Frozen Foods. His statement of economic interests lists an ownership interest in that corporation in excess of 10%. Mr. Ielmini is also an officer of the corporation.

Councilmember Tom Klein

Councilmember Tom Klein has two concerns. First, he owns property on which there exists an option to purchase. The parcel is in the existing general plan and sphere of influence. The option to purchase will continue in existence until 1990. It is difficult to develop the parcel because of limitations in the city's sewer and surface water drainage system. If further development occurs in Patterson, it is anticipated that the sewer and drainage problems may be resolved. At this point it appears that any significant improvement of city facilities will not occur until the general plan process is completed and development will be allowed to occur in the vicinity of this parcel.

Second, Dr. Klein owns another parcel, ten acres in size, which possibly will be included in the new general plan and sphere of influence.

Mayor Wade Bingham

Mayor Wade Bingham operates a wholesale/retail agriculture chemical and fertilizer supply business known as "Pacoast." He is a 40% owner of Pacoast. Pacoast sells products retail to farmers who may be included in the study area. He also sells products wholesale to Del Puerto Supply who in turn sells these products on a retail basis to members. One of the individuals who purchases products from Del Puerto Supply owns land in the area which may be included in the study area and ultimately the general plan and sphere of influence. Del Puerto Supply is a corporation which was formed by seven farm operations on the west side of Stanislaus County to provide farm advisory services as well as to combine the acreage of the group for its purchasing power.<sup>3/</sup>

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her position to influence a governmental decision in which the official knows or has reason to know he or she 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 the effect on the public generally, on the official or a member of his or her immediate family 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.

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<sup>3/</sup> Portions of the information regarding Mayor Bingham's situation were gathered in a meeting which I held with Mayor Bingham and City Manager John Nachbar, and from a follow-up letter from Del Puerto supply which was submitted by Mr. Nachbar (copy enclosed.)

(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 (a)-(e).)

The mayor and city councilmembers may not participate in any decision which will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally on any of the economic interests described above.

#### Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Redevelopment Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).)

#### Councilmember Halseth

Councilmember Halseth owns a 30% interest in a corporation which receives quarterly principal and interest payments from Patterson Foods. As a 30% owner of the corporation, 30% of all gross income received by the corporation from Patterson Foods is attributed to Councilmember Halseth. (Section 82030.) Presumably, more than \$250 in income will be attributable to Mr. Halseth from Patterson Foods in the 12 months before any of the

decisions affecting Patterson are made.<sup>4/</sup> If so, Mr. Halseth may not participate in the decisions if they will have a material financial effect on Patterson Foods.

The Commission has adopted regulations which provide guidance on whether the reasonably foreseeable effects of a decision will be considered material. (Regulations 18702-18702.6, copies enclosed.) The regulations establish different tests depending on whether the official's economic interest is directly or indirectly involved in the decision. If a source of income to the official is directly involved in a decision, the official may not participate in the decision. (Regulation 18702.1(a)(1).) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

(Regulation 18702.1 (b)(1),(2) and (3).)

In the present situation, Patterson Foods has initiated the request that a large parcel of its land be included in the planning area. Patterson Foods is directly involved in that decision. Accordingly, Councilmember Halseth may not participate in that decision.

#### Councilmember Ielmini

Councilmember Ielmini has an investment interest in Patterson Frozen Foods and is an officer in the corporation. (Section 87103 (a) and (d).) Accordingly, he too is disqualified from participating in the decision to include the Patterson Frozen Foods property in the general planning area. (Regulation 18702.1(a)(2).)

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<sup>4/</sup> Having reached this conclusion, it is not necessary for us to analyze whether Mr. Halseth receives income from Patterson Foods as a result of participating in the Patterson Foods group health plan.

Councilmember Klein

Councilmember Klein owns two parcels of property which may be affected by the general plan. He may not participate in any decision which would have a reasonably foreseeable material financial effect on those properties. (Section 87103 (b).) Again, the test for determining whether the effects of a decision on an interest in real property are material depends on whether the interest in real property is directly or indirectly involved in the decision. Regulation 18702.1(a)(3) describes situations in which real property interests are considered materially affected because of the direct impact of the decision on the real property. These include the following situations:

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local government subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or

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(E) For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the subject property, but shall not refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category.

Councilmember Klein's properties will be considered to be materially affected by a decision which directly involves the properties as described above. In addition, Regulation 18702.3 (copy enclosed) describes situations in which the indirect effects of a decision will be considered material. Councilmember Klein may not participate in any decision which will materially affect his real property interests in a manner which is distinguishable from the effect on the public generally or a significant segment of the public. (Regulation 18703, copy enclosed.)

Mayor Bingham

Mayor Bingham has a 40% ownership interest in Pacoast. As such, 40% of all income to Pacoast is attributed to Mayor Bingham. (Section 82030.) Mayor Bingham is prohibited from participating in any decision which will have a reasonably foreseeable material financial effect on Pacoast or on any customer of Pacoast who has provided him with income of \$250 or more in the 12 months before the decision. Mayor Bingham has indicated that Del Puerto Supply has been a source of income to him of more than \$250 in the past 12 months. Accordingly, Mayor Bingham may not participate in any decision which would have a reasonably foreseeable material financial effect distinguishable from the effect on the public generally on Pacoast or Del Puerto.

A decision would materially affect Pacoast or Del Puerto if those companies are directly involved in the decision as described under the portion of this analysis involving Councilmember Halseth. If the companies are not directly involved in a decision, disqualification will still be required if a decision will have an indirect effect on the companies which meets the criteria set out in Regulation 18702.2. Regulation 18702.2 establishes different tests for materiality depending on the size of the particular business entity involved in the decision.<sup>5/</sup>

Public Generally

It should be noted that although a councilmember may be disqualified from participating in a decision regarding a particular component of the general plan, the councilmember may in some circumstances participate in the decision regarding whether to adopt the general plan as a whole. (Haight Advice Letter, No. A-86-021, copy enclosed.)

Quorum

You have also asked what should be done if three members of the city council are disqualified from a decision because of conflicts and the city council lacks a quorum. In In re Hudson (1978) 4 FPPC Ops. 13 (copy enclosed), the Commission concluded

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<sup>5/</sup> You have pointed out that one of the seven individuals who are members and owners of Del Puerto owns property which may be included in the general plan study area and ultimately the general plan and sphere of influence. We have no facts to indicate that the individual's farm operation is "otherwise related" to Del Puerto. (Regulations 18706 and 18236.) Accordingly, Mayor Bingham does not have an economic interest in the individual and does not have disqualification obligations with respect to the individual.

Our File No. I-89-284

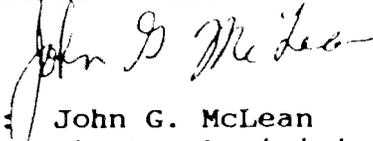
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that if a board cannot, as a result of board member disqualification, obtain a quorum in order to make decisions it is legally required to make, the board may bring back as many disqualified members as is necessary to establish a quorum. The means of selecting which disqualified member should participate is by lot or other means of random selection.

I trust this answers your questions. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John G. McLean  
Counsel, Legal Division

KED:JGM:ld

Enclosure

LAW OFFICES  
OF  
KROLL, LOEFFLER & WAGGONER  
611 THIRTEENTH STREET • P.O. BOX 3489  
MODESTO, CALIFORNIA 95353-3489

MAY 11 10 23 AM '89

JAMES J. KROLL, JR.  
MICHAEL G. LOEFFLER  
CARL O. WAGGONER

FAX (209) 576-8437  
TELEPHONE (209) 576-7777

May 9, 1989

DAVID CERVANTES

FAIR POLITICAL PRACTICES COMMISSION  
Legal Division  
P.O. Box 807  
Sacramento, CA 95814

Re: Request for Formal Written Advice/Government Code  
Section 83114(b)

Gentlemen:

I have been asked to submit on behalf of the City Attorney and Councilmembers Leo Halseth, Angelo Ielmini and Tom Klein and Mayor Wade Bingham a request for formal written advice in accordance with the provisions of Government Code Section 83114(b). Please be advised that for purposes of this request for formal written advice, our office is the authorized representative. All of the above referenced individuals' addresses insofar as their official office is concerned is P.O. Box 667, Patterson, California 95363.

Please consider the following:

The City of Patterson has contracted with a General Plan Consultant to prepare a revised General Plan for the City of Patterson.

In the course of its work, the Consultant has produced a Public Review Draft - Background Report containing eight chapters. These are: Land Use; Housing; Population; Economic Conditions and Fiscal Consideration; Transportation and Circulation; Public Facilities and Services; Recreational and Cultural Resources; Natural Resources; Health and Safety; Scenic Resources and Urban Design. The Background Report describes existing conditions and trends in the City of Patterson. A public hearing was held by the Planning Commission in which each of these chapters were discussed in some detail. A copy of that report is being sent by separate cover to you by the City of Patterson.

The Consultant then prepared for the Planning Commission an Issues and Options Report. The Issues and Options Report contained 20 listings as follows: future role and character of Patterson; amount of mix of new development; direction of future

FAIR POLITICAL PRACTICES COMMISSION

Legal Division

May 9, 1989

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growth; rate of new development; new residential development; new commercial/office development; downtown; new industrial development; urban form; speculation; civic center facility; hospital/health facilities expansion; parks, park standards and recreation facilities; drainage; water supply and distribution; alternate modes of transportation; airports; agricultural lands; historic preservation and architectural themes; child care. Enclosed herewith for your review is a copy of that report.

The Planning Commission reviewed each of the issues in some detail with public input being given at numerous public meetings, and concluded with recommendations to the City Council. The members of the Planning Commission were not always unanimous in their recommendations.

During the proceedings of the Planning Commission on the Issues and Options Report there was presented to the Commission a letter from an attorney representing an owner of a large parcel of farm land lying westerly from the City of Patterson requesting that the General Plan Area be enlarged to add the subject property, along with adjoining property to the scope of study. That owner was Patterson Frozen Foods.

We see the role of the Planning Commission at this stage of the proceedings to be advisory only; advisory to the City Council. The Planning Commission does not have the authority to decide the content of the final General Plan.

Upon receipt of the recommendations of the Planning Commission on the Issues and Options Report, the City Council is now prepared to go ahead with its own series of public meetings on each of the issues. One of the primary issues the City Council will be deciding is the direction of growth which will lead to the establishment of a planning area. We see the role of the City Council at this point also as being advisory, advisory by way of providing general parameters to the General Plan Consultant.

The Commission's advice is sought relative to four individuals, three of whom are City Councilmembers and the fourth, the Mayor. Each individual is concerned with whether he can legitimately participate in deliberations and voting on the adoption of the City of Patterson's new General Plan as well as provide input to the General Plan Consultant.

Councilmember Leo Halseth prior to his retirement was engaged in the agricultural harvesting business. Mr. Halseth was a stockholder in a corporation through which he conducted his harvesting activities. Mr. Halseth owns a 30 percent (30%)

FAIR POLITICAL PRACTICES COMMISSION

Legal Division

May 9, 1989

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interest in the corporation. After Mr. Halseth and the corporation ceased harvesting activities, it sold its equipment to Patterson Frozen Foods and took back a note from which principal and interest payments are made and disbursed to the stockholders every three months.

Patterson Frozen Foods, Inc. owns approximately 475 acres of real property in the area which may or may not be included in the new sphere of influence of the City of Patterson as well as a part of its General Plan. If the real property is included in the General Plan and the sphere of influence, I believe that we can safely assume that the property belonging to Patterson Frozen Foods will increase in value in excess of \$10,000. What is uncertain is whether or not including the property in the so-called planning area at this juncture in the proceeding will have any effect on valuation whatsoever.

Mr. Halseth would also like to have your advice regarding whether or not he is precluded from participating in the General Plan implementation process because he, as an ex-employee of Patterson Frozen Foods, Inc. participates in the group health insurance plan provided its employees. Mr. Halseth pays all of the premium on the policy.

Councilmember Angelo Ielmini is a stockholder in Patterson Frozed Foods. His Statement of Economic Interest lists an ownership interest in that corporation in excess of 10 percent (10%). Mr. Ielmini is also an officer of the corporation. Mr. Ielmini is concerned about whether his participation in the new General Plan process will run afoul of the Fair Political Practices Act, since Patterson Frozen Foods is the owner of the 475 acres described above.

Councilmember Tom Klein has two concerns. First, he owns property on which there exists an option to purchase. This parcel is in the existing General Plan and sphere of influence. That option to purchase will continue in existence until 1990. It is difficult to develop this parcel because of limitations in the City's sewer and surface water drainage system. If further development occurs in Patterson it is anticipated that the sewer and drainage problems may be resolved. At this point it appears that any significant improvement of City facilities will not occur until the General Plan process is completed and development will be allowed to occur in the vicinity of this parcel.

Second, Dr. Klein owns another parcel, ten acres in size, which possibly will be included in the new General Plan and sphere of influence.

FAIR POLITICAL PRACTICES COMMISSION  
Legal Division  
May 9, 1989  
Page 4

Mayor Wade Bingham operates a wholesale/retail agriculture chemical and fertilizer sales business. Mr. Bingham sells products retail to farmers who may be included in the study area. He also sells products wholesale to a co-op, Del Puerto Supply, who in turn sells these products on a retail basis to members. One of the individuals who purchases products from Del Puerto Supply owns land in the area which may be included in the study area and ultimately the General Plan and sphere of influence.

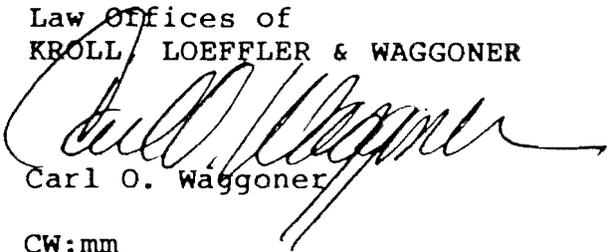
Insofar as the Mayor's business is concerned, none of the aforementioned customers constitute a significant segment of the public generally and the amount of income received is not distinguishable from the amount of income received from its other retail customers.

The four individuals which I have discussed are concerned with not only whether or not they should participate in general, but whether or not there may be some parts of the General Plan adoption process in which they can participate. Further, if three of the above-referenced individuals are precluded from voting, the City Council will lack a quorum. Should the City Council decide which member has the least conflict and have this person participate or should these individuals draw a number from a hat?

Should you have any further questions please contact me. I have been advised by the Mayor and Councilmembers that they are more than willing to travel to your office in Sacramento to meet with a representative of the Commission should clarification or other information be needed.

Very truly yours,

Law Offices of  
KROLL, LOEFFLER & WAGGONER



Carl O. Waggoner

CW:mm

cc: Mayor Wade Bingham  
Councilmember Leo Halseth  
Councilmember Angelo Ielmini  
Councilmember Tom Klein  
John Nachbar, City Manager  
Harold Densmore, City Attorney

June 2, 1989

City of Patterson  
P.O. Box 667  
Patterson, CA 95363  
Attention: John Nachbar

In response to a request from Mayor Wade Bingham I submit the following information concerning Del Puerto Supply Co., its structure, its method of operation and its dealings with Pacoast Chemical Co.

Del Puerto Supply Co. was formed in 1965 by seven farm operations on the west side of Stanislaus County to provide on farm advisory services as well as combining the acreage of the group for its purchasing power. The company was organized as a for profit corporation and continues to this date in that mode.

A Board of Directors is elected on an annual basis and make the basic business decisions for the company. They hire and fire and set wages and benefits. They appoint the manager of the company and delegate to him the responsibility to run the company on a day to day basis.

The two principal employees are registered Pest Control Advisers. The company provides pesticide and fertilizer recommendations to its customers and supplies the materials as needed. There are twenty four growers that are customers of the company and they range geographically from south of Gustine to north of Westley.

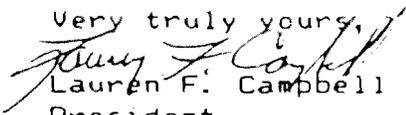
The manager of the company, as mentioned above, has the day to day responsibility of running the company and that includes making the decisions on where to buy the materials supplied to its customers.

He purchases product from ten different suppliers, one of which is Pacoast Chemical Co. In 1988 Pacoast Chemical Co. supplied approximately forty percent of the total purchases for the year.

Individual customers are not allowed to make purchase decisions for the company whether or not they are shareholders. Effective management of the company simply would not be possible if this were allowed. The manager must stay up to date on his product needs and make decisions on a timely basis because of the ever changing situation on the availability of product.

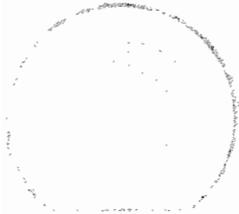
Please let us know if we can provide any further information.

Very truly yours,

  
Lauren F. Campbell

President

Del Puerto Supply Co.



# City of Patterson



May 12, 1989

FAIR POLITICAL PRACTICES COMMISSION  
Legal Division  
P.O. Box 807  
Sacramento, CA 95814

Re: City of Patterson Request for Formal Written Advice/Govern-  
ment Code Section 83114(b)

Gentlemen:

Carl Waggoner, an attorney representing the City of Patterson,  
sent you a letter dated May 9, 1989 regarding the above refer-  
enced request.

The letter indicated a copy of the Background Report would be  
sent under separate cover.

I have enclosed a copy in accord with that letter.

Sincerely,

John M. Nachbar  
City Manager

enclosure

June 2, 1989

City of Patterson  
P.O. Box 667  
Patterson, CA 95363  
Attention: John Nachbar

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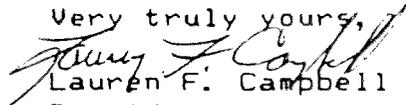
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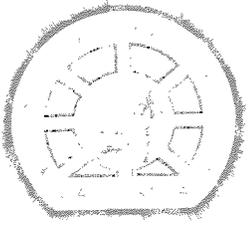
Individual customers are not allowed to make purchase decisions for the company whether or not they are shareholders. Effective management of the company simply would not be possible if this were allowed. The manager must stay up to date on his product needs and make decisions on a timely basis because of the ever changing situation on the availability of product.

Please let us know if we can provide any further information.

Very truly yours,

  
Lauren F. Campbell  
President  
Del Puerto Supply Co.





# City of Patterson



P.O. Box 667, Patterson, California 95363 (209) 892-2041

May 12, 1989

FAIR POLITICAL PRACTICES COMMISSION  
Legal Division  
P.O. Box 807  
Sacramento, CA 95814

Re: City of Patterson Request for Formal Written Advice/Government Code Section 83114(b)

Gentlemen:

Carl Waggoner, an attorney representing the City of Patterson, sent you a letter dated May 9, 1989 regarding the above referenced request.

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Sincerely,

John M. Nachbar  
City Manager

enclosure

*[Faint handwritten notes and signatures]*

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OF  
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611 THIRTEENTH STREET • P.O. BOX 3489  
MODESTO, CALIFORNIA 95353-3489

MAY 11 10 23 AM '89

JAMES J. KROLL, JR.  
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Please consider the following:

The City of Patterson has contracted with a General Plan Consultant to prepare a revised General Plan for the City of Patterson.

In the course of its work, the Consultant has produced a Public Review Draft - Background Report containing eight chapters. These are: Land Use; Housing; Population; Economic Conditions and Fiscal Consideration; Transportation and Circulation; Public Facilities and Services; Recreational and Cultural Resources; Natural Resources; Health and Safety; Scenic Resources and Urban Design. The Background Report describes existing conditions and trends in the City of Patterson. A public hearing was held by the Planning Commission in which each of these chapters were discussed in some detail. A copy of that report is being sent by separate cover to you by the City of Patterson.

The Consultant then prepared for the Planning Commission an Issues and Options Report. The Issues and Options Report contained 20 listings as follows: future role and character of Patterson; amount of mix of new development; direction of future

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growth; rate of new development; new residential development; new commercial/office development; downtown; new industrial development; urban form; speculation; civic center facility; hospital/health facilities expansion; parks, park standards and recreation facilities; drainage; water supply and distribution; alternate modes of transportation; airports; agricultural lands; historic preservation and architectural themes; child care. Enclosed herewith for your review is a copy of that report.

The Planning Commission reviewed each of the issues in some detail with public input being given at numerous public meetings, and concluded with recommendations to the City Council. The members of the Planning Commission were not always unanimous in their recommendations.

During the proceedings of the Planning Commission on the Issues and Options Report there was presented to the Commission a letter from an attorney representing an owner of a large parcel of farm land lying westerly from the City of Patterson requesting that the General Plan Area be enlarged to add the subject property, along with adjoining property to the scope of study. That owner was Patterson Frozen Foods.

We see the role of the Planning Commission at this stage of the proceedings to be advisory only; advisory to the City Council. The Planning Commission does not have the authority to decide the content of the final General Plan.

Upon receipt of the recommendations of the Planning Commission on the Issues and Options Report, the City Council is now prepared to go ahead with its own series of public meetings on each of the issues. One of the primary issues the City Council will be deciding is the direction of growth which will lead to the establishment of a planning area. We see the role of the City Council at this point also as being advisory, advisory by way of providing general parameters to the General Plan Consultant.

The Commission's advice is sought relative to four individuals, three of whom are City Councilmembers and the fourth, the Mayor. Each individual is concerned with whether he can legitimately participate in deliberations and voting on the adoption of the City of Patterson's new General Plan as well as provide input to the General Plan Consultant.

Councilmember Leo Halseth prior to his retirement was engaged in the agricultural harvesting business. Mr. Halseth was a stockholder in a corporation through which he conducted his harvesting activities. Mr. Halseth owns a 30 percent (30%)

interest in the corporation. After Mr. Halseth and the corporation ceased harvesting activities, it sold its equipment to Patterson Frozen Foods and took back a note from which principal and interest payments are made and disbursed to the stockholders every three months.

Patterson Frozen Foods, Inc. owns approximately 475 acres of real property in the area which may or may not be included in the new sphere of influence of the City of Patterson as well as a part of its General Plan. If the real property is included in the General Plan and the sphere of influence, I believe that we can safely assume that the property belonging to Patterson Frozen Foods will increase in value in excess of \$10,000. What is uncertain is whether or not including the property in the so-called planning area at this juncture in the proceeding will have any effect on valuation whatsoever.

Mr. Halseth would also like to have your advice regarding whether or not he is precluded from participating in the General Plan implementation process because he, as an ex-employee of Patterson Frozen Foods, Inc. participates in the group health insurance plan provided its employees. Mr. Halseth pays all of the premium on the policy.

Councilmember Angelo Ielmini is a stockholder in Patterson Frozed Foods. His Statement of Economic Interest lists an ownership interest in that corporation in excess of 10 percent (10%). Mr. Ielmini is also an officer of the corporation. Mr. Ielmini is concerned about whether his participation in the new General Plan process will run afoul of the Fair Political Practices Act, since Patterson Frozen Foods is the owner of the 475 acres described above.

Councilmember Tom Klein has two concerns. First, he owns property on which there exists an option to purchase. This parcel is in the existing General Plan and sphere of influence. That option to purchase will continue in existence until 1990. It is difficult to develop this parcel because of limitations in the City's sewer and surface water drainage system. If further development occurs in Patterson it is anticipated that the sewer and drainage problems may be resolved. At this point it appears that any significant improvement of City facilities will not occur until the General Plan process is completed and development will be allowed to occur in the vicinity of this parcel.

Second, Dr. Klein owns another parcel, ten acres in size, which possibly will be included in the new General Plan and sphere of influence.

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Mayor Wade Bingham operates a wholesale/retail agriculture chemical and fertilizer sales business. Mr. Bingham sells products retail to farmers who may be included in the study area. He also sells products wholesale to a co-op, Del Puerto Supply, who in turn sells these products on a retail basis to members. One of the individuals who purchases products from Del Puerto Supply owns land in the area which may be included in the study area and ultimately the General Plan and sphere of influence.

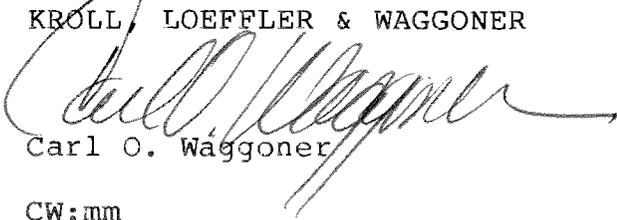
Insofar as the Mayor's business is concerned, none of the aforementioned customers constitute a significant segment of the public generally and the amount of income received is not distinguishable from the amount of income received from its other retail customers.

The four individuals which I have discussed are concerned with not only whether or not they should participate in general, but whether or not there may be some parts of the General Plan adoption process in which they can participate. Further, if three of the above-referenced individuals are precluded from voting, the City Council will lack a quorum. Should the City Council decide which member has the least conflict and have this person participate or should these individuals draw a number from a hat?

Should you have any further questions please contact me. I have been advised by the Mayor and Councilmembers that they are more than willing to travel to your office in Sacramento to meet with a representative of the Commission should clarification or other information be needed.

Very truly yours,

Law Offices of  
KROLL, LOEFFLER & WAGGONER

  
Carl O. Waggoner

CW:mm

cc: Mayor Wade Bingham  
Councilmember Leo Halseth  
Councilmember Angelo Ielmini  
Councilmember Tom Klein  
John Nachbar, City Manager  
Harold Densmore, City Attorney



# California Fair Political Practices Commission

May 12, 1989

Carl O. Waggoner  
Kroll, Loeffler & Waggoner  
P.O. Box 3489  
Modesto, CA 95353-3489

Re: Letter no. 89-284

Dear Mr. Waggoner:

Your letter requesting advice under the Political Reform Act was received on May 11, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean 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

cc: Mayor Wade Bingham  
Councilmember Leo Halseth  
Councilmember Angelo Ielmini  
Councilmember Tom Klein