



# California Fair Political Practices Commission

June 21, 1989

Honorable Joseph G. Marsano  
Watsonville City Councilmember  
P.O. Box 202  
Watsonville, CA 95076

Re: Your Request for a Confirmation  
of Telephone Advice  
Our File No. A-89-308

Dear Councilmember Marsano:

This is in response to your request for confirmation of telephone advice regarding your duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

This letter confirms that your letter dated May 16, 1989 accurately summarizes the telephone advice I provided to you on May 8, 1989. As I stated in our telephone conversation, Section 87100 prohibits any public official from participating in a governmental decision in which the official has a financial interest. Section 87103(b) defines financial interest to include any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more. Section 82033 further defines an interest in real property to include an option to acquire real property.

Black's Law Dictionary (4th Ed., 1968.) defines option as "A privilege existing in one person, for which he has paid money, which gives him the right to buy certain merchandise...from another person, if he chooses, at any time within an agreed period, at a fixed price...." Under contract law an option is legally enforceable. (Riverside Fence Co. v. Novak (1969) 273 Cal. App. 2d. 656, 663.)

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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.

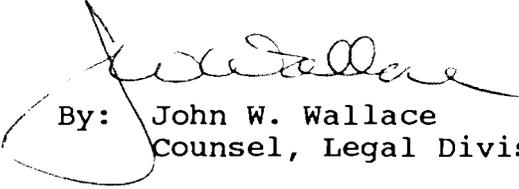
In our telephone conversation you stated you had a reservation on a home in a subdivision. The reservation was an unwritten, informal agreement by which you had the first opportunity to purchase the home. You stated that no money had changed hands and that you could withdraw the reservation without any penalty. The final map of the subdivision is now before the city council and you asked whether you could participate.

I concluded that a reservation on a home was not a legally enforceable option. A legal option to purchase real property must be in writing pursuant to the statute of frauds. (Civil Code Section 1624(c).) In addition, without some monetary consideration, the developer's promise to sell the home may be revoked. (Prather v. Vasquez (1958) 162 Cal. App. 2d 198, 204.) Thus, I advised you that you do not have a real property interest in the subdivision that is the subject of the city council decision. I further advised that you could participate in the decision on the subdivision's final map, provided there was no other direct financial effect on you, and that you local conflict of interest provisions permitted participation.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures

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May 16, 1989

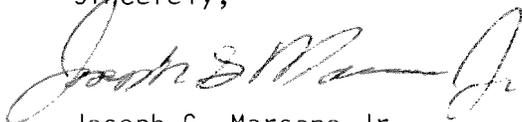
Mr. John Wallace  
Legal Division  
Fair Political Practice Commission  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Mr. Wallace:

Pursuant to our conversation of May 8, 1989, please be advised that I would like a written opinion on the conclusion of our conversation concerning my participation on voting on the final map on a subdivision in which I have a reservation on a lot during our May 9th city council meeting.

Please forward your response to the address given below. If you have any questions please feel free in phoning the undersigned.

Sincerely,



Joseph G. Marsano Jr.  
P. O. Box 202  
Watsonville Ca 95076

Phone: 408-724-7175



# California Fair Political Practices Commission

May 23, 1989

Joseph G. Marsano Jr.  
P.O. Box 202  
Watsonville, CA 95076

Re: Letter No. 89-308

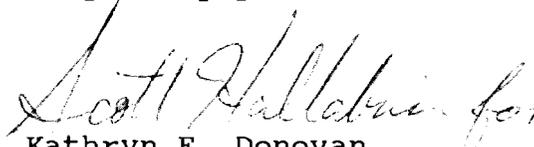
Dear Mr. Marsano:

Your letter requesting advice under the Political Reform Act was received on May 22, 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,

  
Kathryn E. Donovan  
General Counsel

KED:plh