



California Fair Political Practices Commission

July 18, 1989

Vicki J. Finucane
Acting City Attorney
City of San Luis Obispo
990 Palm Street
P. O. Box 8100
San Luis Obispo, CA 93403-8100

Re: Your Request for Advice
Our File No. A-89-369

Dear Ms. Finucane:

This is in response to your request for advice regarding the responsibilities of San Luis Obispo Planning Commissioner R. Gilbert Hoffman under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Does the location of Mr. Hoffman's residence directly across the street from a proposed development create a conflict of interest requiring disqualification?
2. Is Mr. Hoffman's interest affected in substantially the same manner as the public generally?

CONCLUSIONS

1. The location of Mr. Hoffman's residence directly across the street from a proposed development may require disqualification.
2. Mr. Hoffman's interest is not affected in substantially the same manner as the public generally.

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

You are the acting city attorney for the City of San Luis Obispo. In this capacity, Mr. Hoffman, a planning commissioner for the city, has asked you to seek advice from the Commission.

Mr. Hoffman is a member of a neighborhood group opposed to a development project commonly known in your city as the Prefumo Creek project. This project would consist of 39 single family homes and some multi-family units to be constructed directly across the street from Mr. Hoffman's residence. In order for the development to be approved, it must go through the annexation process. Mr. Hoffman has stated to you that, although he can see no financial effect on his residence by the approval or disapproval of this project, he intends to disqualify himself from participating in the annexation process. We, therefore, do not discuss this matter in our advice to you and assume that Mr. Hoffman will disqualify himself from participating in this decision.

The planning commission will soon be asked to vote on a resolution for planning work to stop on all annexation proposals until the general plan is updated. At the present time, there are at least three such proposals before staff, including the Prefumo Creek project. Mr. Hoffman seeks advice about his vote on the blanket cessation resolution which would stop work on all annexation proposals until the general plan is updated.

ANALYSIS

The Political Reform Act prohibits a public official from making or participating in making a governmental decision in which the official knows or has reason to know he has a financial interest. (Section 87100.) A planning commissioner is a public official. (Section 82048.)

An official has a financial interest in a decision that would have a foreseeable material financial effect, distinguishable from the effect on the general public, on the official or any member of his immediate family 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.

(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.

Section 87103(b) and (c).

For purposes of our discussion, we will assume that Mr. Hoffman's interest in his home exceeds \$1,000.

In determining whether Mr. Hoffman may participate in decisions to stop all annexation proposals, we must first consider whether such decision will have a foreseeable effect on Mr. Hoffman's real property.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

In your request for advice, you have stated that Mr. Hoffman believes the decision to locate a 39-unit development across from his home will have no effect upon his property. However, there is a substantial likelihood that such a development will result in an increase in traffic, population density, air pollution, noise and demand for services which will tend to affect the value of single family dwellings in the area. Whether the effect is positive or negative is of no relevance under the Act. (Scher Advice Letter, No. A-88-479, copy enclosed.) It is thus reasonably foreseeable that a vote to stop all annexation proposals in the city will have a financial effect on Mr. Hoffman's interest since it will prevent the development of property across the street from his residence.

Materiality

The next issue is whether the foreseeable effects of the decision on Mr. Hoffman's realty will be material. The effect of a decision is material as to real property in which an official has an interest if the real property is located within a 300 foot radius of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property. (Regulation 18702.3, copy enclosed.) Your letter indicates that Mr. Hoffman's property is directly across the street from property that is subject to the decision in question. Thus, unless Mr. Hoffman can show that the decision to stop all annexations in the city will have no financial effect upon his property, the reasonably foreseeable effects of the decision will be presumed to be material as to his interest in the real property.

Public Generally

We now consider whether the decision will affect the public generally in a manner that is not distinguishable from the effect on Mr. Hoffman's property. For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it will affect a significant segment of the public. (Regulation 18703; In re Legan (1985) 9 FPPC Ops. 1, copies enclosed.)

For purposes of our analysis, the "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) In the present situation, the public is the entire population of the City of San Luis Obispo. Consequently, for the public generally exception to apply to Mr. Hoffman, the vote to stop all annexations until the general plan is updated would have to affect a significant segment of the single family owner-occupied residences of the City of San Luis Obispo in substantially the same manner as it would affect Mr. Hoffman's residence. (Scher Advice Letter, supra.)

There is no strict arithmetic guideline for determining what constitutes a significant segment of the public. (Calhoun Advice Letter, No. A-88-362, copy enclosed.) The Commission has stated, however, that a group that is large in numbers and heterogeneous in quality constitutes a significant segment of the public for purposes of the "public generally" exception. (In re Ferraro (1978) 4 FPPC Ops. 62, In re Owen, supra, copies enclosed.)

In the Owen opinion, the Commission concluded that a large and diverse group with its only common bond being the relationship in the group qualifies for this limited exception and thus homeowners living near a particular area of a city constituted the public generally. In Owen, however, the Commission found that the decision to develop the "core" area of the city was likely to result in specific benefits for the entire community and thus the development would not have a peculiar impact on the value of the public official's property.

The decision to stop all annexations in the city will effectively prevent the location of a development directly across the street from Mr. Hoffman's residence. This vote will affect Mr. Hoffman in a manner which is clearly distinguishable from its effect on the remaining population of the city. Thus, the public generally exception does not apply to the facts at hand.

We conclude, then, that because Mr. Hoffman's property is situated directly across the street from the proposed development, Mr. Hoffman must abstain from participating in any decisions related to this development, including the decision to stop all annexations, unless he can demonstrate that the location of this

project across the street from his home will have no financial effect on his interest in the real property.

Should you have any questions regarding the above, do not hesitate to call me at (916) 322-5901.

Sincerely,

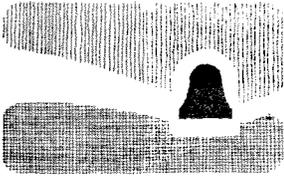
Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures



City of San Luis Obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

June 14, 1989

General Counsel, Legal Division
California Fair Political Practices Commission
428 "I" Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

JUN 15 1989
CITY OF SAN LUIS OBISPO

Re: Request for Opinion and Advice Regarding Conflict of Interest
On Behalf of Planning Commissioner R. Gilbert Hoffman

Dear Counsel:

I have been asked by Mr. Hoffman for an opinion regarding a possible conflict of interest involving his voting on a resolution which is expected to come before the City Planning Commission.

Mr. Hoffman is a member of a neighborhood group opposed to a development project which proposes to build 39 single family homes and some multi-family units on a meadow-like area near Prefumo Creek. Mr. Hoffman's personal residence is directly across the street from the proposed development. In order for the development to be approved, it must go through the annexation process. Mr. Hoffman has stated that he can see no financial effect on his residence by the approval or disapproval of this project. However, because of his personal involvement in the matter, he intends to disqualify himself from voting on this particular matter.

Recently, it has become apparent that the Planning Commission will soon be asked to vote on a resolution for Planning Staff work to stop on all annexation proposals until the General Plan is updated. At the present time, there are at least three such proposals before staff, the Prefumo Creek project being one of the three. Mr. Hoffman is concerned about his vote on the blanket cessation resolution. Specifically, the questions are:

1. While the commission cannot serve as finders of fact, given that Mr. Hoffman's residence is within 300 feet of the project's proposed boundary, is there a presumption of a financial effect (§ 18702.3, 2 Cal. Code of Regs.) when a development is to be built in such proximity?

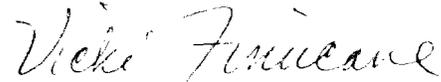
General Council, Legal Division
June 14, 1989
Page Two

2. If there is a presumed financial effect, is Mr. Hoffman's interest affected by the blanket decision in substantially the same manner as it will affect all members of the public or a significant segment of the public (§ 18703, 2 Cal. Code of Regs.)?

As usual, a quick reply is requested. If you need more information, please contact me or my law clerk (Mr. Bob Illman) by telephone at (805) 549-7140.

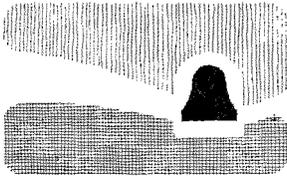
Thank you in advance for your assistance.

Very truly yours,



Vicki J. Finucane
Acting City Attorney

VJF/sw



City of San Luis Obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

June 14, 1989

General Counsel, Legal Division
 California Fair Political Practices Commission
 428 "I" Street, Suite 800
 P.O. Box 807
 Sacramento, CA 95804-0807

JUN 15 9:10 AM '89
 T. J. C.

Re: Request for Opinion and Advice Regarding Conflict of Interest
 On Behalf of Planning Commissioner R. Gilbert Hoffman

Dear Counsel:

I have been asked by Mr. Hoffman for an opinion regarding a possible conflict of interest involving his voting on a resolution which is expected to come before the City Planning Commission.

Mr. Hoffman is a member of a neighborhood group opposed to a development project which proposes to build 39 single family homes and some multi-family units on a meadow-like area near Prefumo Creek. Mr. Hoffman's personal residence is directly across the street from the proposed development. In order for the development to be approved, it must go through the annexation process. Mr. Hoffman has stated that he can see no financial effect on his residence by the approval or disapproval of this project. However, because of his personal involvement in the matter, he intends to disqualify himself from voting on this particular matter.

Recently, it has become apparent that the Planning Commission will soon be asked to vote on a resolution for Planning Staff work to stop on all annexation proposals until the General Plan is updated. At the present time, there are at least three such proposals before staff, the Prefumo Creek project being one of the three. Mr. Hoffman is concerned about his vote on the blanket cessation resolution. Specifically, the questions are:

1. While the commission cannot serve as finders of fact, given that Mr. Hoffman's residence is within 300 feet of the project's proposed boundary, is there a presumption of a financial effect (§ 18702.3, 2 Cal. Code of Regs.) when a development is to be built in such proximity?

General Council, Legal Division
June 14, 1989
Page Two

2. If there is a presumed financial effect, is Mr. Hoffman's interest affected by the blanket decision in substantially the same manner as it will affect all members of the public or a significant segment of the public (§ 18703, 2 Cal. Code of Regs.)?

As usual, a quick reply is requested. If you need more information, please contact me or my law clerk (Mr. Bob Filman) by telephone at (805) 549-7140.

Thank you in advance for your assistance.

Very truly yours,



Vicki J. Finucane
Acting City Attorney

VJF/sw



California
Fair Political
Practices Commission

June 22, 1989

Vicki J. Finucane
Acting City Attorney
P.O. Box 8100
San Luis Obispo, CA 93403-8100

Re: Letter No. 89-369

Dear Ms. Finucane:

Your letter requesting advice under the Political Reform Act was received on June 19, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze 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