



# California Fair Political Practices Commission

August 29, 1989

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Re: Your Request for Advice  
Our File No. A-89-409

Dear Ms. Glickfeld:

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

## QUESTIONS

1. Are you required to disqualify yourself from participating in the California Coastal Commission's decision on sewer assessment districts? If yes, are you required to disqualify yourself from participating in the related subsequent decisions which will come before the Coastal Commission regarding approval of the exact location for the sewer plant and issues relating to the disposal of treated water at the plant?

2. Under what circumstances are you required to disqualify yourself because of your husband's partnership interest in a law firm?

## FACTS

You are a member of the Coastal Commission. In September, the Coastal Commission will be voting to affirm, deny, or conditionally affirm the establishment by the County of Los Angeles (the "county") of a service area for a new sewer system and the establishment by the county of two assessment districts to finance the sewer system. This sewer system is in a portion of the area proposed for the new City of Malibu (the "city"). The service area covers approximately 20% of the area proposed for the city. Your primary residence, which is a single family home is located within one of the two assessment districts. You have been

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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.

informed that each single family home in the assessment district which includes your residence will be assessed \$9,902.00 plus interest over 30 years. The Coastal Commission will take a single vote on the two assessment districts.

Your spouse is a partner in a law firm. He has an 8% partnership interest in the law firm. The law firm does not represent clients before the Coastal Commission.

#### ANALYSIS

##### 1. Sewer Assessment District

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 her immediate family,<sup>2</sup> 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)-(c).

You are a public official. (Section 82048.) Accordingly, you are prohibited from participating in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on you, i.e. on your "pocketbook," or on your real property interest -- your residence. (Section 87103(b).)

#### 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.

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<sup>2</sup> An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

Downey Development 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).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

You have been informed that the assessment against your property would be \$9,902.00 plus interest over 30 years, contingent upon the approval of the assessment districts by the Coastal Commission. Accordingly, it is reasonably foreseeable that the decision will have an economic effect on your pocketbook and your real property.

#### Materiality

Regulation 18702 (copy enclosed) sets forth the guidelines for determining whether the effect of a decision upon an official's economic interests is "material." In the present situation, the decision involves the assessment of fees on your property. In such circumstances, the effect of the decision is deemed material pursuant to 18702.1(a)(3)(c) (copy enclosed).

#### Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87103.) The financial effect of such a decision is distinguishable from the effect on the public generally unless the decision will affect your property in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703, copy enclosed.)

The "public" for the Coastal Commission is the coastal zone. Therefore, the financial effect of a decision is distinguishable from the effect on the public generally unless the decision will affect your property in substantially the same manner as it will affect all residents of the coastal zone or a significant segment of the residents of the coastal zone. (Regulation 18703.)

The single family homes in the assessment district are few in number and do not constitute a significant segment of the residents of the coastal zone. (See, e.g., In re Owen (1976) 2 FPPC Ops. 77; In re Legan (1985) 9 FPPC Ops. 1; copies enclosed). Therefore, the effect of the decision on your residence is distinguishable from the effect on the public generally. Accordingly, you are prohibited from participating in the decision regarding approval of the assessment district which includes your residence.

You have also inquired whether you may participate in related subsequent decisions which will come before the Coastal

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Commission such as approval of the exact location of the sewer plant and issues relating to the disposal of the treated water at the plant. You may participate in such decisions unless the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on one of the interests listed in Section 87103.<sup>3</sup>

Regulation 18702.3 (copy enclosed) provides guidance in determining whether decisions regarding the placement of the treatment plant will materially affect your real property. For example, if the proposed site of the sewage treatment plant is located between 300 feet and 2500 feet of your home, you must determine whether the effect of the decision is material pursuant to Regulation 18702.3(a)(3). If the effect of the decision is material, you must disqualify yourself from participating in the decision. Accordingly, you must determine on a case-by-case basis whether you must disqualify yourself from any particular decision related to the assessment district.

2. Conflicts of interest generated by your spouse's partnership interest in a law firm.

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 within the meaning of Section 87100 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 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.

\* \* \*

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on

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<sup>3</sup> This presumes that the decision before the Coastal Commission does not indirectly impact the decision regarding approval of the assessment district, since we have concluded above that you may not participate in such a decision. For example, a public official who is disqualified from participating in a decision to approve a project may not thereafter vote against all plans to implement the project, thus in effect indirectly voting to disapprove the project.

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.

\* \* \*

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official....

Section 87103(a) and (c).

As stated in Section 87103, indirect investment or interest means any investment or interest owned by the spouse. (See also Section 82034.) Therefore, you have an investment in a business entity, your spouse's law firm, presumably worth more than \$1,000 within the meaning of Section 87103(a). In addition, the law firm is a source of income to you, presumably of more than \$250 (your community property interest, i.e. 50% of your spouse's income) within the meaning of Section 87103(c). Accordingly, you may not make, participate in, or use your position to influence a governmental decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the law firm. However, since your husband owns less than 10% of the law firm, you do not at present have an obligation to disqualify from a decision merely because it will materially affect a client of the firm. (Section 82030.)<sup>4</sup>

#### Materiality

As noted above, Regulation 18702 sets forth the guidelines for determining whether an official's financial interest in a decision is "material" within the meaning of Section 87103. If your spouse's law firm is the applicant or is the subject of a decision, Regulation 18702.1 applies to determine materiality.

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<sup>4</sup> If your spouse acquires a 10% or greater interest in the law firm, clients of the law firm which are sources of income to the law firm of more than \$500 become sources of income to you of more than \$250 within the meaning of Section 87103(c). You would then be required to determine as to each such client whether you have a conflict of interest.

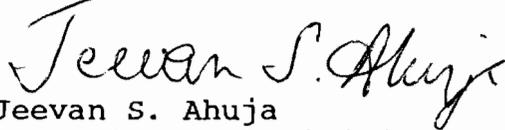
You have alluded to the problem of determining potential conflicts of interest in view of the lack of access to the names of the clients of your spouse's law firm. You might choose to adopt the method discussed in our Christiansen Advice Letter, No. I-87-019 (copy enclosed) to obtain the information necessary to enable you to determine whether you have a conflict of interest.

If your spouse's law firm is indirectly affected by the decision, Regulation 18702.2 (copy enclosed) would apply to determine whether the effect of the decision is material.

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

Sincerely,

Kathryn E. Donovan  
General Counsel

  
Jeevan S. Ahuja  
Counsel, Legal Division

KED/JSA/aa

Enclosures



# California Fair Political Practices Commission

July 12, 1989

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Re: Letter No. 89-409

Dear Ms. Glickfeld:

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

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

FPPC  
Jul 11 8 15 AM '89

(213) 456-2217

July 7, 1989

Kathryn Donovan, Esq.  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan:

This letter is sent pursuant to Government Code Section 83114(b), to request opinions on two different situations which may present conflicts of interest questions for me as a member of the California Coastal Commission. I understand that under Government Code Section 83114(b), your advice will be rendered within twenty-one (21) working days. The first question relates to an issue that is scheduled to be heard in September by the Coastal Commission. Therefore, I would appreciate a prompt response on that question. If the second question requires more time to answer, please go ahead and respond to the first question without waiting to respond to the second.

The first question relates to the creation of assessment districts for a new sewer system in Malibu. In September, the Coastal Commission will be voting to affirm, deny or conditionally affirm the establishment by the County of Los Angeles ("the County") of a service area ("Service Area") for a new sewer system in a portion of the area proposed for the new City of Malibu, and the establishment by the County of two assessment districts to finance the sewer system. The Service Area, as established by the County, covers approximately twenty (20%) percent of the entire 12,800 acre area proposed for the new City. My primary residence, which is a single family home, is located within the service area and is within one of the two assessment districts. The Commission will make a single vote on the two assessment districts. The following chart shows my residence in relation to the two assessment districts.

Kathryn Donovan, Esq.  
 July 7, 1989  
 Page 2

	Total Parcels	Total Acres	Total \$Value Assessed
Community Improvement District 2640R*	2009	1923	\$43 million
Zoning of Land Included			
Residential	1794	1044	
Commercial	123	{	
Institutional	55	{	
Park	0	{879	
Mixed Use	31	{	
Unknown	6	{	
Integrated Financing District #1**	427	530	-0-
Residential	359	383	
Commercial	15	{	
Institutional	8	{	
Park	13	{147	
Mixed	4	{	
Unknown	28	{	
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TOTAL, Both Districts	2436	2453	\$43 million
Glickfeld Parcel	1	.5	\$9902
	.04%	.02%	.02%

\*My parcel is included in this assessment district.

\*\*My parcel is not included in this assessment district.

As the chart indicates, as presently established by the County, my personal assessment would be \$9,902.00 plus interest over 30 years. The Commission could affirm the assessment districts, completely deny them, or enlarge or reduce the area covered by the assessment districts. My parcel is well within the boundaries of the district and, therefore, unlikely to be deleted from the district by any reduction.

Should I disqualify myself from participating in the Coastal Commission's decision on the sewer assessment districts? In addition, whether or not I disqualify myself from participating in that decision, is there a need for me to disqualify myself from participating in the related subsequent decisions which will come before the Commission regarding approval of the exact location for the sewer plant and issues relating to the disposal of treated water at the plant?

Kathryn Donovan, Esq.  
July 7, 1989  
Page 3

The second question is unrelated to the first and involves the relationship between Coastal Commission decisions and clients of the law firm in which my husband is a partner. My husband's partnership interest in the law firm is eight percent (8%). The law firm does not represent clients before the Commission. Although I am not aware of any similar situation presently pending, one of the firm's prior clients did, in the middle of a controversial hearing, request that I disqualify myself without any prior notice. I had been informed that that person was no longer a client of the firm and, therefore, I did not formally disqualify myself, but I did excuse myself from the hearing and did not vote on the issue. I would like to know under what circumstances in the future I should disqualify myself from participating in a Coastal Commission decision where a person who is currently, or was previously represented by my husband's law firm on a separate matter is presently appearing before the Commission? If there are circumstances under which I should disqualify myself, how should I make that determination in view of the fact that, because I am not in any way involved in the law firm's practice and because of attorney-client privilege, I am not privy to a list of the clients of the law firm, nor to their billings?

I asked this question of the Attorney General's Office, and that office rendered the attached informal response. They advised me to seek a binding opinion from your office.

If you need any further information from me or any clarification of my questions, please call me. I will be out of the country from July 15 through August 7, 1989. Therefore, if you need to reach me during that time, please contact my attorney, Josephine Powe. She can be reached at Hedges, Powe & Caldwell, 606 So. Olive Street, Suite 1410, Los Angeles, California 90014, (213) 629-9040.

Sincerely,



Madelyn J. Glickfeld

:rl  
190-01\JEP.204

FPPC

Jul 13 9 01 AM '89

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

(213) 456-2217

July 10, 1989

Kathryn Donovan, Esq.  
General Counsel  
Fair Political Practices Commission  
428 J. Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan,

My letter of July 7 requesting an opinion from the FPPC referred to a "attached informal response" from the Attorney General's Office. I neglected to include that response with my request and am now forwarding it. I hope this did not cause any inconvenience.

Sincerely



Madelyn J. Glickfeld

enc.



June 7, 1989

(619) 237-7590

Madelyn Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Dear Madelyn:

You have asked for our advice on the following question: Since your husband is a partner in a law firm, under what circumstances are you disqualified from participating in a Coastal Commission decision where your spouse's law firm previously represented a person presently appearing before the Commission? In answering this question, we presume that although the individual appearing before the Commission was represented by the firm, your husband was not personally acting as counsel. In addition, we assume that the firm provided representation to this individual on another matter than that on which the Coastal Commission will render a decision.

There are three potential financial interests which could disqualify you: 1) if the decision will have a material financial effect on any business entity in which you have an indirect or direct investment of one thousand dollars or more (Gov. Code section 87103(a)); 2) if the prior client of your spouse's firm is deemed to be a source of income to you of two hundred fifty dollars or more paid or promised within twelve months prior to the Commission's decision (Gov. Code section 87103(c)); or 3) if the decision will have a material financial effect on a business entity in which you are a partner, manager or office. (Gov. Code section 87103(d)).

First, if a decision of the Coastal Commission will have a material financial effect on any business entity in which you have an investment of one thousand dollars or more, you are disqualified from participating (Gov. Code section 87103(a)). "Business entities" are defined by statute to include firms and partnerships (Gov. Code section 82005). "Investment" is defined by statute to include partnership interests owned by your spouse (Gov. Code section 82029). In other words, your spouse's investments are assumed to be your investments for purposes of disqualification under the statute. You must disqualify yourself if a decision the Coastal Commission makes will have a material financial effect on the law firm if your husband's interest is worth over one thousand dollars. Whether there is a material

Madelyn Glickfeld  
June 7, 1989  
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financial effect is determined pursuant to a complicated regulation which sets forth the amount by which the gross revenues of the business entity (i.e., law firm) must increase or decrease in order to be considered material (2 Cal. Code of Regs., § 18702.2). (This complexity makes it very difficult to compute on the spur of the moment at a Commission hearing. A copy of the regulation is enclosed for your review.) The material financial effect (increase or decrease in gross revenues) must be "reasonably foreseeable" (Gov. Code section 87103).

Second, a prior client of your spouse's firm can be a source of income to you. A preliminary inquiry must be made to determine whether your spouse's interest in the firm is greater than 10%. If so, then your community property share (defined as "income": Gov. Code section 82030) of the percentage your spouse owns in the business entity will be calculated and traced as a source of income from a particular client. All the fees paid to the firm by its clients will be scrutinized; this is referred to as a "pass through." Where a "pass through" is employed (10% or greater interest), the Fair Political Practices Commission (FPPC) will use this calculation to determine whether the income from a client is over the threshold two hundred fifty dollars:  $(\% \text{ interest in firm} \times \text{fees paid by client}) \times 1/2$ . The calculation of income will be made on the basis of gross fees paid by the client; operating expenses will not be deducted. You will only be disqualified (after computation using the above formula) if your community property share of the income from fees paid or promised by the client in the year preceding the Commission's decision is over two hundred fifty dollars (Gov. Code section 87103).

The FPPC maintains that income from a law firm will not be traced as income from a client if the partnership interest involved is less than 10%. If that is the case, the FPPC will not subject the income earned from the firm to a "pass through" and any money received from the firm is considered salary. In other words, a client of the firm will be considered a source of income to you only if your spouse has a 10% (or greater) interest in the firm. If the interest in the firm is less than 10%, income received from the firm is not treated as being received from any particular client, and the client will not be considered a source of income to you.

Third, you are required to disqualify yourself if a decision will have a material financial effect on any business entity in which you are a partner, officer or manager (Gov. Code section 87103(d)). The statute does not contemplate disqualification where it is your spouse who holds the position. The FPPC maintains, in other words, that you do not have to disqualify yourself if it is your spouse who is a manager, partner or

Madelyn Glickfeld  
June 7, 1989  
Page 3

officer in a business entity on which your decision will have a material financial effect. While I think the statute is clear in this regard, you may wish to confirm it by seeking a binding opinion from the FPPC.

When any of these issues arise, obtaining an FPPC opinion is the only way you can be fully assured that your participation in a decision will not be questioned. The FPPC takes cases under advisement and writes binding decisions after 21 working days. The advice in this letter will, I hope, enable you to deal with some of the questions when there is not sufficient time to consult the FPPC or seek its opinion.

Please let me know if you need any further information.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

  
ANTHONY M. SUMMERS  
Deputy Attorney General

AMS:ak

Enclosure

cc: N. Gregory Taylor  
Steven H. Kaufmann  
Ralph Faust

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

(213) 456-2217

July 7, 1989

Kathryn Donovan, Esq.  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

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July 7, 1989

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Madelyn J. Glickfeld

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FPPC

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Madelyn J. Glickfeld  
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July 10, 1989

Kathryn Donovan, Esq.  
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Fair Political Practices Commission  
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Sincerely



Madelyn J. Glickfeld

enc.

JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



110 WEST A STREET, SUITE 700  
SAN DIEGO 92101  
(619) 237-7351

June 7, 1989

(619) 237-7590

Madelyn Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Dear Madelyn:

You have asked for our advice on the following question: Since your husband is a partner in a law firm, under what circumstances are you disqualified from participating in a Coastal Commission decision where your spouse's law firm previously represented a person presently appearing before the Commission? In answering this question, we presume that although the individual appearing before the Commission was represented by the firm, your husband was not personally acting as counsel. In addition, we assume that the firm provided representation to this individual on another matter than that on which the Coastal Commission will render a decision.

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First, if a decision of the Coastal Commission will have a material financial effect on any business entity in which you have an investment of one thousand dollars or more, you are disqualified from participating (Gov. Code section 87103(a)). "Business entities" are defined by statute to include firms and partnerships (Gov. Code section 82005). "Investment" is defined by statute to include partnership interests owned by your spouse (Gov. Code section 82029). In other words, your spouse's investments are assumed to be your investments for purposes of disqualification under the statute. You must disqualify yourself if a decision the Coastal Commission makes will have a material financial effect on the law firm if your husband's interest is worth over one thousand dollars. Whether there is a material

Madelyn Glickfeld  
June 7, 1989  
page 2

financial effect is determined pursuant to a complicated regulation which sets forth the amount by which the gross revenues of the business entity (i.e., law firm) must increase or decrease in order to be considered material (2 Cal. Code of Regs., § 18702.2). (This complexity makes it very difficult to compute on the spur of the moment at a Commission hearing. A copy of the regulation is enclosed for your review.) The material financial effect (increase or decrease in gross revenues) must be "reasonably foreseeable" (Gov. Code section 87103).

Second, a prior client of your spouse's firm can be a source of income to you. A preliminary inquiry must be made to determine whether your spouse's interest in the firm is greater than 10%. If so, then your community property share (defined as "income": Gov. Code section 82030) of the percentage your spouse owns in the business entity will be calculated and traced as a source of income from a particular client. All the fees paid to the firm by its clients will be scrutinized; this is referred to as a "pass through." Where a "pass through" is employed (10% or greater interest), the Fair Political Practices Commission (FPPC) will use this calculation to determine whether the income from a client is over the threshold two hundred fifty dollars:  $(\% \text{ interest in firm} \times \text{fees paid by client}) \times 1/2$ . The calculation of income will be made on the basis of gross fees paid by the client; operating expenses will not be deducted. You will only be disqualified (after computation using the above formula) if your community property share of the income from fees paid or promised by the client in the year preceding the Commission's decision is over two hundred fifty dollars (Gov. Code section 87103).

The FPPC maintains that income from a law firm will not be traced as income from a client if the partnership interest involved is less than 10%. If that is the case, the FPPC will not subject the income earned from the firm to a "pass through" and any money received from the firm is considered salary. In other words, a client of the firm will be considered a source of income to you only if your spouse has a 10% (or greater) interest in the firm. If the interest in the firm is less than 10%, income received from the firm is not treated as being received from any particular client, and the client will not be considered a source of income to you.

Third, you are required to disqualify yourself if a decision will have a material financial effect on any business entity in which you are a partner, officer or manager (Gov. Code section 87103(d)). The statute does not contemplate disqualification where it is your spouse who holds the position. The FPPC maintains, in other words, that you do not have to disqualify yourself if it is your spouse who is a manager, partner or

Madelyn Glickfeld  
June 7, 1989  
Page 3

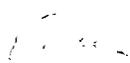
officer in a business entity on which your decision will have a material financial effect. While I think the statute is clear in this regard, you may wish to confirm it by seeking a binding opinion from the FPPC.

When any of these issues arise, obtaining an FPPC opinion is the only way you can be fully assured that your participation in a decision will not be questioned. The FPPC takes cases under advisement and writes binding decisions after 21 working days. The advice in this letter will, I hope, enable you to deal with some of the questions when there is not sufficient time to consult the FPPC or seek its opinion.

Please let me know if you need any further information.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

  
ANTHONY M. SUMMERS  
Deputy Attorney General

AMS:ak

Enclosure

cc: N. Gregory Taylor  
Steven H. Kaufmann  
Ralph Faust



# California Fair Political Practices Commission

August 29, 1989

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Re: Your Request for Advice  
Our File No. A-89-409

Dear Ms. Glickfeld:

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

## QUESTIONS

1. Are you required to disqualify yourself from participating in the California Coastal Commission's decision on sewer assessment districts? If yes, are you required to disqualify yourself from participating in the related subsequent decisions which will come before the Coastal Commission regarding approval of the exact location for the sewer plant and issues relating to the disposal of treated water at the plant?

2. Under what circumstances are you required to disqualify yourself because of your husband's partnership interest in a law firm?

## FACTS

You are a member of the Coastal Commission. In September, the Coastal Commission will be voting to affirm, deny, or conditionally affirm the establishment by the County of Los Angeles (the "county") of a service area for a new sewer system and the establishment by the county of two assessment districts to finance the sewer system. This sewer system is in a portion of the area proposed for the new City of Malibu (the "city"). The service area covers approximately 20% of the area proposed for the city. Your primary residence, which is a single family home is located within one of the two assessment districts. You have been

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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.

informed that each single family home in the assessment district which includes your residence will be assessed \$9,902.00 plus interest over 30 years. The Coastal Commission will take a single vote on the two assessment districts.

Your spouse is a partner in a law firm. He has an 8% partnership interest in the law firm. The law firm does not represent clients before the Coastal Commission.

#### ANALYSIS

##### 1. Sewer Assessment District

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 her immediate family,<sup>2</sup> 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)-(c).

You are a public official. (Section 82048.) Accordingly, you are prohibited from participating in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on you, i.e. on your "pocketbook," or on your real property interest -- your residence. (Section 87103(b).)

#### 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.

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<sup>2</sup> An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

Downey Development 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.) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

You have been informed that the assessment against your property would be \$9,902.00 plus interest over 30 years, contingent upon the approval of the assessment districts by the Coastal Commission. Accordingly, it is reasonably foreseeable that the decision will have an economic effect on your pocketbook and your real property.

#### Materiality

Regulation 18702 (copy enclosed) sets forth the guidelines for determining whether the effect of a decision upon an official's economic interests is "material." In the present situation, the decision involves the assessment of fees on your property. In such circumstances, the effect of the decision is deemed material pursuant to 18702.1(a)(3)(c) (copy enclosed).

#### Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87103.) The financial effect of such a decision is distinguishable from the effect on the public generally unless the decision will affect your property in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703, copy enclosed.)

The "public" for the Coastal Commission is the coastal zone. Therefore, the financial effect of a decision is distinguishable from the effect on the public generally unless the decision will affect your property in substantially the same manner as it will affect all residents of the coastal zone or a significant segment of the residents of the coastal zone. (Regulation 18703.)

The single family homes in the assessment district are few in number and do not constitute a significant segment of the residents of the coastal zone. (See, e.g., In re Owen (1976) 2 FPPC Ops. 77; In re Legan (1985) 9 FPPC Ops. 1; copies enclosed). Therefore, the effect of the decision on your residence is distinguishable from the effect on the public generally. Accordingly, you are prohibited from participating in the decision regarding approval of the assessment district which includes your residence.

You have also inquired whether you may participate in related subsequent decisions which will come before the Coastal

Commission such as approval of the exact location of the sewer plant and issues relating to the disposal of the treated water at the plant. You may participate in such decisions unless the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on one of the interests listed in Section 87103.<sup>3</sup>

Regulation 18702.3 (copy enclosed) provides guidance in determining whether decisions regarding the placement of the treatment plant will materially affect your real property. For example, if the proposed site of the sewage treatment plant is located between 300 feet and 2500 feet of your home, you must determine whether the effect of the decision is material pursuant to Regulation 18702.3(a)(3). If the effect of the decision is material, you must disqualify yourself from participating in the decision. Accordingly, you must determine on a case-by-case basis whether you must disqualify yourself from any particular decision related to the assessment district.

2. Conflicts of interest generated by your spouse's partnership interest in a law firm.

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 within the meaning of Section 87100 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 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.

\* \* \*

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on

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<sup>3</sup> This presumes that the decision before the Coastal Commission does not indirectly impact the decision regarding approval of the assessment district, since we have concluded above that you may not participate in such a decision. For example, a public official who is disqualified from participating in a decision to approve a project may not thereafter vote against all plans to implement the project, thus in effect indirectly voting to disapprove the project.

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.

\* \* \*

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official....

Section 87103(a) and (c).

As stated in Section 87103, indirect investment or interest means any investment or interest owned by the spouse. (See also Section 82034.) Therefore, you have an investment in a business entity, your spouse's law firm, presumably worth more than \$1,000 within the meaning of Section 87103(a). In addition, the law firm is a source of income to you, presumably of more than \$250 (your community property interest, i.e. 50% of your spouse's income) within the meaning of Section 87103(c). Accordingly, you may not make, participate in, or use your position to influence a governmental decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the law firm. However, since your husband owns less than 10% of the law firm, you do not at present have an obligation to disqualify from a decision merely because it will materially affect a client of the firm. (Section 82030.)<sup>4</sup>

#### Materiality

As noted above, Regulation 18702 sets forth the guidelines for determining whether an official's financial interest in a decision is "material" within the meaning of Section 87103. If your spouse's law firm is the applicant or is the subject of a decision, Regulation 18702.1 applies to determine materiality.

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<sup>4</sup> If your spouse acquires a 10% or greater interest in the law firm, clients of the law firm which are sources of income to the law firm of more than \$500 become sources of income to you of more than \$250 within the meaning of Section 87103(c). You would then be required to determine as to each such client whether you have a conflict of interest.

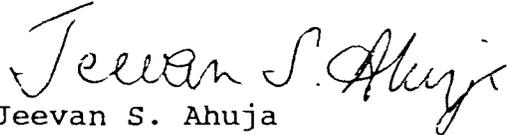
You have alluded to the problem of determining potential conflicts of interest in view of the lack of access to the names of the clients of your spouse's law firm. You might choose to adopt the method discussed in our Christiansen Advice Letter, No. I-87-019 (copy enclosed) to obtain the information necessary to enable you to determine whether you have a conflict of interest.

If your spouse's law firm is indirectly affected by the decision, Regulation 18702.2 (copy enclosed) would apply to determine whether the effect of the decision is material.

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

Sincerely,

Kathryn E. Donovan  
General Counsel

  
Jeevan S. Ahuja  
Counsel, Legal Division

KED/JSA/aa

Enclosures

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

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(213) 456-2217

July 7, 1989

Kathryn Donovan, Esq.  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan:

This letter is sent pursuant to Government Code Section 83114(b), to request opinions on two different situations which may present conflicts of interest questions for me as a member of the California Coastal Commission. I understand that under Government Code Section 83114(b), your advice will be rendered within twenty-one (21) working days. The first question relates to an issue that is scheduled to be heard in September by the Coastal Commission. Therefore, I would appreciate a prompt response on that question. If the second question requires more time to answer, please go ahead and respond to the first question without waiting to respond to the second.

The first question relates to the creation of assessment districts for a new sewer system in Malibu. In September, the Coastal Commission will be voting to affirm, deny or conditionally affirm the establishment by the County of Los Angeles ("the County") of a service area ("Service Area") for a new sewer system in a portion of the area proposed for the new City of Malibu, and the establishment by the County of two assessment districts to finance the sewer system. The Service Area, as established by the County, covers approximately twenty (20%) percent of the entire 12,800 acre area proposed for the new City. My primary residence, which is a single family home, is located within the service area and is within one of the two assessment districts. The Commission will make a single vote on the two assessment districts. The following chart shows my residence in relation to the two assessment districts.

Kathryn Donovan, Esq.  
 July 7, 1989  
 Page 2

	Total Parcels	Total Acres	Total \$Value Assessed
Community Improvement District 2640R*	2009	1923	\$43 million
Zoning of Land Included			
Residential	1794	1044	
Commercial	123	{	
Institutional	55	{	
Park	0	{879	
Mixed Use	31	{	
Unknown	6	{	
Integrated Financing District #1**	427	530	-0-
Residential	359	383	
Commercial	15	{	
Institutional	8	{	
Park	13	{147	
Mixed	4	{	
Unknown	28	{	
-----			
TOTAL, Both Districts	2436	2453	\$43 million
Glickfeld Parcel	1	.5	\$9902
	.04%	.02%	.02%

\*My parcel is included in this assessment district.  
 \*\*My parcel is not included in this assessment district.

As the chart indicates, as presently established by the County, my personal assessment would be \$9,902.00 plus interest over 30 years. The Commission could affirm the assessment districts, completely deny them, or enlarge or reduce the area covered by the assessment districts. My parcel is well within the boundaries of the district and, therefore, unlikely to be deleted from the district by any reduction.

Should I disqualify myself from participating in the Coastal Commission's decision on the sewer assessment districts? In addition, whether or not I disqualify myself from participating in that decision, is there a need for me to disqualify myself from participating in the related subsequent decisions which will come before the Commission regarding approval of the exact location for the sewer plant and issues relating to the disposal of treated water at the plant?

Kathryn Donovan, Esq.  
July 7, 1989  
Page 3

The second question is unrelated to the first and involves the relationship between Coastal Commission decisions and clients of the law firm in which my husband is a partner. My husband's partnership interest in the law firm is eight percent (8%). The law firm does not represent clients before the Commission. Although I am not aware of any similar situation presently pending, one of the firm's prior clients did, in the middle of a controversial hearing, request that I disqualify myself without any prior notice. I had been informed that that person was no longer a client of the firm and, therefore, I did not formally disqualify myself, but I did excuse myself from the hearing and did not vote on the issue. I would like to know under what circumstances in the future I should disqualify myself from participating in a Coastal Commission decision where a person who is currently, or was previously represented by my husband's law firm on a separate matter is presently appearing before the Commission? If there are circumstances under which I should disqualify myself, how should I make that determination in view of the fact that, because I am not in any way involved in the law firm's practice and because of attorney-client privilege, I am not privy to a list of the clients of the law firm, nor to their billings?

I asked this question of the Attorney General's Office, and that office rendered the attached informal response. They advised me to seek a binding opinion from your office.

If you need any further information from me or any clarification of my questions, please call me. I will be out of the country from July 15 through August 7, 1989. Therefore, if you need to reach me during that time, please contact my attorney, Josephine Powe. She can be reached at Hedges, Powe & Caldwell, 606 So. Olive Street, Suite 1410, Los Angeles, California 90014, (213) 629-9040.

Sincerely,



Madelyn J. Glickfeld

:rl  
190-01\JEP.204



# California Fair Political Practices Commission

July 12, 1989

Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Re: Letter No. 89-409

Dear Ms. Glickfeld:

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

FPPC

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Madelyn J. Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

(213) 456-2217

July 10, 1989

Kathryn Donovan, Esq.  
General Counsel  
Fair Political Practices Commission  
428 J. Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan,

My letter of July 7 requesting an opinion from the FPPC referred to a "attached informal response" from the Attorney General's Office. I neglected to include that response with my request and am now forwarding it. I hope this did not cause any inconvenience.

Sincerely

  
Madelyn J. Glickfeld

enc.

JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



110 WEST A STREET, SUITE 700  
SAN DIEGO 92101  
(619) 237-7351

June 7, 1989

(619) 237-7590

Madelyn Glickfeld  
21132 Las Flores Mesa Drive  
Malibu, CA 90265

Dear Madelyn:

You have asked for our advice on the following question: Since your husband is a partner in a law firm, under what circumstances are you disqualified from participating in a Coastal Commission decision where your spouse's law firm previously represented a person presently appearing before the Commission? In answering this question, we presume that although the individual appearing before the Commission was represented by the firm, your husband was not personally acting as counsel. In addition, we assume that the firm provided representation to this individual on another matter than that on which the Coastal Commission will render a decision.

There are three potential financial interests which could disqualify you: 1) if the decision will have a material financial effect on any business entity in which you have an indirect or direct investment of one thousand dollars or more (Gov. Code section 87103(a); 2) if the prior client of your spouse's firm is deemed to be a source of income to you of two hundred fifty dollars or more paid or promised within twelve months prior to the Commission's decision (Gov. Code section 87103(c)); or 3) if the decision will have a material financial effect on a business entity in which you are a partner, manager or office. (Gov. Code section 87103(d)).

First, if a decision of the Coastal Commission will have a material financial effect on any business entity in which you have an investment of one thousand dollars or more, you are disqualified from participating (Gov. Code section 87103(a)). "Business entities" are defined by statute to include firms and partnerships (Gov. Code section 82005). "Investment" is defined by statute to include partnership interests owned by your spouse (Gov. Code section 82029). In other words, your spouse's investments are assumed to be your investments for purposes of disqualification under the statute. You must disqualify yourself if a decision the Coastal Commission makes will have a material financial effect on the law firm if your husband's interest is worth over one thousand dollars. Whether there is a material

financial effect is determined pursuant to a complicated regulation which sets forth the amount by which the gross revenues of the business entity (i.e., law firm) must increase or decrease in order to be considered material (2 Cal. Code of Regs., § 18702.2). (This complexity makes it very difficult to compute on the spur of the moment at a Commission hearing. A copy of the regulation is enclosed for your review.) The material financial effect (increase or decrease in gross revenues) must be "reasonably foreseeable" (Gov. Code section 87103).

Second, a prior client of your spouse's firm can be a source of income to you. A preliminary inquiry must be made to determine whether your spouse's interest in the firm is greater than 10%. If so, then your community property share (defined as "income": Gov. Code section 82030) of the percentage your spouse owns in the business entity will be calculated and traced as a source of income from a particular client. All the fees paid to the firm by its clients will be scrutinized; this is referred to as a "pass through." Where a "pass through" is employed (10% or greater interest), the Fair Political Practices Commission (FPPC) will use this calculation to determine whether the income from a client is over the threshold two hundred fifty dollars:  $(\% \text{ interest in firm} \times \text{fees paid by client}) \times 1/2$ . The calculation of income will be made on the basis of gross fees paid by the client; operating expenses will not be deducted. You will only be disqualified (after computation using the above formula) if your community property share of the income from fees paid or promised by the client in the year preceding the Commission's decision is over two hundred fifty dollars (Gov. Code section 87103).

The FPPC maintains that income from a law firm will not be traced as income from a client if the partnership interest involved is less than 10%. If that is the case, the FPPC will not subject the income earned from the firm to a "pass through" and any money received from the firm is considered salary. In other words, a client of the firm will be considered a source of income to you only if your spouse has a 10% (or greater) interest in the firm. If the interest in the firm is less than 10%, income received from the firm is not treated as being received from any particular client, and the client will not be considered a source of income to you.

Third, you are required to disqualify yourself if a decision will have a material financial effect on any business entity in which you are a partner, officer or manager (Gov. Code section 87103(d)). The statute does not contemplate disqualification where it is your spouse who holds the position. The FPPC maintains, in other words, that you do not have to disqualify yourself if it is your spouse who is a manager, partner or

Madelyn Glickfeld  
June 7, 1989  
Page 3

officer in a business entity on which your decision will have a material financial effect. While I think the statute is clear in this regard, you may wish to confirm it by seeking a binding opinion from the FPPC.

When any of these issues arise, obtaining an FPPC opinion is the only way you can be fully assured that your participation in a decision will not be questioned. The FPPC takes cases under advisement and writes binding decisions after 21 working days. The advice in this letter will, I hope, enable you to deal with some of the questions when there is not sufficient time to consult the FPPC or seek its opinion.

Please let me know if you need any further information.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

*J. M. Summers*  
ANTHONY M. SUMMERS  
Deputy Attorney General

AMS:ak

Enclosure

cc: N. Gregory Taylor  
Steven H. Kaufmann  
Ralph Faust