



California Fair Political Practices Commission

September 18, 1989

Charles S. Vose
Hermosa Beach City Attorney
Oliver, Stoeber, Barr & Vose
1000 Sunset Boulevard
Los Angeles, CA 90012

Re: Your Request for Informal Assistance
Our File No. I-89-472

Dear Mr. Vose:

You have requested advice on behalf of the Hermosa Beach City Council regarding their responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your request does not provide specific facts with respect to any particular councilmember, we are treating your request as one for informal assistance.²

QUESTION

The city council will be facing decisions on an oil drilling proposal which will affect approximately one-half of the landowners in the city. May members of the city council who will be entitled to receive royalties under the oil drilling proposal participate in decisions regarding the proposal?

CONCLUSION

Under the facts presented, the oil drilling proposal will affect a significant segment of the city's population. Therefore, members of the city council may participate in decisions regarding

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.

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

the oil drilling proposal if they will be affected similarly to other persons who will receive royalties under the proposal.

FACTS

Pursuant to a ballot measure passed by the voters in 1984, the City of Hermosa Beach has been given the right to lease its city maintenance yard for development of oil and gas resources within city boundaries. In a companion ballot measure in 1984, the Hermosa Beach City School District also received voter approval to lease a one-acre portion of its school yard for oil drilling, permanent tanks and production facilities.

In 1986, the City of Hermosa Beach solicited bids from interested oil operators to drill for hydrocarbons at the city maintenance yard. Later that year, an oil company was selected as the ultimate operator for oil production purposes at the city maintenance yard and the school yard site.

The oil operator has completed its studies and is now prepared to commence exploratory drilling and temporary production testing for the recovery of the oil which lies underneath a portion of the city. The planning commission and city council are required to approve such activities by way of a conditional use permit and an environmental impact report which has been prepared for public review. The environmental impact report is pending before the planning commission and will be transmitted for certification to the city council within a few months.

The oil operator has, during the past few years, obtained leases from various residents and landowners for the mineral rights underneath their property and, as part of these leases, has agreed to pay royalties to the property owners as required by state law. Eventually, the operator will be required to receive 75% approval from the property owners in the area projected to have oil reserves, which is approximately 50% of the land area of the City of Hermosa Beach and approximately 50% of the city's landowners. This area consists primarily of small, residential parcels. Whether or not a property owner signs the lease, once oil production is commenced, all property owners will receive their proportional share of any royalties which are required to be paid by the oil operator.

A number of the councilmembers reside in or own property in the portion of the city which is anticipated to be impacted by the oil recovery activities which are proposed. Regardless of whether the councilmembers have signed leases with the oil operator, each councilman will be entitled to royalties which are anticipated to exceed \$250.00 within a future twelve-month period.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have 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 any member of his or her immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

In the present situation, the decision regarding the oil drilling proposal will have a direct "pocketbook" affect on the councilmembers who receive royalties. You have indicated that the royalties will exceed \$250.00 per year. Commission regulations provide that such an affect is material. (Regulation 18702.1(a)(4), copy enclosed.)³ Accordingly, the councilmembers may participate in the decision regarding the oil drilling proposal if the effect of the decision on the councilmembers will not be distinguishable from the effect on the public generally.

The effect of a decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest 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.) In order to be considered a significant segment of the public, a group usually must be large in numbers and heterogeneous in quality. (In re Ferraro (1978) 4 FPPC Ops. 62, copy enclosed.)

In the present situation, decisions on the proposed drilling project will affect approximately 50% of the land area in the city. In our recent phone conversation, you indicated that the area also includes approximately 50% of the landowners in the city. You also indicated that the community and the drilling area are primarily constituted of small parcels improved with residential properties. A group of this size and diversity constitutes a significant segment of the public. (In re Owen,

³ The decision may also have a material financial effect on the councilmembers' real property interests. (Regulations 18702.1 and 18702.3) However, since we have already concluded that the decisions will materially affect the councilmembers' pocketbooks, we needn't address that issue.

Our File No. I-89-472

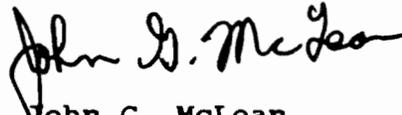
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(1976) 2 FPPC Ops. 77; Hazard Advice Letter, No. A-86-302; Nitz Advice Letter, No. A-83-284; copies enclosed.) Consequently, if the councilmembers will be affected in substantially the same manner as all or most of the other persons with interests in the drilling area, they may participate in decisions regarding the proposed drilling project.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John G. McLean
Counsel, Legal Division

KED/JGM/aa

Enclosures

LAW OFFICES

OLIVER, STOEVER, BARR & VOSE

A PROFESSIONAL CORPORATION

1000 SUNSET BOULEVARD

LOS ANGELES, CALIFORNIA 90012

(213) 250-3043

FPPC

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TELECOPIER
(213) 482-5336

THOMAS W. STOEVER
WILLIAM B. BARR
CHARLES S. VOSE
CONNIE COOKE SANDIFER
ROGER W. SPRINGER
EDWARD W. LEE
HERIBERTO F. DIAZ
JAMES DUFF MURPHY
JANICE R. MIYAHIRA

August 8, 1989

John G. McLean, Esq.
Legal Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95804-0807

Re: Request for Advice Letter -
City of Hermosa Beach

Dear Mr. McLean:

I am the City Attorney for the City of Hermosa Beach and I request an advice letter on behalf of the City Council as to a potential conflict of interest relating to an oil drilling proposal which will be coming before the City Council for their review.

The material facts are as follows:

1. The City of Hermosa Beach is a general law city located in the South Bay area of the County of Los Angeles. Pursuant to a ballot measure passed by the voters in 1984, the City of Hermosa Beach has been given the right to lease its city maintenance yard for development of oil and gas resources within city boundaries. In a companion ballot measure in 1984, the Hermosa Beach City School District also received voter approval to lease a one acre portion of its school yard for oil drilling, permanent tanks and production facilities.
2. In 1986, the City of Hermosa Beach solicited bids from interested oil operators to drill for hydrocarbons at the city maintenance yard. Later that year, an oil company was selected as the ultimate operator for oil production purposes at the city maintenance yard and the school yard site.

John G. McLean, Esq.
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3. The oil operator has completed its studies and is now prepared to commence exploratory drilling and temporary production testing for the recovery of the oil which lies underneath a portion of the City. The Planning Commission and City Council are required to approve such activities by way of a conditional use permit and an Environmental Impact Report has been prepared for public review. The Environmental Impact Report is pending before the Planning Commission and will be transmitted for certification to the City Council within a few months.
4. Pursuant to various California statutes, the oil operator has, during the past few years, obtained leases from various residents and landowners for the mineral rights underneath their property and, as part of these leases, have agreed to pay royalties to the property owners as required by state law. The oil operator has received written leases for at least 50% of an initial study area to be impacted by this proposal (approximately 15% of the City). Eventually, the operator will be required to receive 75% approval from the property owners in the area projected to have oil reserves, which is approximately 50% of the land area of the City of Hermosa Beach. Whether or not a property owner signs the lease, once oil production is commenced, all property owners will receive their proportional share of any royalties which are required to be paid by the oil operator.
5. A number of the councilmembers reside in or own property in the portion of the City which is anticipated to be impacted by the oil recovery activities which are proposed. Regardless of whether the councilmembers have signed leases with the oil operator, each councilman will be entitled to royalties which are anticipated to exceed \$250.00 within a future twelve-month period (at the time of signing the lease, the oil operator pays each property owner approximately \$100.00).

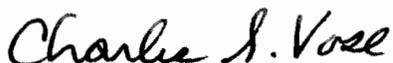
Based upon the above information, a question has been raised as to whether a councilmember has a conflict of interest if he resides within the 50% portion of the city

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which may receive royalties if the oil recovery operations are successful. Furthermore, since a property owner will be entitled to royalties whether or not he signs the lease, is any distinction to be made between councilmembers who have executed such a lease versus those who have not? It is assumed that whatever direction you will provide in this regard will also be applicable to any Planning Commissioner who may be similarly situated.

If you require further facts or information concerning this matter, kindly contact the undersigned or Mr. Edward Lee at this law firm. It would be appreciated if you could furnish your advice letter prior to the end of August, 1989. Thank you for your cooperation.

Very truly yours,



Charles S. Vose
of OLIVER, STOEVER, BARR & VOSE

CSV:ilf
cc: Kevin Northcraft, City Manager
Mayor and City Councilmembers



California Fair Political Practices Commission

August 21, 1989

Charles S. Vose
City Attorney, Hermosa Beach
Oliver, Stoeber, Barr & Vose
1000 Sunset Boulevard
Los Angeles, CA 90012

Re: Letter No. 89-472

Dear Mr. Vose:

Your letter requesting advice under the Political Reform Act was received on August 14, 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

89-472

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August 8, 1989
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