



# California Fair Political Practices Commission

December 27, 1989

Rodney J. Blonien  
Whitman and Ransom  
1121 L Street  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
Our File No. I-89-491

Dear Mr. Blonien:

This is in response to your letter seeking guidance regarding application of the conflict of interest provisions of the Political Reform Act (the "Act")<sup>1</sup> to a number of hypothetical situations. Your letter does not provide sufficient facts to render specific advice. Accordingly, we are treating your request as one for informal assistance.<sup>2</sup>

## QUESTIONS

1. May a city councilman participate in a real estate development which must come before the city council for approval?
2. Once the city councilman leaves public office, may he immediately participate in real estate developments which must be approved by the city council or is there a waiting period?

## CONCLUSIONS

1. A city councilman is not precluded by the Act from participating in a real estate development which must come before the city council for approval. However, once the city councilman does become involved in the development, he may not participate,

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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

or use his official position to influence any governmental decision which would have a material financial effect on the development.

2. There are no provisions in the Act limiting the activities of a locally elected official once he has left office.

#### FACTS

A city councilman has been approached by some real estate developers who have invited him to invest in a development. He would like to know what limitations such an investment would impose upon his activities as a member of the city council.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any 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 the effect on the public generally, on the official or any 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.

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

(Section 87103 (a)-(e).)

You have provided no specific facts regarding the possible investment options available to the city councilman. Depending on precisely how a public official were to invest in a real estate development, his involvement could create an investment interest, a partnership interest, a real property interest, and the development could be a source of income to him. Thus, the city councilman would have to disqualify himself from any decisions of the city council which would have a foreseeable material financial effect on the partnership, the business entity in which he invests, or the real property being developed.

I am providing to you copies of several Commission opinions and advice letters which involve questions of conflicts of interest posed by public officials with interests in real estate developments. In addition, Regulation 18702 et seq. (copies enclosed) provides guidance regarding the Commission's standards for establishing whether the effects of a governmental decision are material. For example, any decision before a public agency where a public official's business entity is a named party, files an application or claim, or seeks a permit or other entitlement, or which directly affects a public official's real property interest, is presumed to have a material financial effect. (Regulation 18702.1(a)(2), (a)(3) and (b).) Therefore, should the business entity in which the councilman invests appear before the city council on any matter, the councilman would have to disqualify himself from participation in the decision.

In addition, the city councilman would be disqualified from participating in decisions which would indirectly affect the business interest or real property in a material way. Regulation 18702.2 provides guidelines for determining when a business entity indirectly involved in a decision would be materially affected, and Regulation 18702.3 applies to decisions indirectly affecting real property interests of a public official.

The conflict of interest provisions of the Act apply to "public officials" which includes elected officials. (Sections 82048 and 87100.) Once a public official leaves office, and he or she is no longer participating in governmental decisions, the prohibitions in the Act no longer apply. Thus, the Act does not affect the business activities of a former city councilman unless there is evidence that he participated in governmental decisions while still in office with the promise of income or other compensation after leaving that office. (Shaw Advice Letter, No. A-84-105, copy enclosed.)

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

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in cursive script, appearing to read "Liddy Spitz".

By: Liddy Spitz  
Counsel, Legal Division

KED:LS:ld

Enclosure

FPPC

WHITMAN & RANSOM

Aug 17 9 05 AM '89

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203-889-3800  
444 SOUTH FLOWER STREET  
LOS ANGELES, CALIFORNIA 90071  
213-485-1060  
435 TASSO STREET  
PALO ALTO, CALIFORNIA 94301  
415-323-6686

August 16, 1989

Fair Political Practices Commission  
Attn: Kathryn E. Donovan  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan:

I would appreciate receiving advice from the Fair Political Practices Commission on the following questions. These questions relate to a potential conflict of interest for a city councilman of one of the cities of which I currently represent.

1. May a councilman participate in a real estate development which must come before the city council for approval?

For purposes of this question, I would assume that the councilman would not vote or participate in the debate relating to the project of which he has a financial interest.

2. If the councilman decides to leave public office, may the councilman participate in real estate developments which must be approved by the City council which he is no longer a member of?
3. If the councilman may not immediately participate in real estate developments which must go before the council, is there a waiting period, and if so, how long would that waiting period be?

WHITMAN & RANSOM

Fair Political Practices Commission  
Attn: Kathryn E. Donovan  
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Needless to say, we appreciate your assistance in this matter. Thank you very much for your consideration.

Most cordially,



Rodney J. Blonien of  
Whitman & Ransom

RJB:dg



# California Fair Political Practices Commission

August 21, 1989

Rodney J. Blonien  
Whitman & Ransom  
1121 L Street  
Sacramento, CA 95814

Re: Letter No. 89-491

Dear Mr. Blonien:

Your letter requesting advice under the Political Reform Act was received on August 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz 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