



California Fair Political Practices Commission

November 20, 1989

Iris P. Yang
McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-89-514

Dear Ms. Yang:

You have requested advice on behalf of several members of the project area committee for the redevelopment plan in the City of Clearlake, regarding their obligations under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your request does not involve a specific decision pending before the PAC, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Does the "public generally exception" enable members of the project area committee to participate in decisions which will have a reasonably foreseeable material financial effect on their economic interests?

CONCLUSION

Members of the project area committee may participate in decisions which will have a reasonably foreseeable material financial effect on their economic interests, unless the effect of the decisions on their economic interests will be distinguishable

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).)

from the effect on other members of the public within the redevelopment project area.

FACTS

Clearlake is a city with a population of approximately 13,000 people. The proposed redevelopment project area encompasses the major portion of the city, including the entire business area.

The Clearlake City Council last spring adopted procedures for the formation of a project area committee. The procedures insured that the project area committee (the "committee") would comply with the statutory mandate that committees include residential owner occupants, residential tenants, business owners and existing organizations within the project area.

Following those procedures, 11 members, representing the four categories of interests specified in the law, were elected. The committee consists of four representatives of residential owner occupants; two residential tenants; two business owners and three representatives of local organizations. You are requesting advice as to six of the committee members. Their interests are as follows:

1. James Gordon: Mr. Gordon is a representative of the Lake County Board of Realtors. His wife is a real estate agent who has earned commissions from transactions within the proposed project area.

2. William Blase: Mr. Blase was elected to represent residential owner occupants. In addition to his residence, he owns two residential rental parcels and holds a deed of trust on a third. All the property is within the project area.

3. Robert Fischer: Mr. Fischer represents business owners. He owns an auto repair and towing business. In addition, he holds a deed of trust on one parcel, owns one parcel from which he receives residential rental income and owns two pieces of commercial property on which his business and business parking lot are located. All are located within the project area.

4. George Klatt: Mr. Klatt represents the Manatee Resort and Country Club Association. He has a 40% partnership interest in a resort as well as property on which the business is located. He is the secretary/manager of the business. His business is in the project area.

5. Joan Mingori: Mrs. Mingori represents residential owner occupants. She owns her home and a parcel of commercial property from which she presently receives no income. She also owns a typesetting business which leases space. Her property and business are located within the project area.

6. Robert Mummert: Mr. Mummert represents business owners. He is the sole proprietor of Mummert's Tax Service. In addition, he owns more than \$1,000 worth of common stock in Clearlake National Bank, which is located within the project area.

Clearlake National Bank is a business entity which falls within the category of business entities set forth in Section 18702.2(g) of the Commission's materiality regulations. The bank has six years remaining on its lease for the property on which the bank is located, with a 25-year option. The bank's primary business is making real estate and commercial loans. Bank officials estimate that the bank does approximately 10% of this type of banking business within the city.

ANALYSIS

Section 87100 prohibits a public official from participating in any decision in which the official knows or has reason to know he or she has a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the 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.

(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).

Each of the officials you have referred to has economic interests which may be materially affected by decisions of the committee. However, before addressing each of their specific interests, it is important to note that even when a decision will have a reasonably foreseeable material financial effect on a member of the committee's economic interests, the member will not have disqualification obligations if his or her interests will be affected in a manner which is similar to the effect on a significant segment of the persons in the project area. This is the so-called "public generally" exception.

Public Generally

In In re Rotman (1987) 10 FPPC Ops. 1 (copy enclosed), the Commission specifically recognized that redevelopment project area committees are intended to represent and include persons with financial interests in the project area. Accordingly, the opinion concludes that disqualification should occur only in very limited circumstances in which a member of the committee economic interests are uniquely affected by a decision. The Commission stated:

We recognize that project area committees are required to include residents, businesses, and members of organizations in the project area, many of whom will have financial interests in the project area. It has been argued that application of the Act to these individuals will result in wholesale disqualification of project area committee members from various decisions of the project area committee. However, disqualification is required only if it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from its effect on the public generally, on the official's economic interest. (Section 87103.)

Regulation 18703 provides:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, 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. Except as

provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

The purpose of the project area committee is to provide input from residents, businesses, and members of organizations in the project area regarding issues which affect persons in the project area. (Health and Safety Code Sections 33865 and 33386.) It is not the role of project area committee members to represent the interests of individuals outside of the project area. Thus, the "public" with respect to a project area committee is those persons in the project area. Accordingly, members of project area committees are required to disqualify themselves from participating in decisions which will materially affect their economic interests only if the effect of the decision will be distinguishable from the effect on all other persons in the project area or on a significant segment of the persons in the project area. For example, if persons owning businesses in the project area constitute a significant segment of the persons in the project area, project area committee members who own businesses in the project area are disqualified from participation in decisions of the project area committee only if the decision will have a material financial effect distinguishable from other businesses in the project area.

Rotman Opinion at pp. 8-9.
(Emphasis added.)

Having addressed the limited circumstances in which project area committee members will have disqualification obligations, we will now address the economic interests which may give rise to disqualification. Again, disqualification will not be required if the decision will have a similar effect on a significant segment of the persons in the project area.

James Gordon

Mr. Gordon is a representative of the Lake County Board of Realtors. You have not indicated whether he is an employee or otherwise receives compensation from the Lake County Board of Realtors. If Mr. Gordon has received \$250 or more in income from the Lake County Board of Realtors in the 12 months preceding a particular decision, he may have disqualification obligations with respect to a decision which would have a material financial effect on the board of realtors. Regulations 18702-18702.6 (copies enclosed) provide guidance regarding whether the reasonably foreseeable effects of a decision are material. In the present situation, Regulations 18702.1 and 18702.2 are applicable.

Mr. Gordon's wife is a real estate agent. Because of his wife's employment as a real estate agent, Mr. Gordon undoubtedly receives community property income from a variety of sources.³ Mr. Gordon may have disqualification obligations with respect to a decision which would have a material financial effect on any such person who has been a source of income of \$250 or more in the 12 months preceding the decision. Regulations 18702.1, 18702.2 and 18702.6 provide guidance regarding whether the reasonably foreseeable effects of a decision on a source of income are considered material.

William Blase

Mr. Blase owns his residence and two rental parcels in the project area. He also holds a deed of trust on a parcel of real property. Presumably, each of these real property interests has a value of \$1,000 or more. If so, Mr. Blase may have disqualification obligations with respect to decisions which would have a material financial effect on those real property interests. Regulations 18702.1, 18702.3 and 18702.4 would be used to determine if the effects of particular decisions would be considered material.

Mr. Blase may also have disqualification obligations with respect to decisions which will materially affect any tenant who has been a source of income of \$250 or more in the 12 months preceding the decision. Furthermore, if the deed of trust is securing a note of \$250 or more, Mr. Blase may have disqualification obligations with respect to decisions which will have a material financial effect on the obligor under that note. The disqualification obligation will remain so long as Mr. Blase has been promised or has received \$250 or more in income in the 12 months preceding a decision. Regulations 18702.1, 18702.2 and 18702.6 would be used to determine if the effects of particular decisions would be considered material.

Robert Fischer

Mr. Fischer owns an auto repair business. He also holds a deed of trust on one parcel of real property, owns one parcel of real property from which he receives residential rental income, and owns two pieces of commercial property on which his business and business parking lot are located.

Mr. Fischer may have disqualification obligations with respect to a decision which will have a material financial effect on any of the real properties in which he has an interest worth \$1,000 or more. He also may have disqualification obligations with respect to a decision which will materially affect any source

³ Commission Regulation 18704.3 (copy enclosed) provides guidance regarding who are the sources of income to a real estate agent.

of income of \$250 or more in the 12 months before the decision. In the present situation, those sources of income may be customers of the business, tenants in the residential property, or obligors on the note secured by the deed of trust. Regulations 18702.1, 18702.2, 18702.3 and 18702.6 would be used to determine if the effects of particular decisions would be considered material.

George Klatt

Mr. Klatt is a 40% owner of a resort and the property on which the resort is located. Mr. Klatt may have disqualification obligations with respect to decisions which will materially affect the resort, or with respect to any person who is a source of income of \$250 or more in the 12 months before a decision. As a 40% owner of the resort, 40% of all income to the resort is attributed to Mr. Klatt. (Section 82030.) Accordingly, a person who has provided income to the resort of \$625 or more is a source of income to Mr. Klatt of \$250 or more. Regulations 18702.1, 18702.2, 18702.3 and 18702.6 would be used to determine if the effects of particular decisions would be considered material.

Joan Mingori

Ms. Mingori owns her home and a parcel of commercial property from which she receives no income. Assuming each of these interests has a value of \$1,000 or more, she may have disqualification obligations with respect to decisions which will materially affect those interests. Regulations 18702.1 and 18702.3 would be used to determine if the effects of particular decisions would be considered material.

Ms. Mingori also owns a typesetting business which leases space. Assuming she has an investment interest of \$1,000 or more in the typesetting business, she may have disqualification obligations with respect to decisions which will materially affect that business. Also, assuming the leasehold interest in the real property is for a tenancy period of more than one month, and has a value of \$1,000 or more, she may have disqualification obligations with respect to decisions which materially affect that real property. Regulations 18702.1, 18702.2 and 18702.4 would be used to determine if the effects of particular decisions would be considered material.

Robert Mummert

Mr. Mummert owns a tax service and owns more than \$1,000 worth of stock in Clearlake National Bank. He may have disqualification obligations with respect to those businesses. Furthermore, he may have disqualification obligations with respect to decisions which materially affect any source of income of \$250 or more in the 12 months before the decision. Regulations 18702.1, 18702.2 and 18702.6 would be used to determine if the

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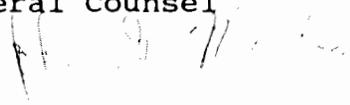
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effects of particular decisions would be considered material. Income to the bank will be attributed to Mr. Mummert only if he owns 10% or more of the bank. (Section 82030.)

If you have any further 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

McDONOUGH, HOLLAND & ALLEN

A PROFESSIONAL CORPORATION

ATTORNEYS

555 CAPITOL MALL, SUITE 950
SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 444-3900
TELECOPIER: (916) 444-8334

NEWPORT BEACH OFFICE
4041 MACARTHUR BOULEVARD, SUITE 101
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (714) 851-1180
TELECOPIER: (714) 851-0367

OAKLAND OFFICE
P. O. BOX 3448
OAKLAND, CALIFORNIA 94609
(415) 547-0106

IRIS P. YANG

August 29, 1989

DELIVERED BY MESSENGER

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

Re: Request for Advice
(Government Code § 83114(b))

Dear Ms. Donovan:

The City of Clearlake is in the process of formulating a redevelopment plan for adoption by the City. As part of that process, a project area committee ("PAC") was elected by the procedures detailed below. On behalf of the Agency and the PAC, I am requesting advice as to the ability of certain PAC members to participate in the plan adoption process.

REQUIREMENTS OF THE COMMUNITY REDEVELOPMENT LAW

The Community Redevelopment Law (Health & Safety Code § 33000 et seq.) requires that the legislative body "call upon the residents and existing community organizations in a redevelopment project area, within which a substantial number of low- and moderate-income families are to be displaced by the redevelopment project, to form a project area committee." (§ 33385(a).)

A legislative body is specifically not able to appoint the members of a project area committee. (Baldwin Park Homeowners Group v. Baldwin Park Redevelopment Agency (1989) 207 Cal.App.3d 222.) In that case, the court paraphrased the intent of Section 33385:

"The legislative body must CALL UPON citizens TO FORM a project area committee. In other words, the project area committee must be created by residents and members of existing organizations

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within the redevelopment area." (Baldwin Park, supra, 207 Cal.App.3d at 227; emphasis in original.)

The court also noted that Section 33385 is

"an uncommon statute which seeks the kind of unremunerated, voluntary citizen participation contemplated by Health and Safety Code Section 33385. The legislature, however, may well believe that an uncommon community event . . . calls for an uncommon statute, such as Section 33385, which provides a mechanism for participation in the redevelopment process by the citizens who are directly affected by it." (Baldwin Park, supra, 207 Cal.App.3d at 227-228; emphasis added.)

The legislature amended the section in 1988 to specifically require that the legislative body adopt procedures for the formation of the project area committee. The procedures shall include, but are not limited to, the following:

1. Publicizing the opportunity to serve on the committee.
2. Conduct by the agency of at least one ((1)) public meeting to explain the establishment and functions of the project area committee.
3. Publishing notices of all meetings, hearings or plebiscites authorized by or on behalf of the agency or the legislative body on the selection of the project area committee.
4. Mailing notices to all residents and businesses in the project area of all meetings, hearings or plebiscites on the selection of the project area committee. (§ 33385(b).)

The section also specifies the type of interests which must be represented on the project area committee. It must include "residential owner occupants, residential tenants, business owners and representatives of existing

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organizations within the project area." (§ 33385(c).) Thus, the Community Redevelopment Law specifies specific interests which committee members must have in order to be eligible to serve.

It should be noted that this section was substantially amended in 1988 (after the adoption of the plan in the Baldwin Park case) to include the specific committee formation procedures as well as make other changes. The changes were also made after the FPPC issued the Rotman opinion. ((1987) 10 FPPC Ops. 1).

FACTS

Clearlake is a city with a population of approximately 13,000 people. The proposed Project Area encompasses the major portion of the city, including the entire business area.

The Clearlake City Council last spring adopted procedures for the formation of a project area committee. The procedures specified that the PAC would consist of persons in the categories of residential owner occupants, residential tenants, business owners and representatives of existing organizations.

The City Council subsequently adopted procedures for the conduct of the PAC elections in an effort to comply with Section 33385 of the Community Redevelopment Law. Candidates were required to file statements of intent, including verification of their eligibility to serve. Anyone 18 or over who either lived within the Project Area or owned a business within the Project Area was considered eligible to vote for PAC candidates. Eleven (11) members, representing the four categories of interests specified in the law, were elected. The PAC consists of four (4) representatives of residential owner occupants; two (2) residential tenants; two (2) business owners and three (3) representatives of local organizations. I am requesting advice as to six (6) of the PAC members. Their interests are as follows:

1. James Gordon: Mr. Gordon is a representative of the Lake County Board of Realtors. His

wife is a real estate agent who has earned commissions from transactions within the proposed Project Area.

2. William Blase: Mr. Blase was elected to represent residential owner occupants. In addition to his residence, he owns two (2) residential rental parcels and holds a deed of trust on a third. All the property is within the Project Area.
3. Robert Fischer: Mr. Fischer represents business owners. He owns an auto repair and towing business. In addition, he holds a deed of trust on one parcel, owns one parcel from which he receives residential rental income and owns two (2) pieces of commercial property on which his business and business parking lot is located. All are located within the Project Area.
4. George Klatt: Mr. Klatt represents the Manatee Resort and Country Club Association. He has a forty percent (40%) partnership interest in a resort as well as the property on which the business is located. He is the secretary/manager of the business. His business is in the Project Area.
5. Joan Mingori: Mrs. Mingori represents residential owner occupants. She owns her home and a parcel of commercial property from which she presently receives no income. She also owns a typesetting business which leases office space. Her property and business are located within the Project Area.
6. Robert Mummert: Mr. Mummert represents business owners. He is the sole proprietor of Mummert's Tax Service. In addition, he owns more than \$1,000 worth of common stock in Clearlake National Bank, which is located within the Project Area.

Kathryn Donovan
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Clearlake National Bank is a business entity which falls within the category of business entities set forth in Section 18702.2(g) of the regulations which implement the Political Reform Act. The bank has six (6) years remaining on its lease for the property on which the bank is located, with a 25-year option. The bank's primary business is making real estate and commercial loans. Bank officials estimate that the bank does approximately ten percent (10%) of this type of banking business within the City.

Section 18703 of the regulations defines the term "effect on the public generally." Subsection (c) provides that an industry, trade or profession constitutes a significant segment of the public "if the statute . . . which creates or authorizes the creation of the official's agency" contains an express reference to Section 87103 of the Government Code. Subsection (d) provides that if there is no such express finding,

"such an industry, trade or profession constitutes a significant segment of the public generally only if such finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, and applicable legislative history, and any other relevant circumstance."

In this case, the composition of a project area committee is mandated by Section 33385 of the Community Redevelopment Law. The purpose of having a project area committee is to have its members represent the specifically enumerated interests (Baldwin Park, supra). Unlike most other candidates for public office, PAC members are only eligible to serve and are elected because of the economic interests they have. In addition, because neither the city council nor the agency can appoint the PAC members, the council and agency have no control over who can or will be elected to the PAC.

The first question is whether, by applying Section 18703 of the regulations, the specific interests represented on the PAC would constitute significant segments

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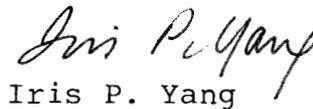
of the public, which, according to the Rotman opinion, ((1987) 10 FPPC Ops. 1), are persons within the project area.

If not, then may the members of the PAC described above participate in decisions regarding the proposed redevelopment plan?

If they cannot, how would you advise the city to conduct its PAC election in order to fulfill the explicit intent of the Community Redevelopment Law to have persons with specific types of interests make recommendations on the redevelopment plan?

Thank you for your assistance in this matter. If you have any questions, please feel free to call.

Very truly yours,


Iris P. Yang

IPY:pjp

cc: Daniel A. Obermeyer



California Fair Political Practices Commission

August 30, 1989

Iris P. Yang
McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

Re: Letter No. 89-514

Dear Ms. Yang:

Your letter requesting advice under the Political Reform Act was received on August 29, 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



City of Clearlake

Post Office Box 2440, Clearlake, CA 95422-2440
(707) 994-8201

29-54
Caroline C. Constable, Mayor
William M. Struthers, Vice-Mayor
Vera Reed, Council Member
Vic Rosa, Council Member
Arsenio P. Sanchez, Jr., Council Member
Elmer Maryatt, City Treasurer
Sharon L. Goode, City Clerk

August 31, 1989

Fair Political Practices Commission
Kathryn Donovan
P.O. Box 807
Sacramento, Ca. 95804

Dear Ms. Donovan:

This letter is being written on behalf of the City of Clearlake per our concerns about FPPC regulations and the workings of our newly formed Redevelopment Project Area Committee (PAC). As you are aware, State law strongly requests that a City establish a Project Area Committee when forming a redevelopment project. Further, the law clearly requires that the PAC Members must be representative of existing organizations, business persons, home owners and tenants from within the proposed project area. Thus, by its very nature, there is a very strong likelihood that several PAC Members will have conflicts of interest per FPPC interpretation of its regulations. There is obviously a basic 'conflict' between the intent of the redevelopment laws governing formation of a PAC and FPPC Regulations.

In Clearlake, at least six (6) out of the eleven (11) PAC Members appear to be ineligible to participate in the public review process for our Redevelopment Plan adoption. After the City went through the entire process to establish the PAC, Agency Special Counsel informed the majority of those selected members that it appears they could not participate in the PAC/ Redevelopment Plan adoption process because of potential conflicts of interest. For each of the six (6) Members that have apparently been disqualified, the conflicts of interest appear, from a reasonable perspective, to be indirect, remote and, in one of the 'kinder' works of a disqualified PAC Member 'total nonsense'.

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FPPC

In concert with the letter being sent to you from the law firm of McDonough, Holland and Allen we strongly urge that the FPPC promptly review our circumstances and approve the eligibility of our PAC Members.

The PAC eligibility delay has already cost our City over \$60,000 and created major political concerns in the City. The City hopes that the FPPC can look at the reasonable and counter productive focus of the FPPC/PAC situation and promptly respond to our situation. Thank you very much for your understanding and cooperation on this matter.

Very truly yours,



Caroline C. Constable
Mayor

cc: City Council
PAC Members
McDonough, Hollan and Allen