



# California Fair Political Practices Commission

December 28, 1989

Julie C. Scott  
Office of the City Attorney  
275 E. Olive Avenue  
P. O. Box 6459  
Burbank, CA 91510

Re: Your Request for Informal Assistance  
Our File No. I-89-519

Dear Ms. Scott:

This is in response to your request for advice regarding the responsibilities of Burbank Mayor Robert Bowne under the Political Reform Act (the "Act").<sup>1</sup> Because your request does not involve a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2</sup>

## QUESTIONS

1. May Mayor Bowne participate and vote on any discretionary entitlement involving the lessor of the building in which he is a tenant?
2. May Mayor Bowne participate and vote on any discretionary entitlement involving the owners of property within 300 feet of the building in which he is a tenant?

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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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. Mayor Bowne may participate and vote on the decision regarding any discretionary entitlement involving the lessor of the building in which he is a tenant unless the effect of the decision on him or his leasehold interest is foreseeable and material, and the effect is distinguishable from the effect on the public generally.
2. Mayor Bowne may participate and vote on the decision regarding any discretionary entitlement involving the owners of property within 300 feet of the building in which he is a tenant unless the effect of the decision on him or his leasehold interest is foreseeable and material, and the effect is distinguishable from the effect on the public generally.

FACTS

Robert Bowne is mayor, councilmember, and chairman of the redevelopment agency of the City of Burbank. Mayor Bowne is an attorney. His office is located in a building at 245 East Olive Avenue in the City of Burbank (the "city"). He has occupied this office pursuant to a lease for the past 11 years. The building is in the process of being sold, and the new owner of the building is a developer who has various projects which may require decisions by the city council or the redevelopment agency.

ANALYSIS

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 his immediate family,<sup>3</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,

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<sup>3</sup> An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

received by or promised to the public official within 12 months prior to the time when the decision is made.

\* \* \*

(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(b), (c) and (e).

Mayor Bowne is a public official. (Section 82048.) He occupies the office in the building in question pursuant to a lease. This leasehold interest is an interest in real property, presumably worth \$1,000 or more, pursuant to Section 82033 which provides in relevant part:

"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction....

(See, In re Overstreet (1981) 6 FPPC Ops. 12, copy enclosed.) Accordingly Mayor Bowne may not make, participate in making, or use his official position to influence any decision which will have a reasonably foreseeable and material financial effect on himself or his interest in real property, which is distinguishable from the effect on the public generally. However, as a tenant of the building, the developer would not be a source of income to Mayor Bowne. Accordingly, Mayor Bowne would not have disqualification obligations with respect to decisions which affect the developer but do not materially affect Mayor Bowne or his real property interest.<sup>4</sup>

#### 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. Downey Community 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

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<sup>4</sup> In reaching this conclusion, we also assume that the developer is not a source of gifts to Mayor Bowne. A gift occurs if Mayor Bowne receives a discount on his rent which is not made in the regular course of business to members of the public without regard to official status. (Section 82028.)

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.)

### Materiality

Regulation 18702 (copy enclosed) sets forth the guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, then Regulation 18702.1 (copy enclosed) applies to determine materiality. Thus, if the decision will result in Mayor Bowne's personal expenses, income, assets, or liabilities increasing or decreasing by \$250 or more, then the effect of the decision is material and Mayor Bowne may have to disqualify himself.

If, on the other hand, the official's economic interest would be indirectly affected by the decision, then Regulations 18702.2 through 18702.6 (copies enclosed) would apply to determine whether the effect of the decision is material. Thus, if the real property in which Mayor Bowne holds the leasehold interest is indirectly affected by the decision, materiality is determined under Regulation 18702.4. Regulation 18702.4 provides that the effect of a decision is material if any of the following applies:

(a) The decision will change the legally allowable use of the leased property, and the lessee has a right to sublease the property;

(b) It is reasonably foreseeable that the lessee will change the actual use of the property as a result of the decision;

(c) It is reasonably foreseeable that the decision will result in a change in the actual use of property within 300 feet of the leased property, and the changed use will significantly enhance or significantly decrease the use or enjoyment of the leased property;

(d) The decision will increase or decrease the amount of rent for the leased property by \$250 or 5 percent, whichever is greater, during any 12-month period following the decision; or

(e) The decision will result in a change in the termination date of the lease.

Regulation 18702.4.

### 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.) For the City of Burbank, the public consists of the residents of the city. The effect of the decision is distinguishable from the 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.) Thus, Mayor Bowne may participate in a decision, even if that decision has a material financial effect on him or his leasehold interest, if all residents of the city or a significant segment of the residents of the city is affected in essentially the same manner as Mayor Bowne.

Mayor Bowne's responsibilities under the conflict-of-interest provisions of the Act can be determined by applying the above-discussed general principles to the specific facts of each decision.

1. May Mayor Bowne participate and vote on any discretionary entitlement involving the lessor of the building in which he is a tenant?

As discussed above, the lessor of the building, the developer, is not a source of income to Mayor Bowne. Accordingly, Mayor Bowne would not have any disqualification obligations with respect to decisions which affect the developer but do not materially affect Mayor Bowne, and do not materially affect Mayor Bowne's real property interest under Regulation 18702.4.

2. May Mayor Bowne participate and vote on any discretionary entitlement involving the owners of property within 300 feet of the building in which he is a tenant?

The decision regarding a discretionary entitlement involving the owners of property within 300 feet of the building in which he is a tenant is material if any of the following applies:

(a) The decision will change the legally allowable use of the leased property, and the lessee has a right to sublease the property;

\* \* \*

(c) It is reasonably foreseeable that the decision will result in a change in the actual use of property within 300 feet of the leased property, and the changed use will significantly enhance or significantly decrease the use or enjoyment of the leased property;

(d) The decision will increase or decrease the amount of rent for the leased property by \$250

or 5 percent, whichever is greater, during any 12-month period following the decision; or

(e) The decision will result in a change in the termination date of the lease.

Regulation 18702.4(a), (c), (d)  
and (e).

Mayor Bowne may participate and vote on the decision regarding any discretionary entitlement involving the owners of property within 300 feet of the building in which he is a tenant unless the effect of the decision is material and the effect is distinguishable from the effect on the public generally. (Section 87103.)

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



By: Jeevan S. Ahuja  
Counsel, Legal Division

KED/JSA/aa

Enclosures



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August 29, 1989

Jeevan Ahvja, Esq.  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95814

Re: Request For Formal Written Advice (Mayor Robert Bowne)  
Our File: 201-1

Dear Mr. Ahvja:

The purpose of this letter is to request formal written advice pursuant to Government Code Section 83114(b) and Section 18329 of the Regulations of the Fair Political Practices Commission on behalf of Robert Bowne, a member of the Burbank City Council, Mayor of the City of Burbank, and Chairman of the Redevelopment Agency for the City of Burbank. I am the Acting City Attorney for the City of Burbank and have been authorized by Mayor Bowne to make this request relating specifically to Mayor Bowne's duties under the Fair Political Practices Act.

**Synopsis of Facts:**

Mayor Bowne is an attorney whose office is located in a building at 245 East Olive Avenue in Burbank. He has occupied the same space, pursuant to a lease, for the past eleven years. He has recently discovered that the building in which he is a tenant is in escrow pursuant to a sale to a local developer. At the close of escrow, Mayor Bowne will, obviously, become a tenant of the new owner.

The new owner of Mayor Bowne's building, since he is a local developer, has various types of projects at varying stages within the City of Burbank and Burbank Redevelopment Agency Project area, which may ultimately require the exercise of discretion by the City Council and/or the Burbank Redevelopment Agency.

Questions:

In light of the above facts, on behalf of Mayor Bowne, I would request that you answer the following questions:

1. May Mayor Bowne participate and vote on any discretionary entitlement involving the lessor of the building in which he is a tenant?
2. May Mayor Bowne participate and vote on any discretionary entitlement involving the owners of property within 300 feet of the building in which he is a tenant?

The reason I have addressed this letter to you is that Mayor Bowne indicates that on August 9, 1989, he had a telephonic conversation with you regarding this issue. Your opinion at that time was that he would have no conflict which would prevent him from participating or voting on any discretionary entitlement involving his prospective landlord or any other property owner within 300 feet of the building in which he is a tenant.

If you have any questions, or require additional information regarding this request, please do not hesitate to contact me at your earliest convenience. Your immediate attention to this matter is, as always, greatly appreciated. It is anticipated that escrow will close regarding the sale of Mayor Bowne's building on approximately October 1, 1989.

Thank you again for your earliest attention to this request.

Very truly yours,



Juli C. Scott  
Acting City Attorney

JCS/keb  
FPPC.JSL

cc: Mayor Robert Bowne



# California Fair Political Practices Commission

September 7, 1989

Julie C. Scott  
Senior Assistant City Attorney  
P.O. Box 6459  
Burbank, CA 91510

Re: Letter No. 89-519

Dear Ms. Scott:

Your letter requesting advice under the Political Reform Act was received on September 1, 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