



California Fair Political Practices Commission

October 30, 1989

Fred V. Spallina
City Attorney, City of Porterville
132 East Mortan Avenue
Porterville, CA 93257

Re: Your Request for Advice
Our File No. A-89-527

Dear Mr. Spallina:

This is in response to your letter requesting advice on behalf of Councilmembers Boyd Leavitt and Nero Pruitt of the Porterville City Council with respect to their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Pursuant to our telephone conversation of September 29, 1989, your question concerning Councilmember Robert Smith has been withdrawn.

QUESTIONS

1. May Councilmember Pruitt participate in decisions concerning the creation of an underground utility district and the assessment of fees on property in the district where the councilmember owns real property within the proposed boundaries of the district?

2. May Councilmember Leavitt participate in decisions concerning the creation of an underground utility district and the assessment of fees in the district, where the councilmember owns real property 280 feet from the nearest boundary of the proposed district?

CONCLUSIONS

1. Councilmember Pruitt may not participate in decisions concerning the proposed utility district in which he owns property.

^{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. Councilmember Leavitt may participate in decisions concerning the utility district provided there will be no financial effect on his real property interest.

FACTS

The Porterville City Council is considering a proposed underground utility district involving a segment of Plano Street in the city of Porterville. The district will be created for the sole purpose of changing the overhead wiring system to an underground system. To help in financing the utility work, the city will be levying a fee on persons owning property in the district.

Councilmember Nero Pruitt owns property on Plano Street. City staff estimates that Councilmember Pruitt's property will be assessed a fee of \$500 should the district be created. Councilmember Boyd Leavitt owns property within 280 feet of Plano Street and the nearest boundary of the district. Since Councilmember Leavitt's property is outside the area subject to the decision, his property will not be assessed.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest 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 a 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).

Councilmembers Pruitt and Leavitt as members of the Porterville City Council are public officials under the Act. (Section 82048.) Presumably, the councilmembers' respective property interests are greater than \$1,000 in value. Thus, the councilmembers are prohibited from making or in any way participating in decisions which would have a reasonably foreseeable material financial effect on their property that is distinguishable from the effect on the public generally.

Foreseeability

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial

likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Councilmember Pruitt owns property within the proposed utility district. It is reasonably foreseeable that the conversion from overhead cable and wiring to underground cable and wiring will affect the fair market value of the councilmember's real property. Further, you have informed us that it is certain that Councilmember Pruitt's property will be subject to the assessment. Conversely, Councilmember Leavitt's real property will not be subject to an assessment fee because the councilmember's property is outside the district and 280 feet from the nearest boundary. However, it is still foreseeable that changes in the character of real property 280 feet away could have some financial effect on Councilmember Leavitt's real property. Consequently, neither councilmember may participate in the decisions if the effect on their property interests will be material.

Materiality

The Commission has adopted guidelines to determine whether an effect is material, depending on the specific circumstances of each decision. Regulation 18702.1(a)(3)(C) (copy enclosed) provides that where a decision involves the imposition, repeal or modification of taxes or fees assessed or imposed on an official's own property, the effect of the decision is deemed to be material. Consequently, Councilmember Pruitt may not participate in any decisions concerning the utility district.^{2/}

Councilmember Leavitt's situation is different. His property is outside the proposed district, but within 280 feet of the district's nearest boundary. With respect to property outside the area that is the subject of the governmental decision, the effect of the decision is material if:

- (1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or proposed boundaries) of the property which is the subject of the decision, unless the

^{2/} While under some circumstances, large and complex decisions may be separated to permit a public official to participate in considering some components, in this case it appears from the resolution that the utility district decisions are too inter-related with the assessment of fees to be treated separately. (Miller Advice Letter, No. A-82-119, copy enclosed.)

decision will have no financial effect upon the official's real property interests.

Regulation 18702.3(a)(1)).

Since the councilmember's property is in such close proximity to the property which is the subject of the decision, the councilmember may only participate in the decision provided there will be no financial effect on his real property. While we cannot determine whether there will be a financial effect on the councilmember's property, Regulation 18702.3(d) does set out factors that should be considered when making this determination.

1. The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

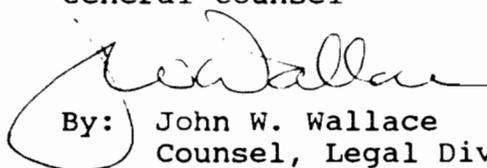
2. Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

3. ... whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, the effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

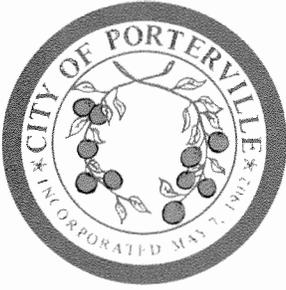
Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures



CITY OF PORTERVILLE

OFFICE OF FRED SPALLINA, CITY ATTORNEY

September 6, 1989

California Fair Political
Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

RE: Request For Opinion Letter

Dear Madam or Sir:

Enclosed please find a council agenda item for the City of Porterville dated September 5, 1989. This agenda item proposes an Underground Utility District wherein the utility poles along Plano Street would be removed and replaced with underground cable. (See last page of agenda item).

The home of Councilman Nero Pruitt is located on the corner of Oak Street and Plano Avenue, directly adjacent to the Utility District. The home of Councilman Boyd Leavitt is also on Oak Street, located 280 feet from the utility district. Since Councilman Pruitt lives adjacent to Plano Avenue, City staff estimate that he will be assessed approximately \$500.00 as an affected property owner. Councilman Leavitt will not have to pay such an assessment.

A third member of the Council, Robert Smith, works as the manager of the local cable company, Falcon Cable. Because of the relocation of these utilities, Falcon Cable will have to undergo an expense of between \$30,000-100,000.00 to relocate their equipment. This relocation expense will not be reimbursed.

Since we have a 5-member Council, I am concerned that some, if not all, of these Council members may be disqualified from participating the decision making process for this Utility District. Because of the availability of grant monies to assist in this project, there are some time constraints that must be followed. Therefore, I would appreciate your prompt reply to my

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FPPC

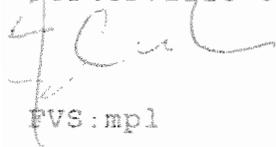
California Fair Political
Practices Commission
September 6, 1989

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question: Are any or all three of the above-mentioned Council
members disqualified from voting on this agenda item?

Very truly yours,

FRED V. SPALLINA
Porterville City Attorney

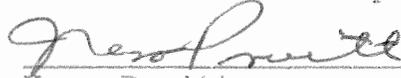

FVS:mpl

cc: Guy Huffaker, City Manager

This request for an advice letter has been authorized by me.

DATE:

C Sep 1989



Nero Pruitt

COUNCIL AGENDA: SEPTEMBER 5, 1989

PUBLIC HEARING

SUBJECT: PUBLIC HEARING - PLANO STREET UNDERGROUND UTILITY
DISTRICT NO. 7

SOURCE: Community Development and Services - Engineering

COMMENT: This is the date and time set for the public hearing on
the Plano Street Underground Utility District No. 7.

This project will underground overhead wires and remove poles back to the 20-foot setback line along Plano Street from Morton Avenue to the Tule River/Plano Street bridge. It also includes Morton Avenue from Plano Street to Roche Street and Roche Street from Morton Avenue to Harrison Avenue. The specific boundaries for this project are described in detail in the attached resolution. This resolution would require affected property owners to be ready to receive underground service by May 1, 1992.

This project ranks number one in the "Proposed Undergrounding of Utility Lines - a Ten Year Plan" adopted by City Council on March 15, 1988. In its adoption action, Council scheduled construction of subject project in 1990. The removal of all overhead wires and poles will enhance the appearance of the area as well as property values.

Tulare County is prepared to provide in excess of \$600,000, accrued in their account from Southern California Edison Company, to make this project a reality. If Porterville decides not to use this money, it will go to some other city in the county.

Property owners within the district must provide underground conversion "pull boxes" to receive electrical service. The installation of "pull boxes" is the responsibility of the property owners. The City has in the past contracted with an electrician to install the required "pull boxes". With one contractor providing all conversion work, the cost to the property owner can be kept to a minimum. In addition, there is potential for use of Community Development Block Grant (CDBG) funds to assist qualifying low income home owners in connecting to the underground service.

Staff mailed notices to all property owners and held an informative public information meeting on August 17, 1989. Ten people attended the meeting and only one expressed any opposition. The one opponent, Mr. Mike

Eaton, objected to the paving in Plano Street being cut. Staff recommends proceeding with the project.

RECOMMENDATION: If after hearing the input at the Public Hearing, the Council elects to proceed with the district, it is recommended that the attached resolution establishing Underground Utility District No. 7 be adopted.

ATTACHMENT: Resolution
Locator Map

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE FINDING AND DETERMINING THAT
THE PUBLIC NECESSITY, HEALTH, SAFETY OR WELFARE
REQUIRES REMOVAL OF POLES, OVERHEAD WIRES AND
ASSOCIATED OVERHEAD STRUCTURES

WHEREAS, by Resolution No. 102-89, a public hearing was called for Tuesday, September 5, 1989, at the hour of 7:30 P.M. in the Council Chambers in the City Hall, Porterville, California, to ascertain whether the public necessity, health, safety or welfare required the removal of poles, overhead wires and associated overhead structures, and the underground installation of wires and facilities for supplying electric, communication or similar or associated service, within that certain area of the City described as follows:

Project Description:

Roche Street: Roche Street from Harrison Avenue to Morton Avenue with the east boundary being 20' east of the Roche Street east property line, the west boundary being 20' west of the Roche Street west property line, the north boundary being 20' north of the Morton Avenue north property line, the south boundary being the Harrison Avenue north property line.

Morton Avenue: Morton Avenue from Roche Street to 300' east Plano Street with the east boundary being 300' east of the Plano Street east property line, the west boundary being 20' west of the Roche Street west property line, the north boundary being 20' north of the Morton Avenue north property line, the south boundary being 20' south of the Morton Avenue south property line.

Plano Street: Plano Street from Morton Avenue to the Plano Street/Tule River bridge with the east boundary being 20' east of the Plano Street east property line, the west boundary being 20' west of the Plano Street west property line, the north boundary being 20' north of the Morton Avenue north property line, the south boundary being the proposed southerly city limits in Annexation No. 382 at the north end of the Plano Street/Tule River bridge. Further, the east boundary along parcel 261-210-07 being 150' east of the Plano Street property line.

and declaring such designated area as Underground Utility District No. 7.

WHEREAS, notice of such hearing was given to all affected property owners as shown on the last equalized assessment roll and to all affected utilities, in the manner and for the time required by law; and

WHEREAS, such hearing was duly held, and all interested persons were given an opportunity to be heard.

WHEREAS, the Council determined, after hearing on the subject, that the Underground Utility District herein created is in the general public interest for the following reasons:

1. "The undergrounding to be accomplished will avoid or eliminate an unusually heavy concentration of overhead distribution facilities";
2. "The streets, roads or rights of way in the District are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic".
3. "The said streets, roads and rights of way adjoin or pass through a civic area".

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Porterville that pursuant to Ordinance No. 922 of the City of Porterville, the above described area is hereby declared an Underground Utility District, and is designated as Underground Utility District No. 7 of the City of Porterville. Attached hereto, marked Exhibit "A", and hereby incorporated as a part of this resolution, is a map delineating the boundaries of said District.

BE IT FURTHER RESOLVED that the Council does hereby fix May 1, 1992, as the date on which affected property owners must be ready to receive underground service and does hereby order the

removal of all poles, overhead wires and associated overhead structures and the underground installation of wires and facilities for supplying electric, communication or similar or associated service within Underground Utility District No. 7 on or before December 1, 1992.

BE IT FURTHER RESOLVED that the utility which undertakes underground installation of its facilities shall use the underground conversion allocation computed pursuant to decisions of the Public Utilities Commission of the State of California for the purpose of providing to each premises in Underground Utility District No. 7 requiring it [a maximum of one hundred feet of individual electric service trenching and conductor (as well as backfill, paving and conduit, if required)]. Each other serving utility will provide service trenching and conductor in accordance with its tariffs on file with the California Public Utilities Commission or as required by its Franchise Agreement with the City. Each property owner in Underground Utility District No. 7 shall be responsible for the installation and maintenance of the conduit and termination box located on, under or within any structure on the premises served.

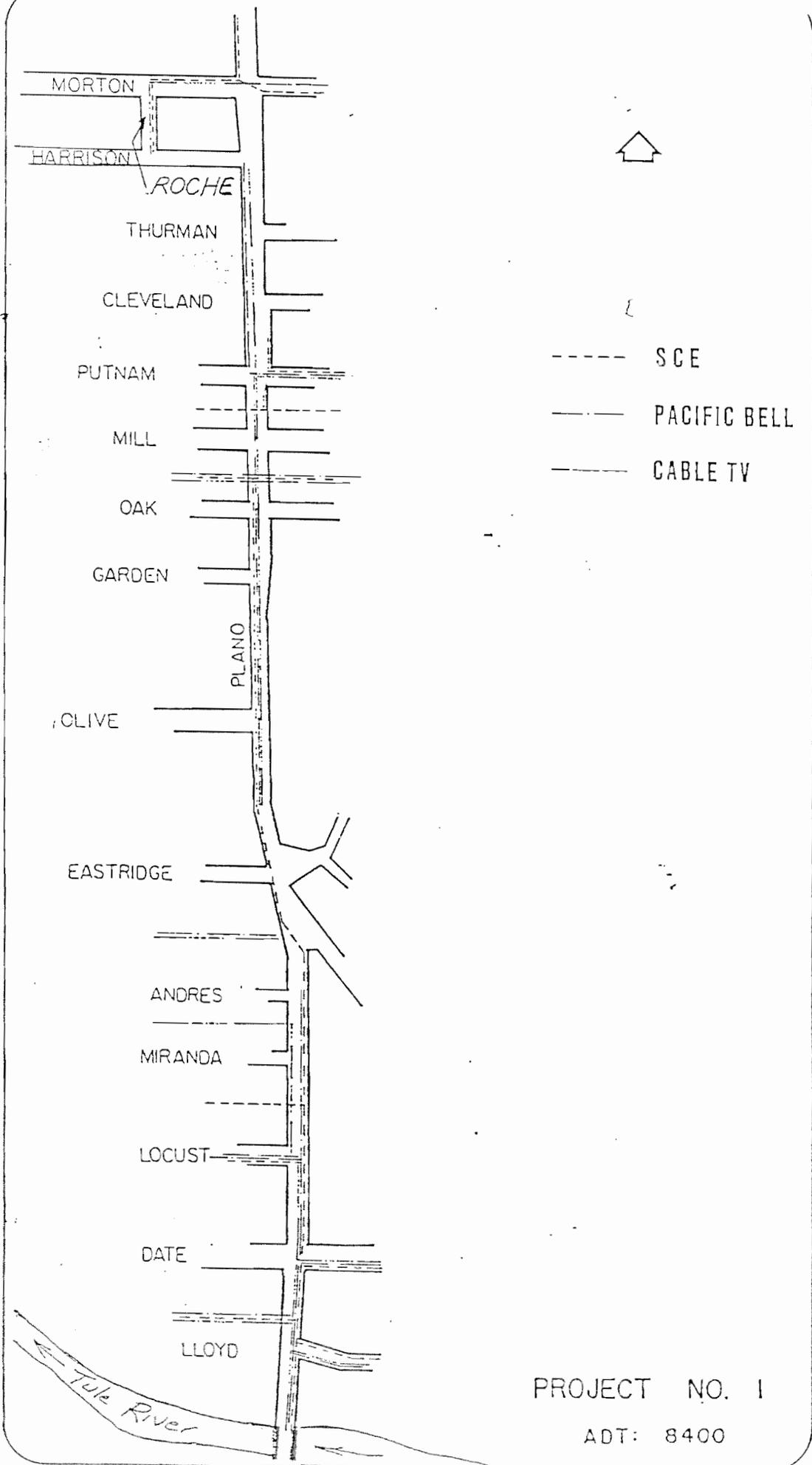
BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to notify all affected utilities and all persons owning real property within Underground Utility District No. 7 of the adoption of this resolution within ten (10) days after the date of such adoption. Said City Clerk shall further notify said property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication or other similar or associated service, they or

such occupant shall, by the date fixed in this resolution, provide all necessary facility changes on their premises so as to receive such service from the lines of the supplying utility or utilities at a new location, in accordance with applicable rules, regulations and tariffs of the respective utility or utilities at a new location, subject to applicable rules, regulations and tariffs of the respective utility or utilities on file with the Public Utilities Commission of the State of California. Such notification shall be made by mailing a copy of this resolution together with a copy of said Ordinance No. 922 to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

Theodore G. Ensslin, Mayor

ATTEST:

C. G. Huffaker, City Clerk



- SCE
- PACIFIC BELL
- CABLE TV

PROJECT NO. 1

ADT: 8400



California Fair Political Practices Commission

September 12, 1989

Fred V. Spallina
City Attorney
630 W. Grand
Porterville, CA 93257

Re: Letter No. 89-527

Dear Mr. Spallina:

Your letter requesting advice under the Political Reform Act was received on September 8, 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