



# California Fair Political Practices Commission

January 3, 1990

John E. Brown  
Best, Best & Krieger  
400 Mission Square  
3750 University Avenue  
Post Office Box 1028  
Riverside, CA 92502

Re: Your Request for Informal Assistance  
Our File No. I-89-547

Dear Mr. Brown:

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

## QUESTION

The members of the Community Redevelopment Agency (the "agency") Orbia Hanks, Glen Huber, Stella Mendoza, Robert L. Noriega and Norma Saikhon, have various financial interests in the City of Brawley (the "city"). May the members participate in decisions regarding the Amendment No. 1 (the "amendment") to the redevelopment plan for the agency's existing Redevelopment Project Area No. 1 (the "redevelopment area")? In addition, may the agency members, sitting as a city council, participate in the same decisions?

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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).)

### CONCLUSION

Agency members Hanks and Huber may not participate in decisions regarding the proposed amendment to the redevelopment plan since the decisions are likely to have a material financial effect on their economic interests, and such effect is distinguishable from the effect on the public generally.

Agency members Mendoza, Noriega and Saikhon may participate in the decisions unless the decisions will have a material financial effect on their economic interests.

### FACTS

Agency members Hanks, Huber, Mendoza, Noriega and Saikhon are elected members of the city council of the city. The city council sits as the community redevelopment agency. The agency is presently considering an amendment to the redevelopment plan.

Orbia Hanks has an ownership interest in one parcel of real property located at 1545 East I Street. The property is the site of Mr. Hanks' business, Rolling R Enterprises, Inc., a farm harvesting contractor. The property is located within the area which the amendment would add to the redevelopment area.

Glen Huber has an ownership interest in a number of properties located within the existing redevelopment area and within the area to be added by the proposed amendment. He owns two adjacent parcels located at 1676 E. Main Street and 1678 E. Main Street, which are the site of his equipment rental business, Elms Equipment Rental, Inc. He also owns property in downtown Brawley located at 136 N. Plaza within the original redevelopment area, which is the site of a retail sales business known as The Party Line, and a parcel of real property located at 625 Main Street, also within the original redevelopment area, which is the site of a now closed downtown movie theater.

Agency member Stella A. Mendoza is a commissioned real estate agent with the ERA Jackson-McCombs Realty Company, which from time to time may offer properties located within the redevelopment area to its customers.

Agency member Robert L. Noriega is employed by Puregrow Company ("Puregrow"), located at 1025 Alder Street within the redevelopment area.

Agency member Norma Saikhon is also a commissioned real estate agent and the real estate company employing her, Smith-Mitchell Real Estate Agency, may offer properties located within the redevelopment area to its customers.

The agency members have inquired whether they can vote as members of the agency, and as members of the city council, on

various issues relating to proceeding with Amendment No. 1 to Redevelopment Project Area No. 1, and have inquired whether they can vote on matters relating to the anticipated financing of redevelopment projects, including land acquisition and public improvement financing and other similar issues.

#### 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:

(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.

Section 87103(a) to (d).

The members of the city council, sitting as the community redevelopment agency, are public officials. (Section 82048.) Accordingly, they may not make, participate in making, or attempt to use their official position to influence a governmental decision if the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on themselves or their economic interests as described by Section 87103.

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

### 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 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.)

The purpose of any redevelopment plan is to promote sound development and redevelopment of blighted areas. The anticipated result of redevelopment is an increase in property values and an improved business climate within the project area, which benefits the community as a whole. (In re Oglesby (1975) 1 FPPC Ops. 71, copy enclosed. See also Downey Cares v. Downey Community Development Com., supra, 196 Cal. App. 3d 983.) Thus it is reasonably foreseeable that the decisions regarding the amendment to the redevelopment area will have a reasonably foreseeable financial effect on the agency members economic interests within any portion of the redevelopment area.

### Materiality

Regulation 18702 sets forth the guidelines for determining whether an official's economic interest in a decision is "materially" affected 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. On the other hand, if the official's financial interest is indirectly affected by the decision, Regulations 18702.2 to 18702.6 (copies enclosed) would apply to determine whether the effect of the decision is material.

Agency members Hanks and Huber own real property which is directly affected by the decisions regarding the proposed amendment to the redevelopment area. Subdivision (a) of Regulation 18702.2 provides in relevant part:

(a) The effect of a decision is material if any of the following applies:

\* \* \*

(3) Interest in Real Property -

\* \* \*

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project

area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

Regulation 18702.1(a)(3)(D)  
(emphasis added).

Agency members Hanks and Huber own property which is included in the proposed amendment to the redevelopment area. Accordingly, the effect of the decisions is deemed material.

The economic interests of agency members Noriega, Mendoza and Saikhon are indirectly affected by the decisions regarding the proposed amendment to the redevelopment plan.

Agency member Noriega's economic interest, Puregrow, is likely to be indirectly affected by the decisions.<sup>4</sup> Regulation 18702.2 details the test applicable to determine, based on the financial size of the business entity involved, whether the effect of a decision is material. For example, for the smallest size business entity,<sup>5</sup> the effect of a decision is deemed material if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

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<sup>4</sup> You have indicated that although Mr. Noriega's employer, Puregrow operates from real property located within the redevelopment area, it is unlikely that the implementation of the redevelopment area, or the proposed amendment to the redevelopment area will have a material financial effect on Puregrow. As discussed above, it is reasonably foreseeable that the decisions regarding the proposed amendment to the redevelopment plan will have an economic effect on properties in the original redevelopment area and in the amended redevelopment area. Since Puregrow is located in the redevelopment area, it is reasonably foreseeable that the decisions will have some economic effect on Puregrow's real estate assets. Regulation 18702.2 describes the test applicable to determine whether that effect is material.

<sup>5</sup> If the financial size of Puregrow is different than that covered by subdivision (g) of Regulation 18702.2, you should apply the appropriate subdivision applicable to Puregrow to determine whether the effect of the decisions is material.

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g).

Similarly, for agency members Mendoza and Saikhon, one of the subdivisions of Regulation 18702.2 details the test, depending on the financial size of their real estate companies, to determine whether the effect of a decision is material. They will also have disqualification obligations with respect to any decisions which will have a material financial effect on a source of income of \$250 or more in the 12 months before the decision.

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 council and the redevelopment agency, the public consists of all residents of the city. Thus disqualification is required unless the decision will affect the agency members financial interests in substantially the same manner as it will affect all residents of the city, or a significant segment of the residents of the city. (Regulation 18703, copy enclosed.)

The effect of the decisions on agency member Hanks is distinguishable from the effect on most other property owners in the City of Brawley. A review of the map indicates that there are few lots as large or larger than the plot owned by Mr. Hanks. Therefore, the effect of the decisions on Mr. Hanks property is not the same as the effect on the public, or as the effect on a significant segment of the public. Thus agency member Hanks may not participate in the decisions regarding the proposed amendment to the redevelopment plan.<sup>6</sup>

Agency member Huber has various property interests in the redevelopment area and the proposed amendment to the redevelopment

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<sup>6</sup> Copies of In re Owen (1976) 2 FPPC Ops. 77 and In re Legan (1985) 9 FPPC Ops. 1, Commission opinions which explain the application of the concept of public generally, are enclosed for your information. In addition, the West Advice Letter, No. A-89-243, the Scher Advice Letter No. A-88-479, and the Flynn Advice Letter, No. I-88-430, are also enclosed, and should be especially helpful for their discussion regarding the determination of what constitutes a significant segment of the public.

area. Under these circumstances, the effect of the decisions on Mr. Huber is not the same as the effect on the public, or the effect on a significant segment of the public. Thus agency member Huber may not participate in the decisions.

Agency members Noriega, Mendoza and Saikhon have economic interests in business entities. It does not appear that the effect of the decisions on these business entities is the same as the effect on the public, or on a significant segment of the public. Thus the agency members may not participate in the decisions if the decisions will have a material financial effect on their financial interests as determined by applying the standards outlined in Regulation 18702.2.

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

# BEST, BEST & KRIEGER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

## LAWYERS

ARTHUR L. LITTLEWORTH\*  
GLEN E. STEPHENS\*  
WILLIAM R. DEWOLFE\*  
BARTON C. GAUT\*  
CHARLES D. FIELD\*  
PAUL T. SELZER\*  
DALLAS HOLMES\*  
CHRISTOPHER CARPENTER\*  
RICHARD T. ANDERSON\*  
JOHN D. WAHLIN\*  
MICHAEL D. HARRIS\*  
W. CURT EALY\*  
THOMAS S. SLOVAK\*  
JOHN E. BROWN\*  
MICHAEL T. RIDDELL\*  
MEREDITH A. JUURY\*  
MICHAEL GRANT\*  
FRANCIS J. BAUM\*  
ANNE T. THOMAS\*  
D. MARTIN NETHERY\*  
GEORGE M. REYES\*  
WILLIAM W. FLOYD, JR.

MICHAEL A. CRISTE\*  
GREGORY L. HARDKE\*  
KENDALL H. MACVEY\*  
CLARK H. ALSOP\*  
DAVID J. ERWIN\*  
MICHAEL J. ANDELSON\*  
DOUGLAS S. PHILLIPS\*  
ANTONIA G. GRAPHOS\*  
GREGORY K. WILKINSON\*  
WYNNE S. FURTH\*  
DAVID L. BARON\*  
VIRGINIA A. ETTINGER\*  
EUGENE TANAKA\*  
BASIL T. CHAPMAN\*  
TIMOTHY M. CONNOR\*  
VICTOR L. WOLF\*  
DANIEL E. OLIVIER\*  
DANIEL J. MCHUGH\*  
STEPHANIE K. HARLAN\*  
MARCE. EMPY\*  
JOHN R. ROTTSCHAEFER\*  
MARTIN A. MUELLER\*

J. MICHAEL SUMMEROUR\*  
HOWARD B. GOLDS\*  
MARGARETT F. TANAKA\*  
JEFFERY H. CRANDALL\*  
SCOTT C. SMITH\*  
JEANNETTE A. PETERSON\*  
TERI L. VOLLNOGLE\*  
BRIAN M. LEWIS\*  
GEORGE H. CHANT III\*  
BRADLEY E. NEUFELD\*  
GEOFFREY K. WILLIS\*  
KANDY LEE ALLEN\*  
ELISE K. TRAYNUM\*  
WILLIAM D. DAHLING, JR.\*  
TERESA J. PRISTOJKOVIC\*  
VICTORIA N. KING\*  
BETTY S. N. AUTON\*  
MATT H. MORRIS\*  
JEFFREY V. DUNN\*  
JAMES E. NEUERBURG\*  
STEVEN C. DEBAUN\*  
BRANT H. DVEIRIN\*

ERIC L. GARNER\*  
DENNIS M. COTA\*  
HAROLD W. HOPP\*  
JULIE HAYWARD BIGGS\*  
RACHELLE J. NICOLLE\*  
MARK D. ALPERT\*  
ROBERT W. HARGREAVES\*  
JANICE L. WEIS\*  
SHARON L. GRONBERG\*  
CHRISTIAN E. HEARN\*  
SHARY L. WALKER\*  
PATRICK W. PEARCE\*  
MOIRA E. UMEMORI\*  
ELLEN C. SPIELMAN\*  
JAMES V. SHEPHERD\*  
GLEN H. WALLACE\*  
KIRK W. SMITH\*

RAYMOND BEST (1868-1957)  
JAMES H. KRIEGER (1913-1975)  
EUGENE BEST (1893-1981)

400 MISSION SQUARE  
3750 UNIVERSITY AVENUE  
POST OFFICE BOX 1028  
RIVERSIDE, CALIFORNIA 92502  
TELEPHONE (714) 686-1450  
TELECOPIER (714) 686-3083  
TELECOPIER (714) 682-4612

GORDON COLOGNE, OF COUNSEL  
JAMES B. CORISON, OF COUNSEL  
RICHARD A. OSHINS, OF COUNSEL\*  
STEPHEN P. DEITSCH, OF COUNSEL\*  
\*ADMITTED IN NEW YORK, NEVADA,  
WASHINGTON, D. C. COURT OF CLAIMS

OFFICES IN  
PALM SPRINGS (619) 325-7264  
RANCHO MIRAGE (619) 568-2611  
ONTARIO (714) 989-8584

\*A PROFESSIONAL CORPORATION

September 19, 1989

Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95814

Re: Request for Written Advice  
(Community Redevelopment Agency of the  
City of Brawley, CA)

Ladies and Gentlemen:

We are counsel to the Community Redevelopment Agency of the City of Brawley, California (the "Agency"). We have been instructed by the members of the Agency to request your written advice with respect to certain economic interests of certain members of the Agency. Our principal inquiry centers on the question of whether or not these Agency members participate in decisions regarding the approval of proposed Amendment No. 1 to Redevelopment Project Area No. 1 in light of their economic interests?

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This particular request relates to Agency members Orbia Hanks, Glen Huber, Stella Mendoza, Robert L. Noriega and Norma Saikhon, who are also elected members of the City Council of the City of Brawley. The City Council sits as the Community Redevelopment Agency. The Agency is presently considering Amendment No. 1 to the redevelopment plan for the Agency's existing Redevelopment Project Area No. 1 (the "Project Area No. 1"). Project Area No. 1 consists of a narrow strip of land along Main Street from the City's limits on the west to Eastern Avenue on the east and is approximately 110 acres in total area. Because Project Area No. 1 is only one-half block deep (alley to alley) on both the north and south sides of Main Street the Agency is encountering significant difficulties in implementing its previously approved Redevelopment Plan for Project Area No. 1. Proposed Amendment No. 1 would add approximately 926.2 acres to Project Area No. 1.

To assist in your review, we have included a large map detailing the boundaries of existing Project Area No. 1 and the proposed Amendment No. 1 area in the City of Brawley. The map also shows the location of real property

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interests held by the various agency members. We are also enclosing copies of the Form 721 Statements of Economic Interests filed by Agency members.

Agency member Orbia Hanks has an ownership interest in one parcel of real property located at 1545 East I Street in Brawley which is within the Amendment No. 1 proposed project area. This property is the site of Mr. Hanks' business, Rolling R Enterprises, Inc., which is a farm harvesting contractor. It is located in a primarily residential neighborhood and is approximately 175 yards from downtown Brawley.

Agency member Glen Huber has an ownership interest in a number of properties located within both Project Area No. 1 and the Amendment No. 1 proposed Project Area. He owns two adjacent parcels located at 1676 E. Main Street and 1678 E. Main Street, which are the site of his equipment rental business, Elms Equipment Rental, Inc. This property is located in a primarily commercial/residential area of the City and is approximately 183 yards from downtown Brawley.

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He also owns property in downtown Brawley located at 136 N. Plaza within the original Project Area No. 1, which is the site of a retail sales business known as The Party Line, and he also owns a parcel of real property located at 625 Main Street, also within the original Project Area No. 1, which is the site of a now closed downtown movie theater.

Agency member Stella A. Mendoza is a commissioned real estate agent with the ERA Jackson-McCombs Realty Company, which from time to time may offer properties located within the Redevelopment Project Area to its customers.

Agency member Robert L. Noriego has disclosed a source of income, as a salaried employee, from Puregrow Company located at 1025 Alder Street in Brawley. Although Mr. Noriega's employer operates from real property located within the Project Area, it is unlikely that either the implementation of Project Area 1 or the adoption of Amendment No. 1 will have a material financial affect on his source of income from Puregrow Company.

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Agency member Norma Saikhon is also a commissioned real estate agent and the real estate company employing her, Smith-Mitchell Real Estate Agency, may offer properties located within the Redevelopment Project Area to its customers.

The Agency members have inquired whether they can vote as members of the Agency on various issues relating to proceeding with Amendment No. 1 to Redevelopment Project Area No. 1, and have inquired whether they can vote on matters relating to the anticipated financing of redevelopment projects, including land acquisition and public improvement financing. These or similar issues may also come before the City Council of the City of Brawley, and the Agency members would like to know if he must disqualify themselves if and when such issues arise in the context of a City Council vote.

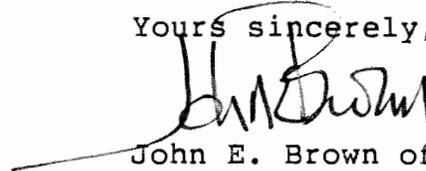
If you require any additional information with respect to the above, please do not hesitate to contact me. Given the importance of these issues to the City of Brawley, we would appreciate it if you could render a

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BEST, BEST & KRIEGER

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written opinion to me at the address noted herein at your  
earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John E. Brown". The signature is written in a cursive style with a long horizontal line extending to the left.

John E. Brown of  
Best, Best & Krieger  
Counsel, Redevelopment Agency  
City of Brawley

JEB/ch  
Enclosures



# California Fair Political Practices Commission

September 27, 1989

John E. Brown  
Best, Best & Krieger  
P.O. Box 1028  
Riverside, CA 92502

Re: Letter No. 89-547

Dear Mr. Brown:

Your letter requesting advice under the Political Reform Act was received on September 21, 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