



California Fair Political Practices Commission

November 1, 1989

John R. Calhoun
City Attorney
City of Long Beach
City Hall
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Your Request for Advice
Our File No. A-89-568

Dear Mr. Calhoun:

This is in response to your letter requesting confirmation of telephone advice provided to you on behalf of Long Beach City Councilmember Ray Grabinski on August 4, 1989 with respect to his responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

In that telephone conversation you asked whether the councilmember could participate in decisions concerning an Alley Lighting Assessment District and decisions concerning a proposed California Heights Landmark District. These districts would encompass essentially the same area of the city. The Alley Lighting Assessment District includes 1,484 parcels. The California Heights Landmark District involves 1,210 parcels. The councilmember owns real property in both proposed districts.

As I stated in our telephone conversation, 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 any real property in which the public official has a direct or indirect interest worth \$1,000 or more. (Section 87103(b).)

^{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.

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.) You stated in our telephone conversation that you anticipated a financial effect on the councilmember's property from both decisions.

Regulation 18702.1(a)(3)(A) (copy enclosed) provides that the effect of a decision on real property in which an official has a direct, indirect or beneficial ownership interest, is material if:

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property.

Emphasis added.

Since both decisions involve the inclusion of the councilmember's property in a district, the effect on the councilmember's property is deemed to be material unless there will be no financial effect on the official's real property. Moreover, Regulation 18702.1(a)(3)(C) 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. This provision would also require the councilmember's disqualification with respect to the Alley Lighting Assessment District.

Consequently, if there will be any financial effect on Councilmember Grabinski's real property, he may not participate in decisions concerning the Alley Lighting Assessment District and the California Heights Landmark District unless the effect on his financial interest is the same as the effect on the public generally. For the "public generally" exception to apply, the decision must affect the councilmember's interest in substantially the same manner as it will affect a significant segment of the public in Long Beach. (Regulation 18703, copy enclosed.)

You stated in our telephone conversation and in your letter requesting this confirmation that the area encompassed by the two districts was "about the same area" as that encompassing by a rezoning decision which was the subject of a previous letter. (Calhoun Advice Letter No. A-88-362, copy enclosed.) In that letter we concluded that the segment of the population in the area in question, encompassing about 1 percent of the dwelling units in

File No. A-89-568

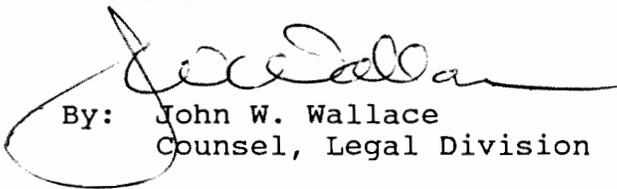
Page 3

the city, was not sufficient in size to constitute a significant segment of the public. Since the facts are substantially the same, we reach the same conclusion with respect to the Alley Lighting Assessment District and the California Heights Landmark District.

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

OFFICE OF THE
CITY ATTORNEY
OF
LONG BEACH

JOHN R. CALHOUN
CITY ATTORNEY

ROBERT E. SHANNON
ASSISTANT

MAIN OFFICE
City Hall
333 West Ocean Boulevard
Long Beach, California 90802
(213) 590-6061

HARBOR BRANCH OFFICE
Harbor Administration Building
Post Office Box 570
Long Beach, California 90801
(213) 590-4120

WORKERS' COMPENSATION SECTION
(213) 590-6583

September 28, 1989

Mr. John Wallace
Counsel, Legal Division
California Fair Political
Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Dear Mr. Wallace:

It is respectfully requested that your office provide Long Beach City Councilmember Ray Grabinski with formal written advice confirming your telephone advice given on or about September 4, 1989, that Mr. Grabinski should disqualify himself from making, participating in or influencing the decision of the Long Beach City Council concerning (1) the proposed California Heights Alley Lighting Assessment District Project, and (2) the designation of the proposed California Heights Landmark District.

With respect to the Alley Lighting Assessment District, a proposal is being processed by the City Manager's office for an assessment district to install and provide alley lighting in an already developed and built-up area comprised of approximately 193 acres (about forty city blocks) containing 1,484 parcels. There will be approximately 103 lights installed and operated in the proposed Alley Lighting District. A sketch map of the boundaries of the proposed Alley Lighting Assessment District is attached for your information.

Regarding the proposed California Heights Landmark District, the area consists of 248 acres (about 38 city blocks) containing 1,210 parcels. Such a designation, if approved by the City Council, would mean that environmental changes (as defined in the City's ordinance) made to cultural resources within the Landmark District would require a certificate of appropriateness regardless of whether the alteration, removal or construction of such property requires a building permit. The denial of a certificate of appropriateness can delay a proposed

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Mr. John Wallace, Counsel, Legal Division
California Fair Political Practices Commission
September 28, 1989
Page 2

environmental change within the District for up to one year. A copy of the applicable chapter of the Long Beach Municipal Code is enclosed for your information and use. A sketch map of the boundaries of the proposed Landmark District is also enclosed.

The total land area of the City of Long Beach is approximately fifty square miles. There are nine City Council districts in the City, each containing approximately the same number of residents. Mr. Grabinski serves on the Long Beach City Council as the elected representative for the Seventh Councilmanic District. Both the proposed Alley Lighting Assessment District and the proposed Landmark District are located entirely within the council district which Mr. Grabinski represents. He resides in a single-family residence owned by him which is on a parcel located within both the proposed Alley Lighting Assessment District and the proposed Landmark District. Mr. Grabinski's residence is indicated in red on the enclosed Assessment District and Landmark District maps.

Furthermore, Mr. Grabinski owns a delicatessen/fast food restaurant business which he operates in a building leased to him located approximately 450 feet from the outside boundary of the proposed Landmark District and approximately 1300 feet from the outside boundary of the proposed Alley Lighting Assessment District boundary.

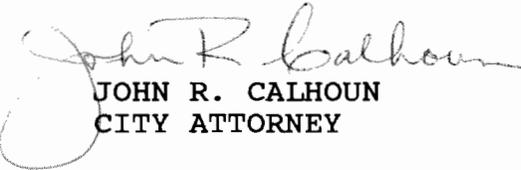
The above-stated facts pertaining to these matters were related to you during a telephone conversation on or about August 3, 1989. During said conversation you were also informed that last year your office ruled on a question regarding Mr. Grabinski's disqualification involving a rezoning matter concerning almost the same area covered by the boundaries of the proposed Alley Lighting District and Landmark District (your file #A-88-362). You indicated that you would review your file and inform us of your advice concerning Mr. Grabinski's participation in the Alley Lighting District and the Landmark District matters.

On or about August 4, 1989 you advised our office by telephone that based upon your review and analysis of the situation as related to you during our August 3, 1989 telephone conversation, the Fair Political Practices Commission staff had determined that Mr. Grabinski should disqualify himself from making or participating in or influencing the City Council's decision concerning the proposed Alley Lighting District and Landmark District matters.

Mr. John Wallace, Counsel, Legal Division
California Fair Political Practices Commission
September 28, 1989
Page 3

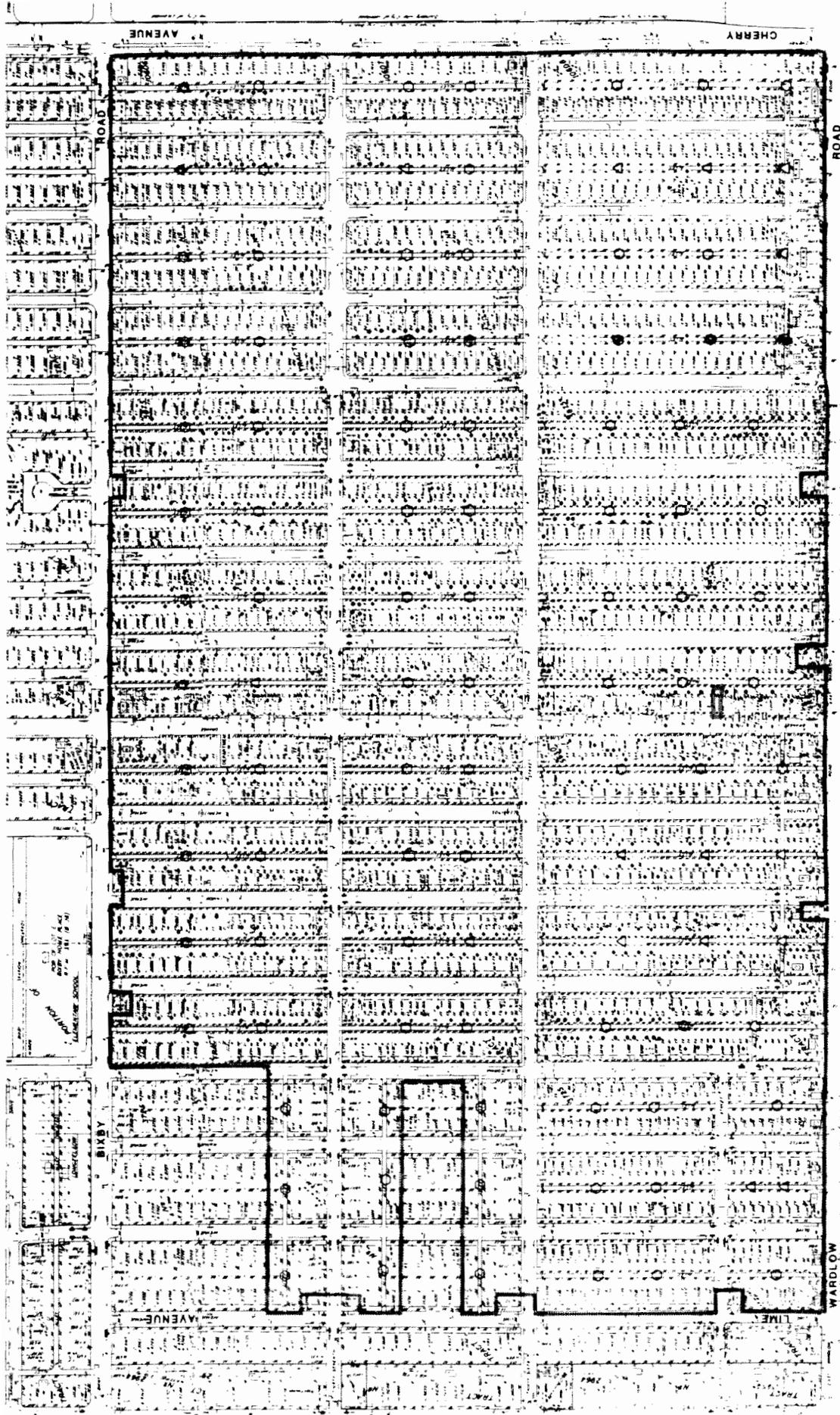
Councilman Grabinski would appreciate formal written advice confirming your telephone advice regarding his disqualification in these two matters.

Very truly yours,



JOHN R. CALHOUN
CITY ATTORNEY

JRC:fl
Enclosure



PROPOSED CALIFORNIA HEIGHTS ALLEY LIGHTING ASSESSMENT DISTRICT

○ APPROXIMATE LOCATION OF PROPOSED 70W., 5800 LUMEN, HIGH PRESSURE SODIUM VAPOR LIGHT TO BE MOUNTED ON EXISTING EDISON POLE

△ APPROXIMATE LOCATION OF EXISTING EDISON LAMP TO BE CONVERTED TO H.P.S.

----- PROPOSED ASSESSMENT DISTRICT BOUNDARY



California Fair Political Practices Commission

October 2, 1989

John R. Calhoun
City Attorney
City Hall
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Letter No. 89-568

Dear Mr. Calhoun:

We received your letter requesting confirmation of advice under the Political Reform Act on October 2, 1989. Your letter has been assigned to John Wallace for response. If you have any questions, you may contact him directly at (916) 322-5901.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh:confadv1