



California Fair Political Practices Commission

November 13, 1989

June Elliott
707 Boulevard Ave., #1
Imperial Beach, CA 92032

Re: Your Request for Advice
Our File No. A-89-610

Dear Ms. Elliott:

You have requested written advice regarding the application of conflict-of-interest provisions of the Political Reform Act (the "Act").¹ We cannot give you advice regarding specific decisions, because you have not provided information as to specific decisions to be made by the planning commission.² Therefore, this advice is limited to the issue of foreseeability as it generally applies to specific sources of income.

QUESTION

As a planning commissioner who is also a real estate agent, may you participate in decisions relating to amendment of the Seacoast Specific Plan?

CONCLUSION

You may participate in decisions relating to the amendment of the Seacoast Specific Plan unless the decisions will materially affect your financial interest. Based upon the information provided, it is not foreseeable at this time that decisions made

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 We cannot give formal written advice regarding specific decisions unless we have all the facts material to consideration of the question. (Regulation 18329(b)(2)(B), copy enclosed.)

in connection with amendment of the Seacoast Specific Plan will affect the real estate firm that is a source of income to you.

It is also not foreseeable that decisions on the plan will affect a former client, once the client completes the sale of his or her property within the area affected by the plan. However, until escrow closes, the client has an ownership interest in the property, and you may not participate in decisions which will materially affect the client's property interest.

FACTS

You are a planning commissioner with the City of Imperial Beach. The city is considering amendments to the Seacoast Specific Plan. This document is part of the city's general plan and is also a part of the city's certified local coastal plan.

You are not certain what the precise amendments to the plan will be, but you anticipate making a detailed examination of all land use issues within this district. The proposed changes include redesignating land uses on certain parcels and changes to density or intensity of permitted use, height, and other related regulations.

You are a real estate agent employed by Realty World, McNally, Inc. ("Realty World"). Realty World is located outside the affected area. You have submitted a statement from Realty World indicating that it has no current listings or escrows in the area covered by the Seacoast Specific Plan and that the bulk of its real estate activities is in other areas. Generally, Realty World deals in single-family residential property. The area affected by the plan is primarily composed of investment properties.

Within the past 12 months, you sold a parcel in the affected area. You indicated in our telephone conversations that you represented the buyer in the transaction and received a commission of approximately \$6,000. The buyer has since resold the parcel and the property is presently in escrow. You have included a statement from the new buyer indicating that no further documents are anticipated to be required for closing escrow. Escrow should close on or before November 4, 1989. The current seller (your former client, hereafter referred to as "Client") is being cashed out and will retain no interest in the property. You did not represent either party to the present transaction. Client does not own any other property in the area. The new buyer has placed a substantial cash deposit in escrow, and possession has already been transferred to the new buyer.

You do not foresee listing or selling other property in the affected area.

ANALYSIS

The conflict-of-interest provisions of the Act prohibit a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the public official knows or has reason to know he or she has a financial interest.

(Section 87100.) As a member of the planning commission, you are considered to be a public official. (Section 82048; Regulation 18700, copy enclosed.)

Financial Interest

A public official may not participate in a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) Whether the official has a financial interest in the decision is governed by Section 87103, which provides in part:

An official has a financial interest in a decision within the meaning of Section 87100 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 or her immediate family or on:

* * *

(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.

Section 87103 (Emphasis added.)

Regulation 18704.3 provides that the sources of commission income to a real estate agent for a specific sale include the following:

(A) The broker and brokerage business entity under whose auspices the agent works;

(B) The person the agent represents in the transaction; and

(C) Any person who receives a finder's or other referral fee for referring a party to the

transaction to the broker, or who makes a referral pursuant to a contract with the broker.

Regulation 18704.3, copy enclosed.

According to the facts which you have provided, both Client and Realty World are sources of income to you of more than \$250 dollars within the past 12 months.

However, you may still be able to participate in decisions relating to the Seacoast Specific Plan, unless it is foreseeable that the decisions will materially affect either Client or Realty World. The effect of a decision is foreseeable if there is a substantial likelihood that it will occur. However, there must be something more than a mere possibility that the effect will occur. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Based upon the information that you have provided, it does not appear at this time that amendments to the Seacoast Specific Plan will have a financial effect upon Realty World. You indicate that Realty World has no listings or escrows in the area covered by the plan, and does not regularly sell property in this area. You also indicated in our telephone conversations that you do not believe that amendments to the plan will affect property values outside the plan area where Realty World may have listings or escrows. So long as it is not foreseeable that Realty World will be affected by decisions relating to property covered by the Seacoast Specific Plan, the fact that Realty World is a source of income to you will not disqualify you from participating in plan amendments.²

With respect to Client, once escrow has closed and Client retains no ownership interest in property covered by the plan, it is not foreseeable that Client will be materially affected by any decisions of the planning commission with respect to the Seacoast Specific Plan.

However, until escrow closes, there is always a possibility that the sale will not be completed. Therefore, pending close of escrow, Client is still deemed to have an ownership interest in the property. If a decision before the planning commission will

² Should Realty World acquire listings or escrows in the affected area or shift its activities to the area, this advice could change. This advice could also change as specific decisions arise which might foreseeably affect property outside the plan area. In either event, we would advise you to contact the Commission for further advice. The issue would then be whether a decision of the planning commission would materially affect Realty World's interest.

have a material financial effect on the property, you will be disqualified from participating in the decision. (Regulation 18702.6(b), copy enclosed.)

Whether Client's property will be materially affected by a decision of the planning commission will depend upon such factors as the type of decision to be made and the extent to which the decision may be expected to increase or decrease the property's market value or rental value. (Regulations 18702.1, 18702.3, 18702.4, copies enclosed.)

Finally, you have requested advice which will protect you from administrative and criminal sanctions. The Act provides that formal written advice is a complete defense to any enforcement proceeding initiated by the Commission. It is also evidence of good faith in any civil or criminal proceeding. However, this limited immunity applies only if the person who requested advice did so in good faith, disclosed truthfully all material facts, and acts in reliance upon the advice provided. (Section 83114(b).)

As previously indicated, the advice provided by this letter is limited to the general issue of foreseeability at this time. Without further information, we cannot advise you as to particular decisions which may come before the planning commission relative to amending the Seacoast Specific Plan.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED:MWE:aa

Enclosures

PLEASE NOTE THIS URGENCY: 85-610

I shall abstain from participation in this matter on our meeting of October 26th.

October 23, 1989

FPPC

Legal Division
Conflict Advice
428 "J" Street, Suite 800
Sacramento, California 95814

Oct 25 2 45 PM '89

However, would appreciate so very much receiving your response prior to the following meeting on November 9th.

I can receive your response by FAX at (619) 575-7730.

RE: Possible Conflict of Interest; Request for Advice Letter.

I am a Planning Commissioner with the City of Imperial Beach. I respectfully request that you give me an advice letter with regard to a possible conflict of interest on my part. The situation is summarized as follows:

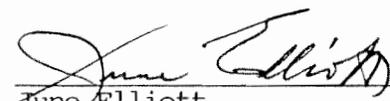
The City of Imperial Beach is considering amendments to the Seacoast Specific Plan. This document is a portion of the City's General Plan and is also a part of the City's certified Local Coastal Plan. The area in question is a portion of the city near the beach.

The changes that have been proposed to the Plan are potentially far-reaching. They include redesignating land uses on certain parcels and changes to density or intensity of permitted use, height, and other related regulations. Since the amendments have not been approved, it is impossible to state what, exactly, they will be. However, we anticipate making a detailed examination of all land use issues within this district.

My situation is as follows:

- 1) I do not own property or have any continuing interest in property either in or near the affected area, nor do I have business or other financial interests there. I have no family members in the city.
- 2) I am a real estate agent employed by Realty World, McNally, Inc., which is located outside the affected area. There will be no material effect on the broker through decisions made in the amendments to the Plan. Please refer to Exhibit "A" attached. I have no financial interest in the brokerage company.
- 3) In the past 12 months I sold one parcel in the affected area to a person residing outside this county who does not own any other property in this city. He has subsequently sold the parcel to a buyer, whose statement of the terms of sale and condition of the escrow is outlined on Exhibit "B" attached. My commission on the original sale was \$6,000±, which is not a major source of my income.
- 4) I do not foresee listing or selling other property in the affected area.

I have attached a copy (Exhibit "C") of my most recent Conflict of Interest Statement. Should you require further assistance from the City, please contact the Assistant City Attorney, Susan Reynolds, at (619)236-1551. Should you require more information about me, please feel to call me at (619)423-7275. I would like a written opinion such that if you cannot find a conflict based on these facts, I would have protection from administrative and criminal sanctions.


June Elliott

707 Boulevard Ave., #I
Imperial Beach CA 92032

This material was sent to you by FAX 10-23-89.

cc: Susan Reynolds

J.E.

EXHIBIT "A"



REALTY WORLD® — McNally, Inc.
280 Palm Avenue, Imperial Beach, CA 92032
Telephone: (619) 423-5555

October 23, 1989

TO WHOM IT MAY CONCERN:

This office currently has no listings within the beachfront area covered by the Seacoast District Specific Plan.

The bulk of our real estate activities has been in areas eastward of the beachfront area, including other areas of Imperial Beach and South San Diego.


Partner 10/23/89.



THE RESULTS PEOPLE®

Each office independently owned and operated

EXHIBIT "B"

To Whom it Concerns:

I am the buyer in escrow on property at 118-128 Daisy Avenue
in Imperial Beach, California.

The seller is being cashed out and is not carrying back any note
or Second Deed of Trust.

Both buyer and seller have signed escrow instructions.

There are no pending or anticipated amendments to the escrow.

The buyer has made a substantial, non-refundable deposit to escrow.

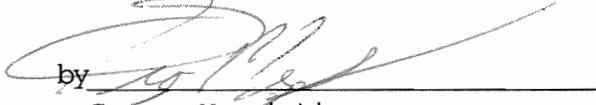
There are no further documents presently or anticipated to be
required for closing escrow.

Escrow will close on or before November 4, 1989.

Buyer has received possession of the property with management rights.

There was no participation or representation of either the buyer
or seller in this transaction by June Elliott or any other
real estate agent, nor has June Elliott ever acted as my
real estate agent.

MERZIOTIS PROPERTIES

by 

George Merziotis

October 23, 1989.

CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL
SOUTH DAVENPORT SOUTH FLORIDA

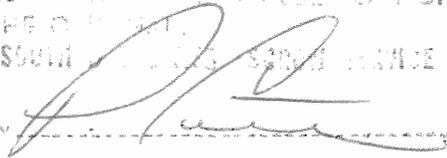
By 

EXHIBIT "C"

Date Received by FPPC

Date Received by Filing Official

FORM 721

STATEMENT OF ECONOMIC INTERESTS

A Public Document

1988-89

PLEASE TYPE OR PRINT IN INK

NAME

Jane Elliott

TELEPHONE NUMBER

(619) 423-7275

MAILING ADDRESS

707-I Boulevard Ave

Imperial Beach

92032

STREET

CITY

ZIP CODE

OFFICE SOUGHT OR HELD (Check One):

STATE OF CALIFORNIA OFFICE:

JUDICIAL BRANCH COUNTY: COURT:

CHECK ONE: JUDGE COURT COMMISSIONER

COUNTY OFFICE: COUNTY:

CITY OFFICE: Planning Commissioner CITY: Imperial Beach

TYPE OF STATEMENT (Check the Appropriate Box(es)):

SCHEDULES TO BE COMPLETED

CANDIDATE STATEMENT

File no later than the final filing date for your declaration of candidacy.

Complete Schedules A, B and C disclosing investments and interests in real property held on the date of filing.

ASSUMING OFFICE STATEMENT (For Newly-Elected and Newly-Appointed Officials ONLY)*

ELECTED OFFICIAL (Other than elected state officers assuming office in December or January). File no later than 30 days after assuming office.

Complete Schedules A, B and C disclosing investments and interests in real property held on the date of assuming office.

Date Assumed Office

APPOINTED OFFICIAL Not subject to confirmation by the State Senate or the Commission on Judicial Appointments. File no later than 10 days after assuming office.

Complete Schedules A, B and C disclosing investments and interests in real property held on the date of assuming office.

Date Assumed Office

APPOINTED OFFICIAL Subject to confirmation by the State Senate or the Commission on Judicial Appointments. File no later than 10 days after appointment or nomination.

Complete Schedules A, B and C disclosing investments and interests in real property held on the date of filing.

Date Appointed

ANNUAL STATEMENT

State officials and all judges and court commissioners file between January 1 and March 1. City and county officials file between January 1 and April 1.

PERIOD COVERED: Disclose all reportable interests held or received during the period from January 1, 1988 through December 31, 1988.

Complete all schedules disclosing investments and interests in real property held and income received at any time during the period covered by the statement.

LEAVING OFFICE STATEMENT

File no later than 30 days after leaving office. The period covered is January 1, 19__, through the date of leaving office which was:

Complete all schedules disclosing investments and interests in real property held and income received at any time during the period covered by the statement.

mo. day yr.

NAME June Elliott

The Following Summary Must be Completed by all Filers

DO NOT COMPLETE THIS SUMMARY PAGE UNTIL YOU HAVE CAREFULLY REVIEWED ALL SCHEDULES AND THE INSTRUCTIONS FOR EACH SCHEDULE.

	SCHEDULE COMPLETED AND ATTACHED	NO REPORTABLE INTERESTS
Schedule A INVESTMENTS (Other Than Those Held by a Business Entity or Trust)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule B INTERESTS IN REAL PROPERTY (Other Than Those Held by a Business Entity or Trust)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule C-1 INTERESTS IN REAL PROPERTY HELD BY A BUSINESS ENTITY OR TRUST	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule C-2 INVESTMENTS HELD BY A BUSINESS ENTITY OR TRUST	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule D INCOME (Other Than Loans, Gifts and Honoraria)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schedule E LOANS (Received or Outstanding During the Reporting Period)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule F GIFTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule G HONORARIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schedule H COMMISSION INCOME, INCOME AND LOANS TO BUSINESS ENTITIES OR TRUSTS AND INCOME FROM RENTAL PROPERTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>

NOTE: AFTER THE SUMMARY PAGE HAS BEEN COMPLETED, PLEASE DISCARD THOSE SCHEDULES ON WHICH YOU HAVE NO REPORTABLE INTERESTS.

VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed the statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Jan 25, 19 89, at Imperial Beach CA
(date) (city and state)

SIGNATURE June Elliott

NAME June Elliott

Schedule D -- Income
(Other Than Loans, Gifts and Honoraria)
(SEE PAGES 18 AND 19 OF THE INFORMATION MANUAL)

IDENTIFY EACH SOURCE OF INCOME:

GROSS INCOME RECEIVED:

NAME <i>Realty World/McNally, Inc.</i>	<input type="checkbox"/> \$250 - \$1,000 <input checked="" type="checkbox"/> \$1,001 - \$10,000 <input type="checkbox"/> Over \$10,000
ADDRESS <i>280 Palm Ave., Imperial Beach CA</i>	
BUSINESS ACTIVITY, IF ANY <i>Real Estate</i>	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED <i>Commission</i>	
NAME	<input type="checkbox"/> \$250 - \$1,000 <input type="checkbox"/> \$1,001 - \$10,000 <input type="checkbox"/> Over \$10,000
ADDRESS	
BUSINESS ACTIVITY, IF ANY	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED	
NAME	<input type="checkbox"/> \$250 - \$1,000 <input type="checkbox"/> \$1,001 - \$10,000 <input type="checkbox"/> Over \$10,000
ADDRESS	
BUSINESS ACTIVITY, IF ANY	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED	
NAME	<input type="checkbox"/> \$250 - \$1,000 <input type="checkbox"/> \$1,001 - \$10,000 <input type="checkbox"/> Over \$10,000
ADDRESS	
BUSINESS ACTIVITY, IF ANY	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED	

If additional space is needed use the continuation sheet on the reverse.



California Fair Political Practices Commission

October 26, 1989

June Elliott
707 Boulevard Avenue, #1
Imperial Beach, CA 92032

Re: Letter No. 89-610

Dear Ms. Elliott:

Your letter requesting advice under the Political Reform Act was received on October 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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