



California Fair Political Practices Commission

December 26, 1989

Honorable Willard Murray, Jr.
Assemblyman, Fifty-Fourth District
State Capitol
P.O. Box 942649
Sacramento, CA 94249-0001

Re: Your Request for Informal Assistance
Our File No. I-89-616

Dear Assemblyman Murray:

You have requested advice on behalf of the City of Bellflower concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ The following advice is based upon the facts provided in your letter of October 11, 1989 and the accompanying memorandum written by City Attorney Maurice F. O'Shea on September 13, 1989.

Since we do not have sufficient facts to provide specific advice, we are treating your question as a request for informal assistance pursuant to Regulation 18329(c).² In addition, this letter only concerns the future conduct of the two board members with regard to their participating on an ad hoc committee. We make no comment on their participation in any past decisions. (Regulation 18329(c)(4)(A), copy enclosed.)

QUESTION

May redevelopment agency board members who own property in both the redevelopment survey area and the preliminary plan area be on an ad hoc committee and be present at negotiating sessions with the fiscal review committee?

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 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

The redevelopment agency board members who own property in both the survey and preliminary plan area may be on an ad hoc committee and be present at negotiating sessions, but they may only observe the negotiations. Since the consultations and negotiations with the fiscal review committee are part of the process for the adoption of the preliminary plan, the board members may neither consult with the agency staff nor participate or use their official position to influence any decisions.

FACTS

The City of Bellflower recently formed a redevelopment agency. The city council members constitute the board of directors for the agency. Although the agency has already designated the survey area, the two board members who own commercial property in the survey area did not participate in the designation process.

The next step involves the adoption of a preliminary plan. After the preliminary plan has been prepared and accepted by the redevelopment agency, the redevelopment agency is required to consult with the affected taxing agencies. This process involves dealing with a fiscal review committee, which is composed of representatives of the various affected taxing agencies.

The redevelopment agency is represented by city/agency staff and consultants at the negotiations with the fiscal review committee. The consulting and negotiating necessary by the redevelopment agency and the fiscal review committee involves the preliminary report, redevelopment plan, and draft EIR, among other things.

The board members of the redevelopment agency would like to form an "ad hoc committee" composed of two board members, who will attend the negotiations between the taxing authority fiscal review committee and the agency staff and consultants. This ad hoc committee "will observe, with possible input to agency staff, but will not participate in the negotiations."

ANALYSIS

The Act prohibits a 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. (Section 87100.) A public 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 or on, among other things:

(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)-(d).

You have stated that two board members own commercial property in the survey area. Presumably, their interests are each worth \$1,000 or more. Regulation 18702.1 (copy enclosed) contains guidelines for determining if the effect of a decision is material when an official's economic interest is directly involved in the decision. Pursuant to Regulation 18702.1 (a)(3)(D), the effect of a decision is material as to an official's interest in real property if:

(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).

The decisions in question involve the preliminary plan, the redevelopment plan and the draft environmental document. Accordingly, these decisions materially affect the officials' interests. Since there is a material financial effect on the officials' economic interests, they may not make, participate in or use their official position to influence any decisions at the negotiating sessions with the fiscal review committee. Regulation 18700.1 (a) states:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

Therefore, the two board members may be on an ad hoc committee and be present at the negotiating sessions, but they may only observe the negotiations. Since the consultations and negotiations with the fiscal review committee are part of the process for the adoption of the preliminary plan, the board members may neither consult with the agency staff nor participate or use their official position to influence any decisions.

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

Sincerely,

Kathryn E. Donovan
General Counsel

By:  Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

Enclosures

cc: Maurice F. O'Shea
City Attorney of Bellflower

LAW OFFICES OF
RAPPORT & MARSTON
AN ASSOCIATION
OF
SOLE PRACTITIONERS

FBI
MAR 31 1989

DAVID J. RAPPORT
LESTER J. MARSTON

200 Henry Street
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Ukiah, Ca. 95482
(707) 462-6846

March 28, 1989

Margaret Ellison, Esq.
Fair Political Practices Commission
Legal Division
428 J Street, Suite 800
Sacramento, California 95814

RE: Request for Opinion on Conflict of Interest
Our File No. W-2.7

Dear Ms. Ellison:

The purpose of this letter is to follow up on our telephone conversation of March 23, 1989, in which I requested a formal written opinion from the Fair Political Practices Commission on whether four members of the Willits City Council would be prohibited from voting on the issuance of a use permit for the Harwood Energy Corporation Cogeneration Facility.

As I relate to you in our telephone conversation the Harwood Energy Corporation has applied to the City of Willits for a use permit to operate a cogeneration power plant facility.

The City Council has determined that the project will have a significant impact on the environment and has required that the applicant prepare a environmental impact report. The City has contracted with a consulting firm to prepare the EIR. The consultant is in the process of preparing the responses to the comments on the EIR and the City anticipates that a hearing will be held on this use permit during the first or second week in May.

The proposed location for the site is within the City's redevelopment zone. Three Council members, Virginia Stransky, Herb Giese, Vic Hansen and Edwin Scott own property within the redevelopment zone. For your reference I have enclosed a copy of a map setting forth the boundaries of the redevelopment zone and indicating the approximate locations of the power plant site and council members parcels.

Three council members own property that is within approximately 300 feet of the project site. These council persons are Virginia Stransky, Vic Hansen and Herb Giese. These three council members also own property which abuts on South Street. Council member Scott's property is located at the intersection of Highway 101 and Baechtal Road.

City staff, in conjunction with the consultant which has prepared the EIR, have recommended mitigation measures for the project. This includes moving the location of the project on the same parcel to allow the construction of a freeway off-ramp which would exit onto South Street in the event that Cal Trans constructs the proposed Highway 101 Willits bypass.

Further mitigation measures include certain improvements to Baechtal Road (i.e. repaving of street, construction of curb, gutter and sidewalk) and the construction of a stoplight at the intersection of Highway 101 and Baechtal Road.

None of these improvements will provide a direct financial benefit to any of the Council members. However, an argument can be made that the proposed mitigation measures if implemented, would provide these council members with a better location for their businesses.

Based on these facts I am requesting an opinion from you on the following:

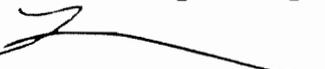
1) Does council member Scott, Stranksy, Giese and Hansen have a conflict of interest which prohibits them from voting on the Harwood Cogeneration use permit simply because they own property within the redevelopment zone?

2) Do these same council members have a conflict of interest that prohibits them from voting on the Harwood use permit because their businesses will be indirectly affected by the improvements made by the applicant if the mitigation measures are adopted as recommended in the final EIR?

As I stated above, this will be scheduled for a vote sometime during the first or second week of May. Therefore, I am requesting that you render an opinion on these issues prior to May 1, 1989.

If you need any additional information in order to render an opinion on these matters, please do not hesitate to give me a call.

Yours very truly,



LESTER J. MARSTON
City Attorney

Enclosure

cc: Bill Van Orden, City Manager
Edwin Scott, Mayor
Council Member Stransky, Giese & Hansen

JOHN K. VAN DE KAMP
Attorney General

F.P.P.C.

OCT 21 8 43 AM '89

State of California
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511
P.O. BOX 944255
SACRAMENTO 94244-2550
(916) 445-9555

October 23, 1989

(916) 324-5435

Willard H. Murray, Jr.
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Dear Assemblyman Murray:

This is in response to your letter of October 11, 1989, concerning conflict of interest questions regarding the City of Bellflower. The issues raised are within the jurisdiction of the Fair Political Practices Commission, and are the subject of their regulations. As the agency counsel notes in her final paragraph: "[T]he Fair Political Practice Commission has the final opinion."

We are therefore forwarding your request to the F.P.P.C. for their consideration and appropriate action.

Sincerely,

JOHN K. VAN DE KAMP
Attorney General

**Original signed By
Nelson Kempsey**

NELSON KEMPSKY
Chief Deputy Attorney General

cc: Fair Political Practices Commission (enclosure)

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Assembly California Legislature



WILLARD H. MURRAY, JR.
ASSEMBLYMAN, FIFTY-FOURTH DISTRICT

COMMITTEES
EDUCATION
GOVERNMENTAL ORGANIZATION
LABOR AND EMPLOYMENT
LOCAL GOVERNMENT
UTILITIES AND COMMERCE
SUBCOMMITTEES ON VETERAN
AFFAIRS

October 11, 1989

John D. Van de Kamp, Attorney General
State Department of Justice
Office of the Attorney General
1515 "K" Street, Suite 511
Sacramento, CA 92444

RE: Request of Opinion
Redevelopment Agency Board Members
Ad-Hoc Committee - Fiscal Review
Conflict of Interest

Dear Attorney General ~~Van de Kamp~~: *John*

The City of Bellflower, one of my constituent cities, has requested an opinion regarding an issue as to whether a conflict of interest arises under the following facts.

The Bellflower Redevelopment Agency has just recently been formed. The City Council members constitute the Board of Directors for the Agency.

To date, a survey area has been designated. Two of the Board members own commercial properties in the survey area and have not participated in the designation process.

When the Preliminary Report is prepared on the Preliminary Plan, the Redevelopment Agency is required to consult with the affected taxing agencies and the process will eventually deal with a Fiscal Review Committee composed of representatives of the various affected taxing agencies.

The Redevelopment Agency is represented at the negotiations with the Fiscal Review Committee by city/agency staff and consultants. After negotiations are concluded, the Redevelopment Agency Board takes final action by resolution of approve Tax Increment Sharing Agreements.

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Attorney General John D. Van de Kamp
Page Two
October 11, 1989

Board Members of the Redevelopment Agency have expressed a desire to form an "ad hoc committee" composed of two Board members to be present at negotiations by and between the taxing authority fiscal Review Committee and agency staff-consultants. As Redevelopment Agency Board members of the ad hoc committee they would observe, with possible input to agency staff, but not necessarily participate in negotiations.

The City Attorney advised that, in his opinion, this would appear to constitute a conflict of interest due to Fair Political Practice regulations.

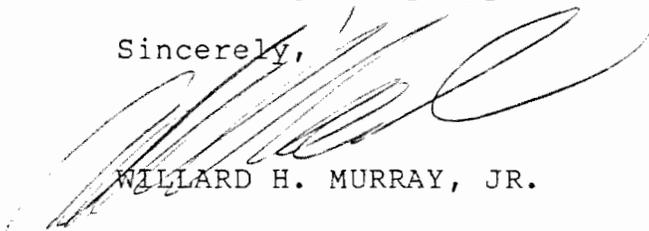
A copy of the City Attorney's opinion is enclosed for reference to the Fair Political Practice Commission regulations and the Fiscal Review process.

The Chairman and Board members of the Bellflower Redevelopment Agency request your opinion as to whether the Fair Political Practice regulations can legally "reach" so far as to prohibit an ad hoc agency board committee from being present at the negotiating session, if they own property in the survey area and the Preliminary Plan area.

Your opinion as to whether a conflict of interest exists with an ad hoc committee to the extent that a member of such committee, who owns property in the survey-plan area, is prohibited from attendance, and/or providing input to staff, at negotiating sessions with the Fiscal Review Committee.

Your attention to this matter is greatly appreciated.

Sincerely,



WILLARD H. MURRAY, JR.

WHM:aj

cc: Maurice F. O'Shea
City Attorney of Bellflower

Enclosure

TO: AGENCY BOARD, EXECUTIVE DIRECTOR
FROM: AGENCY COUNSEL
DATE: SEPTEMBER 13, 1989
SUBJECT: AGENCY AD HOC FISCAL REVIEW COMMITTEE

MEMORANDUM

CONCLUSION. CONFLICT OF INTEREST. Participation by any Agency Board Member on an Ad Hoc Fiscal Committee would be prohibited due to a conflict of interest.

I. FAIR POLITICAL PRACTICE COMMISSION REGULATIONS (FPPC).

Sections 18702.1 (3)(d) and 18702.3 (3)(e) prohibit participation in the decision to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area, to certify the environmental document, to adopt the redevelopment plan, etc. if the official has an interest in real property located within the boundaries (or proposed boundaries) of the redevelopment plan.

II. FISCAL REVIEW PROCESS.

The Regulations do not specifically state that there is a direct prohibition regarding an Ad Hoc Committee which is being considered. However, in order to reach the ultimate conclusion as to a conflict, it is necessary to understand the Fiscal Review Process and the statutory scheme of the conflict provisions of FPPC and Redevelopment Law.

STEPS:

1. The Agency has already designated the Survey Area.
2. The next step will involve the adoption of a preliminary plan.

After the preliminary plan has been prepared and accepted by the Redevelopment Agency, the Redevelopment Agency then notices all taxing agencies within the project area and the State Board of Equalization of its intent to adopt a redevelopment plan. Upon receipt of that information, the county fiscal officer and the State Board of Equalization begin preparation of the report identifying the total assessed valuation of taxable property within the project area, the affected taxing agencies, tax revenues to the taxing agencies from the

base year assessment roll, estimated first year taxes available to the redevelopment agency, etc. That report must be submitted to the redevelopment agency and each taxing agency within 60 days.

III. PROJECT AREA COMMITTEE.

If the project area contains a substantial number of low- and moderate-income residents who will be displaced by the redevelopment project, the legislative body is obligated to form and approve a representative Project Area Committee (the "PAC") within 60 days after the project area is selected. The PAC membership should include, as applicable, residential owner occupants, residential tenants, business persons and members of existing community organizations in the project area. The PAC serves as an advisory body to the Redevelopment Agency, and the Redevelopment Agency must consult with the PAC concerning policy matters which deal with the planning and provision of residential facilities for residents displaced by the project and on other issues which affect the residents of the project area. The redevelopment plan must be submitted to the PAC for review and the PAC may prepare a report and recommendation to the legislative body. Where the PAC recommends against the redevelopment project, the legislative body may only adopt it by a two-thirds vote.

If formation of a PAC is not required, an agency may either (1) choose to form a PAC, or (2) consult with residents and community organizations.

IV. PREPARATION OF PRELIMINARY REPORT TO AFFECT TAXING ENTITIES.

Upon receipt of the report of the county fiscal officer, the Redevelopment Agency is required to prepare a preliminary report to affected taxing agencies, which must contain the following information:

1. The reasons for the selection of the project area;
2. A description of the physical, social, and economic conditions existing in the project area;
3. A preliminary assessment of the proposed method of financing the redevelopment of the project area, including an assessment of the economic feasibility of the project and the reasons for including a provision for the division of taxes pursuant to Section 33670 in the redevelopment plan;
4. A description of the specific project or projects then proposed by the Redevelopment Agency in the project area in sufficient detail and specificity to permit the fiscal review committee, if one is created, to review the potential impacts of the proposed project; and
5. A description of how the project or projects to be pursued by the agency in the project area will improve or alleviate the conditions described in subparagraph (2.).

The purpose of this preliminary report is to provide, at an earlier stage, information to the taxing agencies concerning the Redevelopment Agency's plans for the redevelopment project so that they may better analyze the effects of the project on each of their districts.

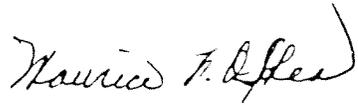
Upon receipt of the preliminary report, the taxing agencies have 15 days to determine whether to create a fiscal review committee.

I attach a summary of the process itself describing the purpose and function of the Fiscal Review.

SUMMARY:

The consulting (and negotiating) necessary by the Redevelopment Agency and the Fiscal Review Committee involves the preliminary report, redevelopment plan, draft EIR, etc.--all of which are specifically set forth in Section 187201.1, which provides that participation is prohibited by a Board Member if he owns property in the project area. When this is inter-referenced to the prohibition under Fair Political Practice Commission Regulations, it appears conclusive that Agency Members owning property in the selected area are precluded from the proposed ad hoc committee.

-NOTE: Though I feel confident that this is the correct conclusion, the Fair Political Practice Commission has the final opinion. If any member requests, I will pursue his opinion accordingly.


MAURICE F. O'SHEA
Agency Counsel

MFO/gac

A. PURPOSE

1. Agencies are required to consult with affected taxing entities about fiscal impact, if any, of the project upon those agencies (Health and Safety Code Section 33353.3).
2. Establishes formal process for consulting with affecting taxing entities in order to alleviate or eliminate financial burden or detriment.
3. Financial burden or detriment as defined in Section 33012 and means either of the following:
 - (a) net increase in the quality or quantity of a service of an affected taxing entities caused by the redevelopment project
 - (b) loss of property tax revenues produced by a change of ownership or new construction which would have been received if the plan was not adopted.
 - (c) the division of taxes pursuant to Section 33670 by itself shall not constitute financial burden or detriment

B. PREREQUISITES

1. After receipt of preliminary plan from planning commission, Agency sends to auditor, assessor, and tax collector of County; legislative body of the affected taxing entities; and Board of Equalization:
 - (a) description of project boundaries
 - (b) statement that plan is being prepared
 - (c) map of project boundaries
 - (d) designation of last equalized assessment roll to be used as base roll.

2. County prepares report ("328 Report") and transmits to Agency within 60 days of filing with the State Board of Equalization (90 days if 5 years of assessed valuation requested); report includes:
 - (a) total assessed value in project area
 - (b) identification of the affected taxing entities
 - (c) amount of tax revenues to be received by each taxing entity base roll
 - (d) total tax revenues received by each taxing entity
 - (e) estimate of first year tax increment
 - (f) assessed valuation of project area for preceding year (5 years, if requested).

3. After receipt of the County Financial Report, Agency prepares preliminary report and sends to each taxing entity; report includes:
 - (a) reasons for selection of project area
 - (b) description of physical, social and economic conditions existing in project area
 - (c) preliminary assessment of proposed method of financing including economic feasibility of project and reasons for including tax increment financing

- (d) description of specific projects
 - (e) description of how projects will improve or alleviate conditions described in (c) above.
4. County or any affected taxing agency may cause the creation of a fiscal review committee ("FRC") within 15 days after receipt of preliminary report (Section 33353).

C. THE PROCESS

1. Within 15 days of receipt and prior to sending the redevelopment plan to the Committee, the Agency shall commence consultation with affected taxing entities. The purpose is to:
 - (a) identify fiscal effects
 - (b) specify additional information, if any, needed to enable fiscal effects to be analyzed
 - (c) suggest possible provisions in the redevelopment plan.
2. Agency sends redevelopment plan to chairperson of the fiscal review committee (County representative is temporary chairperson).
3. Chairperson convenes FRC "with all due dispatch" and holds hearing not less than 25 nor more than 40 days from receipt of plan; hearing must be completed within 15 days of date of initial hearing.
4. FRC must analyze and report to Agency within 30 days of conclusion of hearing; report shall include analysis of fiscal impact of plan on ATE and determination of whether plan will have beneficial effect or financial burden or detriment; report shall be based on:
 - (a) preliminary report
 - (b) redevelopment plan
 - (c) draft EIR
 - (d) information derived from consultation
 - (e) information derived from hearing
 - (f) 328 Report
 - (g) any other information.

- . 5. If report of FRC concludes that redevelopment plan will cause fiscal burden or detriment:
 - (a) report shall specifically describe fiscal burden or detriment and shall contain evidence supporting conclusion
 - (b) report may include recommended actions, including:
 - (1) amendments to redevelopment plan to modify total amount of tax increment, duration of plan, size of project area and the kinds of projects, specific outlines or projects to alleviate or eliminate burden
 - (2) payments to the taxing entity per Section 33401.

D. APPLICATION OF THE RESULTS

1. The fiscal review committee Report and an analysis by the Agency of the Report must be included in the report to City Council (H&S 33352(k) and (m)).
2. The ordinance approving the redevelopment plan must contain findings supported by substantial evidence:
 - (a) adoption and carrying out of redevelopment plan is economically sound and feasible
 - (b) the effect of tax increment financing will not cause significant financial burden or detriment on any affected taxing entity.
3. Tax Increment Sharing Agreements must be approved by resolution containing findings supported by substantial evidence that the redevelopment project will cause or has caused financial burden or detriment and that payments are necessary to alleviate financial burden or detriment.



California Fair Political Practices Commission

October 26, 1989

Willard Murray
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-616

Dear Mr. Murray:

Your letter requesting advice under the Political Reform Act was received on October 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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,

Kathryn E. Donovan
General Counsel

KED:plh