



California Fair Political Practices Commission

February 27, 1990

John Leslie
California Coastal Commission
South Coast Area
245 West Broadway, Suite 380
Long Beach, CA 90802

Re: Your Request for Informal Assistance
Our File No. I-89-649

Dear Mr. Leslie:

Ms. Dorothy Dickey, staff counsel for the California Coastal Commission, forwarded your letter requesting advice concerning application of the "revolving door" provisions of the Political Reform Act (the "Act")¹ to your duties as an employee of the California Coastal Commission. Your letter does not provide sufficient facts to render specific advice. Accordingly,² we are treating your request as one for informal assistance.

QUESTIONS

1. You are an employee of the California Coastal Commission. You are considering a job offer from a consulting firm which may represent Quintex, Inc. (hereinafter referred to as "Quintex") before the City of Dana Point and the Coastal Commission. If you accept employment with the consulting firm, may you represent Quintex on a different project in Laguna Niguel, since you previously worked on coastal permits for this site?

2. Would there be any difference in the application of the Act if you were employed by the consulting firm, which may represent Quintex, or if you were employed directly by Quintex?

3. Quintex may propose a new project on the Laguna Niguel site, which will require a land use plan ("LUP") amendment. Does

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. (Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

the LUP amendment to the local coastal program ("LCP") for Laguna Niguel, which you previously worked on, constitute a new proceeding?

CONCLUSIONS

1. You may represent Quintex on a different project on the Laguna Niguel site, as long as it is a new proceeding and not one in which you participated as a Coastal Commission employee.

2. There is no difference in the application of the Act if you are employed by the consulting firm, which may represent Quintex, or by Quintex directly.

3. If Quintex builds a different project on the Laguna Niguel site, the LUP amendment to the LCP for Laguna Niguel would be considered a new proceeding if it involves new issues which pertain to a different project.

FACTS

You have been employed by the California Coastal Commission since June, 1984. You have been offered a position with a land use planning consulting firm (hereinafter referred to as "consulting firm"). As an employee of the Coastal Commission, you have worked as the staff planner on several local coastal program ("LCP") segments in Orange County, including Laguna Niguel and Dana Point. The Laguna Niguel segment has since been incorporated by the new City of Dana Point, which is comprised of the former county segments of Dana Point, Capistrano Beach and Laguna Niguel. The Dana Point LCP is certified, except for the Laguna Niguel segment.

Your participation in the former county LCP segments was as follows:

(a) Capistrano Beach segment: Another planner worked on the Capistrano Beach segment, which was eventually effectively certified. You did not substantially participate in this segment.

(b) Dana Point segment: You wrote the staff recommendation to the county's resubmittal, which was submitted in response to the Coastal Commission's denial with suggested modifications. The staff report for the denial with suggested modifications was prepared prior to your working for the Coastal Commission.

(c) Laguna Niguel segment: The LUP was certified in 1981, but due to low priority, very little LCP planning was done by either the county or you. Your participation involved working on coastal development permits, using the

1979 master permit and the Coastal Act as the standard of review.

In September, 1989, you prepared the staff report for the LCP submittal by the new City of Dana Point. The city incorporated the county-certified LCP segments for Dana Point and Capistrano Beach, while segmenting-out Laguna Niguel.

Prior to Dana Point's certification, you met with the consulting firm and the county on drafts of a LUP amendment and draft implementation plan for the Laguna Niguel segment. The consulting firm represented the previous owner, the Hemmeter Corporation, which had pending coastal permits before the Coastal Commission.

The landowner history of the Laguna Niguel area and your participation on the permits is as follows:

1972: AVCO Community Builders owned the land.

1979: "Master permit" 5-79-5539 (AVCO) was issued, requiring subsequent coastal development permits (CDP) for individual parcels.

1983: The land was sold to the Stein-Brief Group and 5-79-5539 permit was assigned.

1984: You commenced employment with the Coastal Commission and prepared numerous coastal permits (5-85-585, 5-86-503, 5-87-711 and 5-87-611). Stein-Brief was the applicant and the consulting firm was the agent.

1987: Stein-Brief developed a partnership with the Hemmeter Corporation, which was represented by the consulting firm. Hemmeter applied for new permits on the same sites for which permits 5-85-585 and 5-86-503 had been approved. In addition, permits 5-87-977 through 981 were approved for Hemmeter.

1989: Stein-Brief and Hemmeter sold the land and entitlements to Quintex. Quintex may build a different project on the same lots which previously received the approvals in which you participated. Quintex may propose a project which would either require some new permits or amendments to the existing permits. The consulting firm is considering representing Quintex before the City of Dana Point and the Coastal Commission.

ANALYSIS

Sections 87401 and 87402 provide:

No former state administrative official, after the termination of his or her employment or term of

office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

Section 87401.

No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

Section 87402.

Your employment with the Coastal Commission makes you a state administrative official who is subject to the restrictions of Sections 87401 and 87402. (Section 87400(b).) Therefore, if you leave the Coastal Commission and work for the consulting firm or Quintex, you are prohibited from aiding, advising, counseling, consulting or assisting in representing any person³, for compensation, in any proceeding involving specific parties in which you participated as a Coastal Commission employee. Accordingly, there is no difference in the application of the Act if you are employed by the consulting firm, which may represent Quintex, or by Quintex directly.

Section 87400(c) provides that a "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency" (emphasis added). Therefore, the restrictions of Sections 87401 and 87402 apply only to matters involving a specific party or parties, rather than matters concerning general rules of applicability.

³ "Person" is broadly defined under the Act to include any organization, joint venture, company, corporation or group of persons acting in concert. (Section 82047.)

For purposes of Sections 87401 and 87402, you "participated" in a proceeding if you took part in the proceeding "personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information" as an employee of the Coastal Commission. (Section 87400(d).)

The question then, is whether you participated in any "proceeding" which would prohibit you from advising either the consulting firm on behalf of Quintex or representing Quintex in discussions with staff or before the Coastal Commission.

Under the Coastal Act, there are three distinct phases which are subject to the jurisdiction of the Coastal Commission: the land use plan, the approval of zoning pursuant to the provisions of the general plan, and specific coastal development permit approval. For purposes of Sections 87401 and 87402, each of these phases is considered a different proceeding. The provisions of Sections 87401 and 87402 prohibit your participation in the same proceeding in which you participated as a state employee, but do not restrict your ability to participate in new proceedings. (Evans Advice Letter, No. I-86-117, copy enclosed.)

The specific coastal permit application is the type of matter which most clearly is a "proceeding" for purposes of Sections 87401 and 87402, in that it affects a specific party or parties. Therefore, you may not represent or assist any person or party in any aspect of a coastal permit application proceeding in which you participated as a Coastal Commission employee. However, once the final decision on a coastal permit application proceeding in which you did participate has been made, you would not be prohibited from participating in new proceedings related to that same coastal permit application. (See Galanter Advice Letter, No. A-82-079, copy enclosed, for a discussion of what is, or is not, a new proceeding.)

Since Quintex now owns the land in the Laguna Niguel area, it is necessary to focus on your degree of participation, as a Coastal Commission employee, with the Laguna Niguel segment. You stated that you met with the consulting firm and the county on drafts of an LUP amendment and draft implementation plan for the Laguna Niguel segment. You also worked on numerous coastal development permits for this segment.

Whether these matters are considered "proceedings" for purposes of Sections 87401 and 87402 depends on whether they affected only a specific party or parties, rather than a significant portion of the property within the jurisdiction of the land use plan. If they affected specific parties, you may not represent Quintex in any proceeding in which you participated as a Coastal Commission employee.

As a general rule, the Fair Political Practices Commission interprets the word "proceeding" as a specific permit application, including all the procedural stages involved in the application. A new permit application, even if it involves the same tract of land, or some of the same issues as the prior application, is ordinarily considered a new proceeding. (Galanter, supra.) Therefore, if Quintex plans to build a different project on the lots which previously received approvals, and this project requires new permits or amendments, it would be considered a new proceeding.

Therefore, you may represent Quintex on a different project on the Laguna Niguel site, as long as it is a new proceeding and not one in which you participated as a Coastal Commission employee. Furthermore, if Quintex builds a different project on the Laguna Niguel site, the LUP amendment to the LCP for Laguna Niguel would be considered a new proceeding if it involves new issues which pertain to a different project.

I trust that this answers your questions. 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: Dorothy Dickey

CALIFORNIA COASTAL COMMISSION

631 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105
(415) 543-8555

FPPC

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November 8, 1989

Katherine Donovan, General Counsel
Fair Political Practices Commission
428 J. Street, Suite 800
Sacramento, CA 95814

Dear Ms. Donovan:

We are forwarding the enclosed request for advice to you on behalf of John Leslie, a current employee of the Coastal Commission. Mr. Leslie has indicated that he wishes to be contacted about this matter at 14 La Cueva, Rancho Santa Margarita, CA 92688.

Very truly yours,

A handwritten signature in cursive script that reads "Dorothy F. Dickey".

Dorothy F. Dickey
Staff Counsel

DFD:rvb
Enclosure
cc: John Leslie
01821(74)

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071



MEMORANDUM

November 1, 1989

TO: Ralph Faust, Dorothy Dickey

FROM: John Leslie, Long Beach

RE: Attachment to Letter dated November 1, 1989 to Dorothy F. Dickey

Should the legal department of the Coastal Commission find it advisable to seek a formal opinion of the Fair Political Practices Commission, I hereby authorize the Commission legal staff to forward said letter on my behalf.

John Leslie

2521D



California Fair Political Practices Commission

November 20, 1989

John Leslie
14 La Cueva
Rancho, Santa Margarita, CA 92688

Re: Letter No. 89-649

Dear Mr. Leslie:

Your letter requesting advice under the Political Reform Act was received on November 13, 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,

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

Kathryn E. Donovan
General Counsel

KED:plh

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071



November 1, 1989

Dorothy F. Dickey
Staff Counsel
631 Howard Street, 4th Floor
San Francisco, CA 94105

Re: FPPC Rules on Former Commission Employees

Dear Dorothy:

I have been offered a job working for a land use planning consulting firm, (hereinafer referred to as "Consulting Firm"). I am somewhat familiar with the FPPC rules on conflict of interest. I have read several letters written by yourself and the attorneys from the Fair Political Practices Commission regarding the rules on Government Code section 87400 et seq. I have copies of letters written to Mel Nutter, Karl Hinderer, Don Schmitz, Ruth Galanter, Roy Gorman and Linda Evans. Below are what I consider pertinent facts surrounding my situation and several questions. If you see any other concerns which I have overlooked, please address them in your response.

Since my employment with the Commission since June 1984, I have worked as the staff planner on several LCP segments in Orange County, including, Laguna Niguel and Dana Point. The Laguna Niguel segment has since been incorporated by the new City of Dana Point which now comprises the former county segments of Dana Point, Capistrano Beach and Laguna Niguel. Dana Point's LCP is now effectively certified, except for the Laguna Niguel segment. I would like to focus on my degree of "participation" in the pertinent "proceedings" which relate to permits and planning activities in the Laguna Niguel segment (now Dana Point LCP).

Pertaining to the former county LCP segments, I did not substantially participate in the Capistrano Beach segment. Another planner worked on the Capistrano Beach segment, which was eventually effectively certified. For the Dana Point segment, I wrote the staff recommendation for the resubmittal by the county in response to the Commission action of denial with suggested modifications. The staff report for the denial with suggested modifications was prepared prior to my working for the Commission. My involvement with the recommended action on the resubmittal was to approve the document as submitted, which the Commission did. My participation in the Laguna Niguel segment has been essentially through coastal development permits. Prior to the City incorporating the Laguna Niguel segment, it was comprised of a mini-LCP, or "master permit" which was approved with many conditions in 1979. The landowner and applicant was AVCO. Although the Land Use Plan portion was certified in 1981, the county gave that segment low priority and very little LCP planning was done by me or the county. Instead, numerous coastal permits were issued by the Commission - the standard of review being both the 1979 master permit (for guidance only) and the Coastal Act.

Regarding LCP planning, I prepared the staff report in September of this year for the LCP submittal by the new City of Dana Point. The City incorporated the county-certified LCP segments for Dana Point and Capistrano Beach, while segmenting-out Laguna Niguel. Prior to Dana Point's certification, I have met with the Consulting Firm and the county on drafts of an LUP Amendment and draft Implementation Plan for the Laguna Niguel segment. At that time, the Consulting Firm represented Hemmeter Corporation which had pending coastal permits before the Commission.

My participation on permits in the Laguna Niguel area and the landowner history is as follows:

- 1972 Land owned by AVCO Community Builders (approximately 580 acres)
- 1979 "Master permit" 5-79-5539(AVCO) issued, requiring subsequent CDPs for individual parcels.
- 1983 Land sold to Stein-Brief Group, 5-79-5539 permit assigned.
- 1984 I began working for Commission, and prepared staff reports for numerous coastal permits for which Stein-Brief was applicant, and for which the Consulting Firm was the agent: 5-85-585, 5-86-503, 5-87-711, 5-87-611. Several parcels were sold to other developers who became applicants for permits which I participated in, including 5-79-5539A(McComic), and numerous "Type II" permits which did not require staff recommendations to approve the projects.
- 1987 Stein-Brief develops partnership with Hemmeter Corporation. Hemmeter Corporation (represented by Consulting Firm) applies for new permits on the same sites for which permits 5-85-585 and 5-86-503 were approved. In addition, 3 "new" permits were approved for Hemmeter - all five are 5-87-977, 978, 979, 980, 981.
- 1989 Stein-Brief and Hemmeter sold land (and entitlements) to Quintex Inc. Quintex has plans to build a different project on the lots which received approvals in which I participated. Consulting Firm is considering representing Quintex before the City of Dana Point and Coastal Commission.

Questions:

1. How does the relationship between a "proceeding" and the "new permit holder" (or subsequent landowner) affect my ability to work for the new permit holder on a different project on the same site? Is there any difference between the landowner (applicant) and the consulting firm representing the applicant in terms of either one employing me?
2. What would constitute "further proceedings" on a permit in which I participated? Regarding an amendment to the permit "proceeding" at what point does the new proposal or amendment become a new proceeding?

Dorothy F. Dickey
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3. Should the "new proposal" require an LUP amendment, how does my participation in the LCP process on Laguna Niguel conflict with the interpretation of the "proceeding" on the LCP matter? Can my "participation" and the "proceeding" be separated and considered exclusive for a permit matter vs. an LCP matter?

4. Since I participated in the recommendation for the City of Dana Point's LCP, would working for the Consultant which later contracts with the City in preparing an LUP amendment constitute a conflict of the laws?

If any of this is unclear, please give me a call. I appreciate your taking the time to address my questions.

Sincerely,


John Leslie
Coastal Program Analyst III
Long Beach Office

24860