



California Fair Political Practices Commission

December 12, 1989

Tom W. Maxwell
Planning Commissioner
San Luis Obispo County
1233 Humboldt Street
Los Osos, CA 93402

Re: Your Request for Advice
Our File No. A-89-661

Dear Mr. Maxwell:

This is in response to your letter requesting advice concerning your responsibilities, as a member of the San Luis Obispo County Planning Commission, under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

May you participate in planning commission decisions concerning the construction and operation of wastewater treatment and disposal facilities in Los Osos, Baywood Park and Cuesta-by-the-Sea if you own real property that is located in the community of Los Osos and will be benefited by the sewer project?

CONCLUSION

You may not participate in decisions concerning the sewer project because the project will result in new or substantially improved sewer services for your real property and it appears that the sewer project does not affect a significant segment of the county.

FACTS

You are a Planning Commissioner for San Luis Obispo County. The planning commission will soon be considering a county project concerning the construction and operation of wastewater treatment and disposal facilities for the communities of Los Osos, Baywood

^{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.

Park and Cuesta-by-the-Sea. The principal objective of the proposed project is to eliminate septic tank discharges to the groundwater system in these communities through construction and operation of a complete sewer system. You own two parcels of real property in Los Osos. You anticipate that both of the properties will benefit from the project.

ANALYSIS

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. "Public official" is defined in Section 82048 to include every member, officer, employee or consultant of a state or local government agency.

Section 87103 specifies that an official has a financial interest within the meaning of Section 87100 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:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

As a member of the San Luis Obispo Planning Commission you are a "public official" as defined in the Act. (Section 82048.) Further, we assume that your financial interest in each of the two parcels of real property you own in Los Osos is greater than \$1,000. Thus, you are prohibited from making or in any way participating in decisions which would have a foreseeable material financial effect on your property that is distinguishable from the effect on the public generally.

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.)

Regulation 18702.3 (copy enclosed) provides that the effect of a decision on real property in which an official has an economic interest is material if:

(2) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real

property in which the official has an interest will receive new or substantially improved services.

Regulation 18702.3(a)(2).

Based on the facts you stated in your letter, the project will provide new or substantially improved sewer services to your real property. Therefore, you may not participate in, or use your official position to influence, decisions concerning the sewer project if the effect of the project on your real property is distinguishable from the effect on the public generally.

Regulation 18703 (copy enclosed) provides:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

Thus, for the public generally exception to apply, a decision must affect your property interests in substantially the same manner as it would affect a significant segment of the public in San Luis Obispo County. In In re Legan ((1985) 9 FPCC Ops. 1, copy enclosed) the Commission concluded that with respect to county supervisors the "public" would consist of the entire county, even though the board of supervisors primary land use jurisdiction is confined to the unincorporated areas of the county. This is because all the county's residents are constituents of the various members of the board of supervisors even if they reside in incorporated cities in the county. Further, all the residents of the county are impacted in one way or another by the county's land-use decisions, even if not directly subject to the county's land-use jurisdiction. We believe this same interpretation applies to county planning commissioners. Consequently, for the public generally exception to apply in this situation, the project decisions must affect your interests in substantially the same manner as it would affect a significant segment of the residents and persons doing business in San Luis Obispo County. (Regulation 18703; In re Legan, supra.)

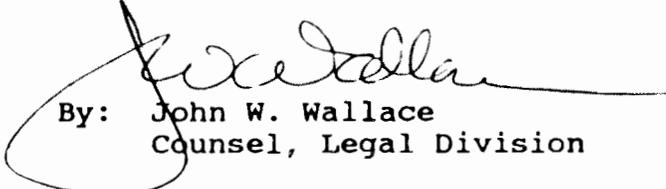
Because the applicability of the exception will vary depending on the number of property owners involved, we cannot provide you with a definitive conclusion as to whether the exception would apply without specific information about the population distribution in San Luis Obispo County. However, it appears from the map we consulted that the segment of the population of the county that will be benefited from the sewer project is not significantly large to invoke the exception.

File No. A-89-661
Page 4

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

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November 15, 1989

Fair Political Practices Commission
428 J. Street, Suite 800
Sacramento, CA 95814

Attn: Ms. Kathy Donovan

I am a Planning Commissioner in and for San Luis Obispo County. In the near future this county Planning Commission will be called upon to vote on a complete sewer system for the unincorporated communities of Los Osos, Baywood Park and Cuesta-by-the-Sea. Further details are included in the project description below.

My personal residence which I own, and a rental single family home which I also own are located in the community of Los Osos. Both of these properties will probably benefit from the sewer system although it is doubtful the benefits outweigh the costs. These affects should not be any different than on other homes in the area.

I would appreciate your written opinion as to whether or not I should vote on this project when it comes before the Planning Commission for decision and recommendation to the Board of Supervisors as to zoning, land use, etc.

PROJECT DESCRIPTION

The proposed project is located within the unincorporated communities of Los Osos, Baywood Park and Cuesta-by the-Sea, San Luis Obispo County, California. The project would consist of the construction and operation of wastewater treatment and disposal facilities mandated by Resolution No. 83-13 of the State Regional Water Quality Control Board. It would be constructed and operated under the jurisdiction of County Service Area Number 9.

Project components would include a wastewater collection system located within the community, a treatment plant located on Turri Road east of the community, wet weather disposal facilities located in the southerly portion of the community, dry wather disposal facilities located on upper Los Osos Creek and force mains to convey the wastewater to the treatment plant and the treated wastewater to the disposal facilities. The primary

Fair Political Practices Commission

November 15, 1989

Page 2

objective of the project is to eliminate septic tank discharges to the groundwater system as mandated by the Regional Water Quality Control Board Resolution 83-13, which is the only source of a domestic water supply now available to the community. A major secondary objective is to recharge the groundwater system with treated wastewater.

The collection system would consist of approximately 46 miles of conventional gravity sewers, possibly with local areas of pressure sewers where these are more cost effective, five pump stations, three miles of force mains, a 1.5-mile gravity interceptor, and 57 miles of service laterals. The sewers would be located primarily within public rights-of-way.

Sincerely,



TOM W. MAXWELL
1233 Humboldt Street
Los Osos, CA 93402
(805) 528-1796

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California Fair Political Practices Commission

November 20, 1989

Tom W. Maxwell
1233 Humbolt Street
Los Osos, CA 93402

Re: Letter No. 89-661

Dear Mr. Maxwell:

Your letter requesting advice under the Political Reform Act was received on November 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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