



# California Fair Political Practices Commission

January 10, 1990

Stephanie Atigh  
City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, CA 93901

Re: Your Request for Confirmation of  
Telephone Advice  
Our File No. A-89-712

Dear Ms. Atigh:

We have received your letter dated December 26, 1989 seeking written confirmation of the telephone advice provided to you by this agency on December 21, 1989 regarding the responsibilities of a member of the Salinas City Council under the conflict-of-interest provisions of the Political Reform Act ("the Act").<sup>1</sup>

Based on the facts you provided in your telephone inquiry and reiterated in your letter, your letter substantially reflects the tenor of the advice given to you, although some clarification is necessary.

You were advised that the councilmember's participation in decisions concerning the construction of a public parking garage at this time may constitute a conflict of interest for the councilmember under the Act. The conflict may be present because: (1) the decision concerning the public parking garage could have a foreseeable material financial effect on a developer whose obligations under a use permit to provide sixty-one parking spaces could be extinguished by the decisions, and (2) the developer is a source of income to the councilmember. (Section 87103(c).)

You were further advised that decisions concerning the public parking garage that did not impact the developer's existing obligations under the land use permit concerning the sixty-one parking spaces would not trigger similar conflict issues, because such

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<sup>1</sup> 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.

decisions which had no foreseeable effect on the developer's obligation under the land use permit would not require disqualification.

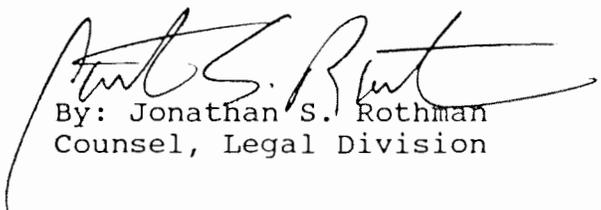
Based on this analysis, you were advised that the councilmember should initially abstain from decisions concerning the parking garage until the issue progressed and a more clear idea of the project was developed. Whether the councilmember may participate in subsequent decisions concerning the parking garage would depend on the impact of the decisions on the developer's obligations under the land use permit.

However, you were not advised with respect to any matter concerning a council decision "to deny the developer the use of the parking garage to offset the planning unit development permit commercial parking requirement." You had not inquired about, and thus were not advised with respect to, any such matter: such a council decision raises different issues and requires different analysis.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: Jonathan S. Rothman  
Counsel, Legal Division

KED:JSR:plh



**City of Salinas**

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93901 • (408) 758-7256

December 26, 1989

John Rothman  
Legal Division  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

SUBJECT: CONFIRMATION OF TELEPHONE ADVICE RE CONFLICT

Dear Mr. Rothman:

Please consider this letter a request for written confirmation of telephone advice received on December 21, 1989 regarding a potential conflict with a City Councilmember.

The facts upon which you based your verbal advice are as follows:

Councilmember is an attorney representing a developer who has received a discretionary land use entitlement (Planned Unit Development Permit). The permit requires the commercial phase of the development to provide 61 parking spaces, and it specifies that "these spaces may be provided in a future parking district". The Councilmember has not and does not represent the developer in this land use matter.

The October 17 earthquake caused significant damage to City buildings in the 100 block of Main Street which is one block away from the proposed PUD development. Several buildings were demolished in this 100 block, and the City anticipates receiving FEMA monies as reimbursement. One of the suggestions for the uses of these monies is to construct a public parking garage on City property in the 100 block.

It is not known at this time if the FEMA money will cover the entire cost of the garage or merely a portion of the cost since cost will depend on size and configuration. It is possible that FEMA money will pay for a portion of the structure with an assessment district paying for the remainder of the construction as well as maintenance costs. FEMA does not allow the City to seek duplicate reimbursement for any FEMA monies received.

If the parking structure is built in the 100 block, it could be used to offset the PUD commercial parking requirement for the developer. This decision has not yet been made by the Council. On January 9, 1990, the Council is scheduled to decide whether or not to issue requests for proposals (RFP) from contractors for the parking garage. The question posed to the FPPC is whether

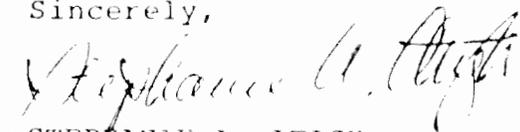
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Mr. John Rothman  
December 26, 1989  
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there is a conflict for the Councilmember to take part in a decision to issue the RFP and in other decisions involving this parking garage.

Thank you for your cooperation and assistance in this request.

Sincerely,



STEPHANIE A. ATIGH  
City Attorney

SAA:mr



# California Fair Political Practices Commission

January 8, 1990

Stephanie Atigh  
City Attorney  
200 Lincoln Avenue  
Salinas, CA 93901

Re: Letter No. 89-712

Dear Ms. Atigh:

Your letter requesting advice under the Political Reform Act was received on December 26, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jonathan Rothman 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