



California Fair Political Practices Commission

March 20, 1991

Marguerite P. Battersby
Interim City Attorney
City of Yucaipa
c/o Law Offices of Brunick, Alvarez
and Battersby
Post Office Box 6425
San Bernardino, CA 92412

Re: Your Request for Informal Assistance
Our File No. I-91-034

Dear Ms. Battersby:

You have requested advice on behalf of Yucaipa City Councilmember Edward Henderson concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act") pursuant to Regulation 18329(c) (copy enclosed).¹ We are treating your request as one for informal assistance because we do not have enough facts about each governmental decision involved herein to advise him with certainty.²

QUESTION

Councilmember Henderson owns a mobilehome and may have a leasehold interest in mobilehome park space. May Councilmember Henderson participate in and vote on decisions concerning the proposed new mobilehome rent control ordinance?

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; Regulation 18329(c)(3), copy enclosed.)

CONCLUSION

Councilmember Henderson may participate in and vote on city council decisions concerning the mobilehome rent control ordinance unless any of the decisions will have a foreseeable and material financial effect on his leasehold interest (if any) or on the value of his mobilehome in a manner which is distinguishable from the effect on the public generally.

FACTS

In June, 1990, the city council adopted an interim urgency rent control ordinance to regulate the amount that owners of mobilehome parks may charge tenants to rent spaces in mobilehome parks. On December 17, 1990, the city council adopted another interim urgency rent control ordinance and conducted its first reading of a permanent rent control ordinance.

Under the new ordinance, rents will be "rolled back" to those in effect on December 31, 1988, plus any increases imposed between that date and the effective date of the ordinance which do not exceed 66.67% of the increase in the Consumer Price Index between that date and the effective date of the ordinance. Rents may automatically be increased once every twelve months by 66.67% of the annual change in the Consumer Price Index. Additional increases are available by administrative application and hearing.

Under the new ordinance rents also may be increased in an unregulated amount when ownership of a mobilehome is transferred or a mobilehome is removed from a mobilehome park. This is known as "vacancy decontrol."

Councilmember Henderson and his aunt have a recorded joint tenancy ownership interest, with a right of survivorship, in a mobilehome which is located in a mobilehome park in the City of Yucaipa.

The lease agreement with the mobilehome park for the park space is only in Councilmember Henderson's aunt's name. The mobilehome served as his aunt's residence until she became ill approximately two years ago. To date, her health has not yet permitted her to return. Councilmember Henderson temporarily occupied the mobilehome to "housesit" when his aunt left to obtain health care. However, he never signed any lease or rental agreement with the mobilehome park or with his aunt for the mobilehome park space. Councilmember Henderson has since returned to his own home, and the mobilehome is now vacant.

The rent for the park space is approximately \$210 per month. Councilmember Henderson, who handles his aunt's finances, makes the monthly rental payments from a bank account in which Councilmember Henderson and his aunt hold a joint tenancy ownership interest. The account only contains the aunt's funds.

There are currently 43 mobilehome parks within the City of Yucaipa containing a total of approximately 4,104 rental spaces. The vacancy rate in these mobilehome parks is virtually zero. The total number of residential dwelling units in the city, including mobilehome spaces, is approximately 13,483. These figures were obtained by the city from a report by the San Bernardino County Assessor dated January 1990. The population of the city is estimated to be 32,000. The city has no figures for the total number of persons who actually reside in mobilehome parks.

ANALYSIS

Section 87100 of the Act provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

As a member of the Yucaipa City Council, Edward Henderson is a "public official" as defined in the Act. (Section 82048.) Thus, he may not use his official position to participate in or vote on a decision in which he knows or has reason to know he has a financial interest.

Economic Interests

Section 87103 specifies that 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 the effect on the public generally, on the official or a member of his immediate family, or on:

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).

Councilmember Henderson may have a potentially disqualifying economic interest by virtue of a leasehold interest in the mobilehome park space. Section 82033 provides that an "interest in real property" includes any leasehold, beneficial or ownership interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official if the fair market value of the interest is one thousand dollars or more.

We do not have sufficient information from which to draw a conclusion as to whether Councilman Henderson has a leasehold

interest in the property.³ However, we can offer you some guidance. If, upon the death of his elderly aunt, Councilmember Henderson must enter into a new lease agreement with the mobilepark owner, which, in turn, would trigger the "vacancy decontrol" under the new ordinance, then Councilmember Henderson probably does not have a leasehold interest in the property. However, if, upon the death of his elderly aunt, the leasehold interest continues into him, by virtue of his joint tenancy ownership interest in the mobilehome, so that rental on the space may not be increased in an unregulated amount under the new ordinance, Councilmember Henderson arguably has a leasehold interest in the property.

In the event Councilmember Henderson does have a leasehold interest, and it is reasonably foreseeable that some city council decisions may materially affect that leasehold interest, then he will be required to disqualify himself from those decisions, unless the number of mobilehome owners similarly affected (i.e. with leasehold interests) constitutes a significant segment of the public.

In addition, Councilmember Henderson owns a mobilehome. Because of his economic interest in this personal property asset, he will be required to disqualify himself from any decision of the city council which could foreseeably have a material financial effect on his mobilehome, that is distinguishable from the effect on the public generally.

Foreseeability

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. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow, (1977) 70

³ Reference was made in your letter to a lease agreement; however, we were not provided with a copy of such agreement. As such, we do not know the terms and conditions of the leasehold. For example, we do not know whether the value of Councilmember Henderson's leasehold interest is \$1,000. or more. We do not know the status of the tenancy. (Regulation 18233, copy enclosed, excludes a month-to-month tenancy from the definition of leasehold interest; In re Overstreet (1981) 6 FPCC Ops. 12, copy enclosed.) We do not know whether Councilmember Henderson has an indirect or beneficial interest in the leasehold simply by virtue of his ownership in the mobilehome.

Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).

Based on the facts that you have presented, it appears likely that decisions concerning the new rent control ordinance will have a financial effect on a mobilehome owner who leases park space or on an owner whose mobilehome sits on leased space.

Materiality

The standard for determining whether the financial effect on a leasehold interest in real property is material is found in Regulation 18702.4 (copy enclosed). This regulation provides in part that the effect of a decision is material as to a leasehold interest in real property if:

(d) The decision will increase or decrease the amount of rent for the leased property by \$250 or 5 percent, whichever is greater, during any 12-month period following the decision; or

(e) The decision will result in a change in the termination date of the lease.

Regulation 18702.4(d) and (e).

The standard for determining whether the financial effect on an official is material is Regulation 18702.1 (copy enclosed). This regulation provides that the effect of a governmental decision is material if:

The decision will result in the personal expenses, income, assets (other than interests in real property), or liabilities of the official ... increasing or decreasing by at least \$250.

Regulation 18702.1(a)(4).

Therefore, the effect of any decision concerning the rent control ordinance will be material if the decision will result in either (a) an increase or decrease, by the greater of \$250 or 5 percent during any 12-month period following the decision, of the rent for the lease of the mobilehome space (Regulation 18702.4(d)); or (b) a change in the termination date of the lease (Regulation 18702.3(e)); or (c) an increase or decrease in the value of the mobilehome by at least \$250 (Regulation 18702.1(a)(4)). (See, Jorgensen Advice Letter, No. A-90-017 and Picquet Advice Letter, No. A-87-233, copies enclosed.)

Under the proposed new ordinance, rents will be rolled back to those in effect on December 31, 1988, plus any increases imposed between that date and the effective date of the ordinance which do not exceed 66.67% of the increase in the Consumer Price Index over that time. We do not have sufficient information upon

which to make a finding of materiality as to Councilmember Henderson's leasehold interest (if any) under Regulation 18702.4. However, we can definitively declare that rents will be lower under the proposed ordinance.

Likewise, we do not have enough information to reach a conclusion as to whether a decision on the proposed new ordinance will result in either an increase or decrease in the value of Councilmember Henderson's mobilehome by at least \$250. You and Councilmember Henderson are in a much better position to analyze the reasonably foreseeable financial effects of each city council decision concerning the new rent control ordinance on the fair market value of his mobilehome.

Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect upon the public generally. (Section 87103.) The financial effect of the city council's decision on Councilmember Henderson is distinguishable from the effect on the public generally, unless the decision will affect his property (leasehold interest) and his asset (the mobilehome) in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703; In re Legan (1985) 9 FPPC Ops. 1; In re Owen (1976) 2 FPPC Ops. 77; copies enclosed.)

The "public generally" is comprised of the entire jurisdiction of the agency in question, particularly when the agency in question is an elected body, as all of the residents are constituents of the various elected members. (In re Legan, supra.) Here, the financial effect of decisions concerning the new rent control ordinance will not affect all city residents similarly since not all residents of the city are owners of mobilehomes which sit on mobilehome park space.

As noted above, Regulation 18703 permits the application of the "public generally" exception when a decision affects the public official's interests in substantially the same manner as it will affect a significant segment of the public. The financial effect of decisions concerning the new rent control ordinance appears to affect Councilmember Henderson's leasehold interest and personal property asset in substantially the same manner as it will affect other owners of mobilehomes situated on mobilehome park spaces. The question then remaining is whether mobilehome owners with mobilehome units situated in mobilehome parks or mobilehome owners with leases constitute a significant segment of the city's residents.

The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order to apply the public generally exception, the population affected must be large in number and heterogeneous in

nature. (In re Ferraro (1978) 4 FPPC Ops. 62; Flynn Advice Letter, No. I-88-430, copies enclosed.)

We have advised in the past that 36 percent of the housing units and population of a county constituted a significant segment of public. (Marsh Advice Letter, No. I-90-151, copy enclosed.) We have advised that the 25 percent of a city's population served by a new bridge was a significant segment of the population. (Christensen Advice Letter, No. A-89-422.) We also have advised that two percent of the similarly situated homeowners and one percent of the population of a city's population are not a significant segment of the public. (Remelmeyer Advice Letter, No. 87-210; Zamboni Advice Letter, No. A-89-021; copies enclosed.) The residential units in a development zone constituting five percent of the residences in a city are not a significant segment of the population. (Cosgrove Advice Letter, No. A-89-120.) We have also said that 15 land owners out of the entire city of Carlsbad were not a significant segment of the population of Carlsbad. (Biondo Advice Letter, No. I-90-241, copy enclosed.)

According to your facts, the total number of dwelling units in the city is 13,483, which includes 4,104 mobilehome units. Your letter did not indicate whether all 4,104 mobilehome units were situated on mobilehome park spaces or whether all owners of the 4,104 mobilehome units have leasehold interests. Your letter also did not specify the number of owners of mobilehomes with leasehold interests, or the number of owners whose mobilehomes sit on mobilehome park spaces. Pursuant to Regulation 18703, Councilmember Henderson is not disqualified if the effect of the rent control ordinance decision on him is not distinguishable from the effect on such owners only if such owners constitute the public or a significant segment of the public. Thus, you must determine, in accordance with the above discussion, whether the city council's decision on the mobilehome rent control ordinance will affect Councilmember Henderson's economic interest in the same manner as the public generally. (Section 87103).

I trust this letter provides Councilmember Henderson with the guidance he has requested in determining his responsibilities under the Act. If you have any further questions regarding this matter, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel



Deanne Stone
Counsel, Legal Division

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Enclosures