



## FAIR POLITICAL PRACTICES COMMISSION

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September 22, 2015

Harold DeGraw  
City Attorney, Nevada City



**Re: Advisory Letter – Harold DeGraw, FPPC No. 14/1069**

Dear Mr. DeGraw:

The Enforcement Division of the Fair Political Practices Commission investigated allegations that you violated the conflict of interest prohibitions of the Political Reform Act (the “Act”)<sup>1</sup> by providing legal advice to the Nevada City Planning Commission and the Nevada City Council in a matter involving real property in close proximity to your house. The Enforcement Division has decided to close its file on this matter. The basis for this decision follows.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or 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.<sup>2</sup> A public official has a financial interest in a governmental decision if it is reasonably foreseeable that decision will have a material financial effect on real property in which the official has an interest worth two thousand dollars or more.<sup>3</sup>

Our investigation found that in your role as city attorney for Nevada City, you provided legal advice to the city council and planning commission regarding the proposed re-opening of a bed and breakfast at 534 Spring Street (“Spring Street”). Previous owners had operated a bed and breakfast on the Spring Street property but not for a number of years. The new owners wanted to re-open but some community members protested. The issues on which you provided legal analysis included: (1) whether a city ordinance prohibited operation of a bed and breakfast; (2) whether the planning commission should conduct a fact-finding hearing to determine if the Spring Street property had lost its right to operate as a bed and breakfast due to non-use; and (3) whether the operation of a bed and breakfast on the Spring Street property was a non-conforming use under the city’s zoning ordinance.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

<sup>2</sup> Section 87100.

<sup>3</sup> Section 87103, subd. (b).

The investigation further determined that you own real property in Nevada City on Drummond Street. You live on the property and have your law office there. The back of your property is adjacent to the back of the Spring Street property. There is a substantial distance between your house and the house on the Spring Street property due to the size of the Spring Street property. The portion of the Spring Street property nearest your property is a wooded area. Drummond Street is all residential and mostly newer houses while the Spring Street house is surrounded by historic houses and is one block from Broad Street, a main commercial street in Nevada City.

As the city attorney, you are a public official under the Act. By providing legal advice to the planning commission and the city council regarding the regulation of bed and breakfasts in Nevada City you were participating in a governmental decision. But we have concluded that you did not have a conflict of interest because it was not reasonably foreseeable that providing your professional opinion as to the current law governing bed and breakfasts in Nevada City generally, and as applied to the Spring Street property, would have a material financial effect on your property. There is no reason to believe that providing legal advice concerning a decision that allowed, or prohibited, the use of the Spring Street property as a bed and breakfast would impact the value of your property. It was highly unlikely you could use your property as a bed and breakfast regardless of what happened with the Spring Street property. Also, any increase in the use of the Spring Street property due to bed and breakfast guests would not impact your use or enjoyment of your property since the properties are on different streets, are accessed from different cross streets, and your property is not near that portion of the Spring Street property that guests of the bed and breakfast would use. Given the dissimilarity between the properties, we did not find evidence that you had a financial interest in any decisions concerning the Spring Street property.

Even though we are closing our file in this matter, please be advised of the conflict of interest provisions of the Act in any future actions you may take, or advice you may give, as a city attorney. If you need guidance regarding the Act's conflict of interest provisions, please contact the Fair Political Practices Commission's Technical Assistance Division at [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov), or visit our website at [www.fppc.ca.gov](http://www.fppc.ca.gov). If you have questions regarding this matter, please contact me at [REDACTED].

Sincerely,

[REDACTED]  
Dave Bainbridge  
Senior Commission Counsel  
Enforcement Division

cc: Stevee Duber, complainant