FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

December 9, 2010

Rick Downey
Redacted

RE: Advisory Letter
In the Matter of Rick Downey, FPPC No. 10/819

Dear Mr. Downey:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act")[1] found in Government Code Section 81000, and following. As you may be aware, the Commission was investigating whether you were in violation of the Act's conflict of interest and voting recusal procedure provisions when voting on Resolution 09-53 on or about December 15, 2009, as a councilmember of the City of Angels.

Our investigation revealed that the reasonably foreseeable material financial effect of the decision on your real property interests was indistinguishable from the effect on the "public generally." (Regulation 18700, subdivision (a)(7).) We have concluded that the "public generally" exception of FPPC Regulation 18707.1 applied at the time of the governmental decisions because property owners of the Greenhorn Creek Subdivision comprised at least ten percent of property owners in the City of Angels and you were affected in substantially the same manner as property owners in that segment of the public. As a result, we are closing this case with this Advisory Letter.

You should be aware that the Act prohibits public officials from making, participating in making or influencing governmental decisions in which the official has a material financial interest. Specifically, Section 87100 of the Act states: "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."

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[1]The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

To determine whether an individual has a disqualifying conflict of interests, the FPPC generally employs the following sequenced analysis: 1) was the individual a public official; 2) did the official make, participate in making, or use or attempt to use his official position to influence a governmental decision; 3) what are the public official's economic interests; 4) was the economic interest affected by the decision, either directly or indirectly; 5) was the economic interest materially affected by the decision; 6) was it reasonably foreseeable that the economic interest would be materially affected by the decision. (See Regulation 18700.)

Additionally, you should be aware that all elected public officials, when recusing themselves from voting on items in which they have a material financial interest, must comply with the procedures set forth in Section 87105 of the Act. Specifically, a public official who holds an office specified in Section 87200 of the Act, including a city council member, who has a financial interest in a decision within the meaning of Section 87100 of the Act shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (1) publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required; (2) recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100; and (3) leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act and provides guidance regarding your obligations over the telephone and through written advice. If you need assistance, please call the Commission's Technical Assistance Division at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Sincerely,

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Luisa Menchaca
Senior Commission Counsel
Enforcement Division