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

August 24, 2009

Ms. Day Yeager

REDACTED

Re: Warning Letter
FPPC Case No. 04/75, Day Yeager

Dear Ms. Yeager:

As you know, the Enforcement Division of the Fair Political Practices Commission (the "FPPC"), which enforces the provisions of the Political Reform Act (the "Act"),[1] received a complaint alleging that you violated the conflict of interest provisions of the Act. Specifically, the complaint alleged that in December 2003, while acting as a member of the Planning Commission for the City of Solvang, you voted to eliminate the garage requirement for second occupancy units, which impacted your use of a former guesthouse at your primary residence that otherwise would have been a non-conforming second occupancy unit. After investigation, and based upon additional information obtained in connection with the probable cause conference, the FPPC is closing its file on this matter without initiating an enforcement action. This is a warning letter.

At the time in question, the Act provided (and still provides) that 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 her official position to influence a governmental decision in which she knows or has reason to know she has a disqualifying conflict of interest. (Section 87100.) Generally, a public official has a disqualifying conflict of interest when it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (See Regulations 18700-18709.) Economic interests include a public official's interest in real property and the personal finances of the public official. (Regulations 18703.2 and 18703.5.)

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[1] The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. FPPC regulations are contained in Sections 18110 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.

Section 87105 provides that upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, the public official in question must 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 herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.
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.

However, Regulation 18707 provides that a public official does not have a disqualifying conflict of interest if the governmental decision affects the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally. This is known as the "public generally" exception.

Based upon our investigation and information obtained in connection with the probable cause conference, it appears that in December 2003, you violated Section 87100 when you voted to eliminate the garage requirement for second occupancy units because your vote may have saved you the cost of an appeal in connection with legalizing a pre-existing second occupancy unit at your place of residence. Additionally, your vote may have increased the fair market value, development potential, and/or income producing potential of your real property.

However, based upon the circumstances of this case, the FPPC has decided not to pursue an enforcement action at this time, in part because it appears that you may have held the mistaken belief that the "public generally" exception allowed you to vote. In analyzing the "public generally" exception, it is important to note that your vote enhanced your own economic interests more than the general public's because you already had a second occupancy unit at your place of residence when you voted. For more information about the "public generally" exception, please see Regulations 18707 through 18707.10.

Although we have decided not to pursue an enforcement action in this matter, the information in this case will be retained and may be used against you should an enforcement action become necessary due to newly discovered information and/or your failure to comply with the Act in the future.

Please note that our Legal Division and Technical Assistance Division can provide advice and assistance for issues which may arise in the future. You may contact either division by calling our toll-free number: 1-866-ASK-FPPC (1-866-275-3772). Also, you may refer to the FPPC website at www.fppc.ca.gov for current information.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated.

Sincerely,

REDACTED

Neal P. Bucknell
Commission Counsel
Enforcement Division

cc: Mr. David Pick