



City of Santa Cruz

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NOV 20 12 57 PM '92

November 18, 1992

Fair Political Practices Commission
Legal Division
420A J Street, Suite 800
Sacramento, California 95814

RE: Conflict of Interest Opinion Request - Cynthia Mathews

Dear Sir or Madame:

Santa Cruz City resident Cynthia Mathews was elected to the Santa Cruz City Council on November 3, 1992. Pursuant to the City's charter, she will be sworn into office on November 24, 1992 and will serve a four year term in office.

Prior to her election to office, Ms. Mathews was an active member in an organization known as the "Friends of Downtown". The Friends of Downtown was formed in April, 1992 as an ad hoc organization in opposition to the proposed development of a factory outlet center near downtown Santa Cruz. Friends of Downtown is comprised of various owners of commercial property in downtown Santa Cruz, owners of businesses in downtown Santa Cruz, owners of residential property in downtown Santa Cruz, residents of downtown Santa Cruz, and various other persons in opposition to the development of the factory outlet center. The organization has no corporate status, nonprofit or otherwise, nor has it been legally created pursuant to statute. Its sole purpose is to organize the opposition to the factory outlet center proposal, and it is expected that the group will disband once that proposal has been finally ruled upon by the City Council. The group has no membership dues and relies for its finances on the voluntary contributions of its membership. As of November 16, 1992, the group had collected approximately \$11,000 which is expected to be budgeted primarily for attorney's fees and incidentally to other organizational costs such as printing and postage. Friends of Downtown has no particular organizational or hierarchical structure. Generally speaking, tactical and substantive decisions are made by a twelve-person steering committee which arrives at its decisions by consensus. Councilmember-elect Mathews has contributed approximately \$2,000 to the organization and serves as a member of the organization's steering committee.

The factory outlet center proposal, which is the object of Friends of Downtown's opposition, has been presented to the City

over the last two years by the developer in "phases". As a result, the current City Council has ruled in regard to a number of issues and permit applications relative to the project. It is now expected that the new City Council will be asked to make a number of other decisions which will directly affect the viability of the factory outlet center proposal.

Friends of Downtown has hired legal counsel to represent its interests and has threatened to bring legal action against the City to overturn certain actions already taken by the City Council with respect to the factory outlet center proposal. Specifically, attorneys for Friends of Downtown contend that the City, in certifying the Environmental Impact Report and other environmental documents prepared by the City in connection with the factory outlet center, has failed to comply with the California Environmental Quality Act. Accordingly, it is reasonably foreseeable that if this issue should be litigated, Friends of Downtown, pursuant to Code of Civil Procedure §1021.5 would seek recovery of attorney's fees. It is also foreseeable that the new City Council would be asked to make decisions relative to the City's response to that litigation, or the threat thereof.

Given the foregoing facts, we would appreciate your opinion as to the following:

1. Should Ms. Mathews remain an active member of Friends of Downtown, would she have a conflict of interest which would prevent her from participating in City Council decisions pertaining to the factory outlet center proposal and City litigation arising out of that proposal?

2. Ms. Mathews, upon her elevation to the City Council, may terminate her active participation in Friends of Downtown. Under these circumstances, would her prior involvement create a conflict of interest which would prevent her from participating in City Council decisions pertaining to the factory outlet center proposal and City litigation arising out of that proposal?

3. Ms. Mathews may voluntarily renounce or forfeit any right to recover money she donated to the Friends of Downtown which was used for attorney's fees and which might be recovered in successful litigation against the City. Under these circumstances, would she have a conflict of interest which would prevent her from participating in City Council decisions pertaining to the factory outlet center proposal and City litigation arising out of that proposal?

We would appreciate the Commission's prompt response to the foregoing opinion request inasmuch as it is currently expected that

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the City Council will shortly be asked to make additional decisions pertaining to the proposed factory outlet center. Thank you very much for your assistance.

Very truly yours,



JOHN G. BARISONE

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cc: Cynthia Mathews