

A-76-296

July 28, 1976

Don P. Bonfa
City Attorney
P.O. Box 190
Huntington Beach, California 92648

Dear Mr. Bonfa:

This letter will confirm our telephone conversation of last week and bring you up to date on the status of both Opinion Request No. 76-033 and the issues involving Conflict of Interest Codes.

Approval of the draft in 76-033 is being delayed because an apparent majority of the Commission wishes to revise the Regulation, 2 Cal. Adm. Code 18700, to exclude persons such as those on PAC agencies from the definition of "member" and hence "public official" as used in Government Code Section 87100. Action to accomplish this may be forthcoming at the Commission's September meeting.

The Commission is also in the process of redefining Regulation Section 18700(c), "participates in the making of a governmental decision". The effect will most likely be to take a more narrow approach in defining the phrase. If this is done, it will have the effect of excluding certain classes of employees from the coverage of Conflict of Interest Codes. This matter will next be presented at the Commission meeting of August 4.

With respect to the specific questions you asked in your letter of May 28, I can see no reason why you should not follow the procedure stated in paragraph "2" when a decision issues. It appears to me that the answer to the question posed in paragraph "1" initially turns on the question raised in your Opinion Request, to wit, are PAC members "public officials"? Accordingly, I would rather not attempt to answer that question definitively until after the September Commission meeting.

Thank you for calling. We will keep you informed of the progress of these discussions.

Sincerely,

Kenneth W. Goshorn
Staff Attorney, Conflicts
of Interest Division



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May 28, 1976

Mr. Delbert L. Spurlock, Jr., Chief,
and Mr. Kenneth Goshorn, Staff Attorney,
Conflicts of Interest Division
Fair Political Practices Commission
Post Office Box 807,
Sacramento, California 95804

Gentlemen:

Thank you for Mr. Spurlock's letter of May 26, 1976 and Jeanne Pritchard's letter of May 24, 1976, in connection with Opinion No. 76-033, and I note that Draft II incorporates my principal concern regarding commercial holdings of PAC members. I also thank Mr. Spurlock for his time in connection with our lengthy telephone conversation of May 24, 1976.

I think that Draft II of Opinion No. 76-033 is quite good and acceptable to the undersigned and trust it will be approved by the Commission.

As discussed by telephone with Mr. Spurlock on May 24, 1976, I should like to propose several questions which may be answered informally:

1. A member of the Project Area Committee is a principal member of the class in a class lawsuit filed against the City of Huntington Beach for \$8,500,000, alleging inverse condemnation and damages due to diminution of property value by reason of an alleged course of conduct on the part of City to deny issuance of building permits for improvement and upkeep of real properties in the redevelopment project area several years ago when a plan of redevelopment called the "Top of the Pier Plan" was being considered by the City Council. The Top of the Pier plan was abandoned in approximately 1971 and all of the condemnation actions filed by this office were dismissed. This principal class litigant filed the class action in about 1973 and it is still pending. A stipulated moratorium has been filed in the action to permit the City and the property owners to work out a redevelopment plan for the project area. An agreement has been entered into with this principal litigant and others that should the City approve a redevelopment plan acceptable to the class, that the class action will be dismissed. This principal litigant is

Mr. Delbert L. Spurlock, Jr. and

Mr. Kenneth Goshorn

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a member of the Project Area Committee. Is the principal class litigant in violation of the conflict of interest provisions of the Political Reform Act?

2. Reducing the theme of Opinion No. 76-033 to specific situations (see footnote 3 on page 10 of Draft II, 5/19/76) regarding "particularistic effect on a member's economic interest", my intention is, when Opinion No. 76-033 is approved by the Commission, to send copies of the Opinion to each member of the Project Area Committee with a warning letter directing their attention to footnote 3 on page 10 and suggesting that specific decisions as to "particularistic effect" may be requested of the FPPC when, as and if the Commission requires. Is this ~~project~~-satisfactory to you?

Sincerely,

proceed


DON P. BONFA
City Attorney

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