

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance/Administration • • • Executive/Legal • • • Enforcement • • • Conflict of Interest
(916) 322-5660 322-5901 322-6441 322-6444

Jeanne P.
87100
87103

August 12, 1977

77-08-059

Robert L. Leslie
496 Alpine Lane
Sonora, California 95370

Dear Mr. Leslie:

This is in response to your letter of 8 August 1977, asking a variety of questions concerning the possibility of the existence of a conflict of interest if you were to engage in certain activities as a Sonora City Councilman.

Government Code Sections 87100 and 87103 set forth the general prohibitions against conflict of interest under the Political Reform Act.^{1/} They provide, in relevant part:

87100. 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.

87103. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

... (b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);...

^{1/} The City Council of the City of Sonora has also adopted a Conflict of Interest Code containing similar provisions. As a City Councilman, you are also subject to the provisions of that Code.

2-B.7

Mr. Robert L. Leslie
August 12, 1977
Page Two

As we discussed previously, and agreed, it is clear that your ability to continue and conclude construction of your new home will have "a material financial effect, distinguishable from its effect on the public generally, on" ...real property in which you have an interest. See, Section 87103, supra. Thus, as a Councilman, you may not generally "make, participate in making or otherwise use your official position to influence" decisions that will directly result in deciding whether continued building may take place.

This prohibition does not, however, totally preclude you from representing your own interests in this matter. The Commission has interpreted the phrases "participating in the making of a decision" and using (your) official position to influence" by Regulation. 2 Cal. Adm. Code Section 18700(d) specifically excludes from that concept:

Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest...

Thus to the extent that you wish to represent your own interests in this matter as a private citizen (and assuming that you engage in no avenues of activity not open to other members of the public and are bound by the same constraints of action as other members of the public), such activity is not prohibited by Government Code Section 87100.

I trust that partially answers several of your questions. There remains, however, the question of what actions you may legally take in your official capacity on behalf of third party applicants (or complainants) with respect to matters pending before the Building Department.^{2/} The answer is that you are only prohibited from acting where it is "reasonably foreseeable" that such actions will predictably result in the approval of continued construction on your property. Based on the facts as presented, and as we discussed, it does not appear that it is presently foreseeable that that result will occur. Stated simply, from what you have told me, it does not appear that efforts on your part to resolve impasses between third parties and the Building Department will foreseeably result in approval of your project. To the extent

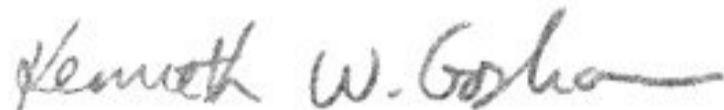
^{2/} Assume for purposes of this discussion that none of the third-party persons involved constitutes a "source of income" to you within the meaning of Section 87103(c), nor do you have any other financial interests in such applicants.

Mr. Robert L. Leslie
August 12, 1977
Page Three

that they would, you should not participate in your official capacity. Therefore, should different circumstances arise in the future which make it more likely that approval of your project would result from resolution of a third party dispute, you should reassess the situation to determine if the criteria governing disqualification are met.

I hope this helps resolve your situation. Thank you for consulting us. If I can be of further assistance in this or any other matter, please feel free to call me at (916)322-6444.

Sincerely,



Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division

KWG:mfa

F P P C
AUG 10 8 23 AM '77

77059
August 8, 1977

496 Alpine Lane
Sonora, Ca., 95370

Mr. Kenneth W. Goshorn
Conflict of Interest Division
Fair Political Practices Commission
1100 "K" Street Bldg.
P. O. Box 807
Sacramento, Ca., 95814

Dear Mr. Goshorn:

This is a letter to confirm in writing the things which we talked about last week.

First, I am a Sonora City Councilman and am at the present time building a new home. The City of Sonora Building Inspector has placed a stop work order on my property because he feels that I am not meeting the building code. I feel that I have met the building code, but am still being stopped by the City Inspector. I do have a contractor's license but have never to this date used it to build for another person. I have had this license for the purpose of self education and for the purpose of building rental buildings for myself only in the past. I have built one building only (a rental fourplex) since becoming elected to the City Council. Since the Building Inspector has stopped construction of my new home, I have been concerned about the state laws pertaining to conflict of interest, and need to know what rights I do or do not have during this period of disagreement.

Given the above conditions, which are mine at present, could you answer the following questions:

1. If I have complaints on the Building Department (a one man operation) from the public at large do I have the right to investigate as a Councilman on behalf of the public to see if there is a problem? In answer to this question it should be stated that I have no personal financial interest in the owner, builder, or any other part of the particular item being questioned.
2. With the same conditions as question # 1 can I go through City permits and files to check on the particular complaint as a Councilman?
3. Can I inform the public or other Councilmen of any irregularities which might be connected to questions # 1 and # 2?

4. Can I call in any other government agencies to assist if I find irregularities under the terms of questions # 1 and # 2?
5. If any contractors or owners wish to protest the Building Inspector's performance do I have a right to participate with them as a Councilman if I have no financial interest in them or their projects?
6. Do I have the right to participate in any evaluations of this Building Department as a whole as a councilman?
7. Acting as a private citizen (not a Councilman) do I have the right to go through building permits and files to determine if I am being treated the same on construction of my own home (with a personal financial interest) as other private citizens have been treated on other similar construction situations.
8. If I find irregularities under the conditions described in item # 7, do I have the right as a private citizen (not a Councilman) to inform the public?
9. Can I appeal to any other government agencies to assist if I do find irregularities under the terms of question # 7?
10. Same as question # 5 but as a private citizen and not as a Councilman.

Even though you verbally discussed most of these items with me last Friday, I think it best to have your opinions in writing should I need them for future reference. Your prompt reply will be very much appreciated.

Sincerely,

Robert L. Leslie

Robert L. Leslie