

# 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

August 23, 1977

77-08-062

Mr. Michael J. Bartlett  
 Deputy City Attorney  
 City of San Clemente  
 100 Avenida Presidio  
 San Clemente, California

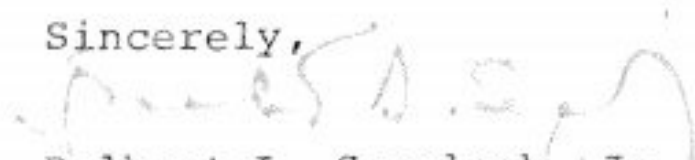
Re: Obligations of Planning Commissioner James L. Chase under the Political Reform Act

Dear Mr. Bartlett:

Thank you for your letter of August 3, 1977, requesting advice pursuant to Government Code §83114 regarding the duties of Commissioner Chase under Government Code §87103 of the Political Reform Act.

Your letter raises two issues which you correctly analyze and answer. Your advice to Mr. Chase, extended on a case-by-case basis, appears consistent with the requirements of Government Code §§87100 and 87103. Of course, we make no determination with respect to the appropriateness of that advice within the specific factual context of each decision before the Planning Commission and Mr. Chase.

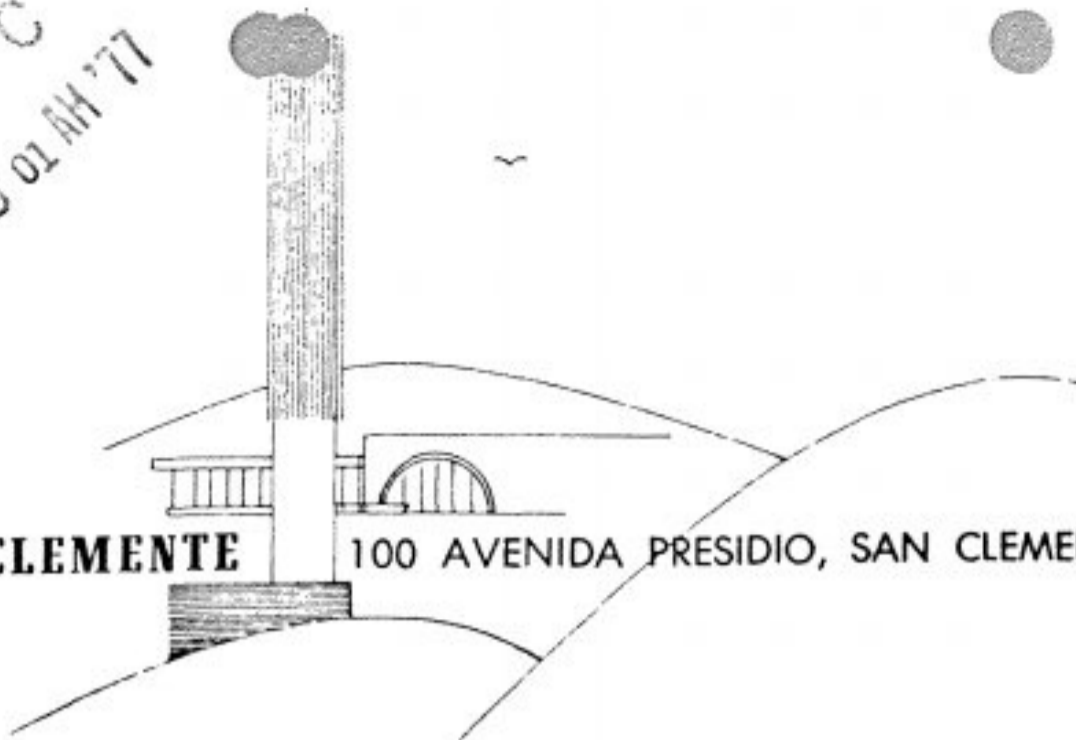
If we may be of further assistance to you in this matter, please feel free to contact me at 916/322-6444.

Sincerely,  
  
 Delbert L. Spurlock, Jr., Chief  
 Conflicts of Interest Division

DLS:glb

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**CITY OF SAN CLEMENTE**

100 AVENIDA PRESIDIO, SAN CLEMENTE, CALIFORNIA - 492-5101

August 3, 1977

Fair Political Practices Commission  
1100 K Street  
P. O. Box 807  
Sacramento, California 95814

Gentlemen:

Request is hereby made, pursuant to Government Code Section 83114, for an opinion and written advice with respect to the following described factual situation:

Mr. James L. Chase is a member of the San Clemente Planning Commission, and is also an architect with offices located within the City of San Clemente. Prior to assuming the position of planning commissioner, Mr. Chase was employed by an architectural firm which was doing very little business within the City of San Clemente.

Approximately ten months after his initial appointment to the Planning Commission, Mr. Chase formed his own firm in partnership with two other local architects, and began accepting work on projects located both outside and within the City of San Clemente. Since the formation of this firm, Mr. Eric Boucher, a local building designer, has been openly critical of the participation by Mr. Chase in the review of projects which involve architectural or design work. Mr. Boucher contends that Chase is, or may be, benefiting financially from his position as a planning commissioner in that persons or firms whose projects are denied might retain him to secure quick approval or that such persons might retain him initially in order to avoid anticipated problems.

Mr. Boucher has recently contacted the City of San Clemente, your commission, and has made a request for an investigation by the Orange County District Attorney's Office and the Grand Jury.

James Chase has been a member of the Planning Commission for slightly more than one year. During that time he has on several occasions sought the advice of this office regarding possible conflicts of interest, and has abstained on a transactional basis from participating or voting when advised to do so. To date, there have been a total of only three occasions where he has abstained. Two of these involved projects in which his firm was involved, and the other concerned a request for a zone change on land which Mr. Chase was purchasing.

#### Questions

The questions for which an opinion and written advice are requested are the following:

1. Does James L. Chase have a "per se" conflict, as a result of the fact that as a member of the San Clemente Planning Commission he is required to review certain real estate development projects which involve contributions of work from architects or building designers?
2. Are there any occupations or professions which, by their very nature, are so incompatible with the duties of a planning commissioner as to require resignation or termination of said occupation or profession in the geographical area under the Commission's jurisdiction?

#### Analysis

The City Attorney's office, when confronted by members of both the City Council and Planning Commission with questions involving a suspected conflict of interest, has relied primarily on the provisions of Government Code Section 87100 and 87103. These sections, along with the companion provisions contained in the California Administrative Code, have enabled this office to utilize an almost mechanical approach in many instances. We are, however, aware that both statutory and common law principles apply to the conflict of interest area [58 Ops. Cal. Atty. Gen. 354 (1975)], and have recommended abstention in certain close cases where the mechanical approach indicated no conflict of interest but where the particular member of the City Council or Planning Commission expressed an inarticulable feeling that abstention was proper; or in rare instances where there was a strong appearance of conflict [46 Ops. Cal. Atty. Gen. 74(1965)].

Implicit in our previous rulings regarding conflicts of interest, is the determination that there is no private occupation or profession which requires a "per se" disqualification which would exclude any person from serving on a city council or planning commission. And although there appears to be no case law directly on point, the Attorney General has so ruled:

"It is to be emphasized that the PRA [Political reform act] prohibits participation upon a transactional basis. It merely requires abstention in the usual situation where a prohibited conflict arises."

59 Ops. Cal. Atty. Gen. 607 (1976)

This would seem to be the proper approach to this question, since a "per se" rule would almost inevitably exclude from participation in local government numerous persons whose expertise and training are greatly needed. From a reading of recent opinions of the Fair Political Practices Commission, however, it appears that the Commission may be moving toward the adoption of a contrary opinion. Reference is made specifically to your opinion dated July 2, 1975, which states in part as follows:

"We have been urged by several witnesses who testified at our hearings in this matter to conclude that one or the other of these types of interest should constitute a per se disqualification from voting to adopt a redevelopment plan. We decline to adopt such a per se rule, because we believe the present case does not require such a rule, and adoption of rules of such wide-ranging scope should, if appropriate at all, follow a more comprehensive consideration of the problem than the Commission has yet undertaken."

1 FPPC Opinions 78(1975)

It is recognized of course that in a particular case a public officer or employee could have, as a result of his occupation, a personal conflict of such a continuing and pervasive nature so as to render him ineffective in his public office. This office has so ruled in such a case. In these instances, resignation from the public office or cessation of the private conflicting activity would appear to be required [59 Ops. Cal. Atty. Gen. 613(1976)]. And of course there are numerous situations which would involve an inherent conflict of interest requiring resignation, such as where a councilman is also a fireman or other employee for the same city. Such situations,

mostly involving the simultaneous holding of several public offices (People Ex Rel. Chapman v. Rapsey, (1940) 16 Cal.2d 636), are expressly excluded from this discussion.

In the present instance, James L. Chase does not hold several public offices, but is simply a licensed architect who performs work for construction projects a limited few of which are located within the City of San Clemente. The number of such projects in comparison with the total number of local projects is very small, and many projects such as single family residences and apartments with fewer than five units are not subject to review by the Planning Commission in the normal case.

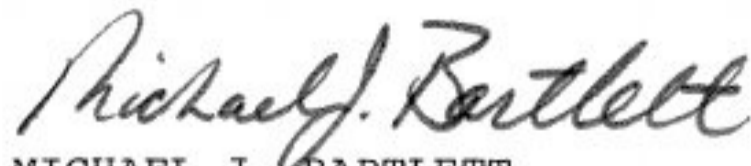
#### Conclusion

The following conclusions were reached by this office and are respectfully submitted to you for your opinion:

1. Based on the facts presented, James L. Chase is not precluded from holding the position of planning commissioner simply because he is a licensed architect who sometimes performs services for construction projects in the City of San Clemente. Mr. Chase must abstain from making or participating in the making, or in any way attempting to use his official position to influence, a governmental decision in which he knows or has reason to know that he has a financial interest, as defined by Section 87103.
2. There are no private occupations or professions which are "per se" inherently in conflict with the positions of city councilperson or planning commissioner.

If we can be of any further service to you in rendering the requested opinion and advice, please do not hesitate to contact this office.

Very truly yours,



MICHAEL J. BARTLETT  
Deputy City Attorney for  
the City of San Clemente