

87100

State of California



Fair Political Practices Commission

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Technical Assistance Administration	•••	Executive Legal	•••	Enforcement	•••	Conflict of Interest
916 322 5460		322 5901		322 6441		322 6444

October 28, 1977

77-10-073

Mr. Robert K. Booth, Jr.
 Palo Alto City Attorney
 250 Hamilton Avenue
 Palo Alto, California 94301

Dear Mr. Booth:

This is in response to your letter of 19 October 1977 regarding the participation by Councilmember Ann Witherspoon in various actions of the Palo Alto City Council concerning the Sand Hill Road Improvement Project. In my letter to you dated 2 September to which you refer in your letter, I reiterated the staff's view that Ms. Witherspoon should not, in light of Government Code §87100, "make or participate in the making" of any decisions which, in light of all the surrounding circumstances, call into question the continued viability of the project. You ask for clarification of that advice in the context of certain specific decisions which the Council must make at its meeting on 7 November, and ask whether Ms. Witherspoon may legally engage in the making of these decisions.

It appears to us that you have answered your own question. To wit, on page two of your letter you say:

We wish to emphasize that approval or disapproval of any of the foregoing actions particularly those pertaining to the assessment district directly, will have a material financial effect upon the university.

To the extent this is the case, we think it clear that Government Code §§87100 and 87103, as summarized and interpreted in my letters to you dated 3 August and 2 September, prohibit Ms. Witherspoon from participating in those decisions.

2-B.19

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We are aware that the matter in question appears to be a sensitive one subject to considerable debate and feeling pro and con. However, we also think the Government Code and previous interpretations of same rendered by the Commission pursuant to §83114 dictate the cited conclusion.

Sincerely,

Kenneth W. Goshorn

Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest
Division

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City of Palo Alto

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October 19, 1977

Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division
State of California Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Dear Mr. Goshorn:

On September 2, 1977, you advised this office by letter regarding participation by Councilmember Ann Witherspoon in various actions of the Palo Alto City Council with respect to the Sand Hill Road Improvement Project. Unfortunately, there continues to exist some confusion in our mind as to whether or not she may participate in the forthcoming actions required on the project. Accordingly, following is further information which we hope you will consider and give us your advice at the earliest opportunity. The next series of actions relating to this project is scheduled for Monday, November 7, 1977 and we would appreciate receipt of your opinion prior to that time.

Summarizing events to date, Stanford University is a non-profit corporation and not a business entity as that term is defined in Government Code Section 82005. Accordingly, to determine whether the requisite financial interest exist only the "source of income" test would be applicable under Section 87103(C). Mrs. Witherspoon is employed by Stanford Medical Center, which is a separate legal entity owned by and under the control of the Board of Trustees of the University. Her activities are primarily related to private charitable fund raising for the benefit of various medical activities.

The road construction project involved will cost in excess of \$6,000,000, with approximately seventy-five percent to be assessed to Stanford University. The university in tern, however, will pass along a substantial portion of its assessments to various lessees, including a large apartment project, the Stanford Shopping Center lessees and other commercial type uses. Some of the assessments will be borne by the university or by its medical activities. Moreover, creation

of the assessment district will provide an immediate cash payment to the university, which will be repaid over time as the assessment district bonds are paid off in the manner set forth above. It is our understanding that you have concluded that the project will have a "material financial effect" upon the source of income of Mrs. Witherspoon.

Your letter of September 2nd states, "We believe that she is only prohibited from making or participating in decisions which, in light of all this surrounding circumstances, realistically involved the continued viability of the project." It is this language which we believe needs further clarification.

On November 7, 1977, the Council will have before it for consideration a number of actions relating to the project. The failure of any one of these to be approved by the City Council will result in termination of the assessment district, although the project could conceivably proceed forward if alternative ways to finance it are found. It is notable that the university is under a legal obligation pursuant to a contract executed some years ago to build the project upon the request of the City, whether the same is financed through an assessment district or not.

On November 7, 1977, the City Council will receive and hear any written protests to the project and will thereafter consider a resolution overruling the same. It will then consider a resolution ordering the project to proceed, including acquisition of property and construction of the improvements and also will consider a resolution confirming the proposed spread of the assessment upon the various parcels of property and will consider one or more proposed agreements with the university relating to restrictions on certain uses of remaining property, establishing a setback from a creek channel and construction of an additional street on the campus itself which is not a part of the assessment district project. There are some other actions with the Council also will consider, but these are of a lesser nature.


We wish to emphasize that approval or disapproval of any of the foregoing actions particularly those pertaining to the assessment district directly, will have a material financial effect upon the university.

It is also possible that the City Council may decide not to proceed forward with the project itself, regardless of the financing matters at issue in the assessment district, and irrespective of the university's preexisting obligation to construct the road upon request.

Because this project is of considerable significance to both the university and the City, we wish to be certain that the

Commission Staff has been fully apprised of all of the aspects of it before issuing its opinion letter. Accordingly, we ask you to once again consider this matter and give us your advice. Please contact me if you need further information on any of the material discussed herein.

Sincerely,


ROBERT K. BOOTH, JR.
City Attorney

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