

# State of California



# Fair Political Practices Commission

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

April 4, 1977

77-04-232

Mr. Eric Lauterer  
City Attorney  
11391 Acacia Parkway  
Garden Grove, CA 92640

Dear Mr. Lauterer:

Thank you for your letter of January 7, 1977, requesting an opinion on behalf of Tilman Williams, Mayor of the City of Garden Grove, concerning a potential conflict of interest. Because your request does not raise a substantial question of interpretation under the Political Reform Act, no formal opinion will be issued. However, I hope the following informal comments, provided pursuant to Gov. Code Section 83114(b) and 2 Cal. Adm. Code Section 18329, will be helpful.

The relevant facts, as we understand them, are as follows:

1. Some time prior to March 9, 1976, during his campaign for the office of Mayor, Mr. Williams met Mr. and Mrs. Marcroft, who related to Mr. Williams some problems they were having with respect to the sale of a piece of property.
2. In April, 1976, Mr. Williams won the mayoral election.
3. After the election, the Marcrofts called Mr. Williams and expressed a desire to list their property with the realty firm owned by Mr. Williams, Satellite Realty and Investment Company (hereinafter "Satellite").
4. The following information with respect to the property is pertinent: the parcel is located in the City of Garden Grove and was included in the area designated for redevelopment by the Community Development Agency; in January, 1976, the City attempted to acquire a portion of the property from

2-A. 19-a

the Marcrofts but the Marcrofts rejected the City's offer for partial acquisition; subsequently, the Marcrofts acquired a parcel of property which adjoins the original parcel; it was this adjoining parcel and the original parcel which the Marcrofts decided to list with Satellite.

5. On July 23, 1976, Tom Slavin, a salesman for Satellite, appraised the property in question and obtained a contract from the Marcrofts to list the property. The list price was \$140,000 and the contract called for a 6% commission.

6. After consummation of the contract, Mr. Williams was advised by you, in your capacity as City Attorney, concerning a potential conflict of interest based on the fact that the City had been negotiating and was continuing to negotiate to acquire the property in question.

7. Based upon this advice, on September 13, 1976, Mr. Williams rescinded the contract with the Marcrofts, thereby terminating the listing.

8. On September 20, 1976, Mr. Williams, in his capacity as a member of the Garden Grove City Council, voted to acquire the Marcrofts' property for a price of \$176,000.<sup>1/</sup>

9. On October 27, 1976, Mrs. Marcroft forwarded to the City Council and Mr. Williams a check for \$4,200 made payable to Satellite. In an accompanying letter, she stated that she believed Mr. Williams was entitled to the money because of the work he had done prior to rescinding the aforementioned contract. The amount of the check equals 3% of the original list price of \$140,000.

Based on the foregoing facts, you have asked whether Mr. Williams is entitled to accept the \$4,200 and, if not, whether the City of Garden Grove or some other representative of Satellite can accept the money. The Act requires disqualification under certain circumstances and disclosure of certain sources of income, but generally does not prohibit a local public official from accepting money. On the other hand, acceptance of the money by Mr. Williams may involve a

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<sup>1/</sup> Apparently Mr. Williams was opposed to the \$176,000 price but he nevertheless voted with other members of the City Council to approve the acquisition.

Mr. Eric Lauterer  
Page Three  
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conflict of interest within the meaning of the Act. We turn, therefore, to that issue.

The basic conflict of interest provision of the Political Reform Act provides:

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.

Gov. Code Section 87100

"Financial interest" is defined in Gov. Code Section 87103, which provides, in relevant part:

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:

\* \* \*

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made;....

(Emphasis added)

Absent additional facts, it is not possible for us to determine definitively whether Mr. Williams had a conflict of interest within the meaning of the quoted provisions at the time he voted on the acquisition of the Marcrofts' property. However, we can delineate the factors that are relevant to the issue.

Clearly, at the time Satellite and the Marcrofts entered into the listing agreement the Marcrofts became a source of income to Mr. Williams within the meaning

of Section 87103(c).<sup>2/</sup> Moreover, it is quite likely that the decision to purchase the Marcrofts' property for a price of \$176,000 had a material financial effect on the Marcrofts. Accordingly, if the listing agreement had been in effect at the time that Mr. Williams cast his vote to purchase the property, this would have constituted a violation of Section 87100.

On the other hand, in light of the fact that the listing agreement had been terminated, it is conceivable that by the time Mr. Williams cast his vote the Marcrofts were not a source of income to him. As we have indicated, the concept of source of income certainly includes any situation where there is extant at the time a governmental decision is made a legally enforceable promise to pay. In addition, we think that the concept of a promise to pay includes a situation where a public official has an expectation that payment will be forthcoming. Accordingly, if Mr. Williams, despite the previous rescission of the contract, expected to be paid by the Marcrofts for the services he had rendered, the Marcrofts were a source of income to him at the time he voted on the acquisition question. However, if Mr. Williams did not expect to receive any payment from the Marcrofts and the check for \$4,200 represented, in fact, a windfall, then the Marcrofts were not a source of income at the time he voted to purchase their property and his vote would not have constituted a violation of Gov. Code Section 87100.<sup>3/</sup>

In this latter situation, acceptance of the \$4,200 check from the Marcrofts would create a disclosure obligation for Mr. Williams and would make the Marcrofts a source of income to him for the twelve month period following receipt of the check. However, it would not involve a violation of the

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<sup>2/</sup> It is our understanding that Mr. Williams owns Satellite and, hence, the Marcrofts would be a source of income to him even though the listing agreement was with Satellite. Gov. Code Section 82030(a). Satellite also is a source of income to Mr. Williams, as well as an investment and a business entity in which he holds a management position. Gov. Code Section 87103(a) and (d). However, in light of our conclusions herein, it is not necessary to analyze whether Mr. Williams' decision produced a material financial effect on Satellite.


<sup>3/</sup> Of course, the facts that the Marcrofts forwarded a check and that in the accompanying note Mrs. Marcroft indicated that it represented payment for services rendered suggest there may have been an expectation of payment. However, these facts alone are not decisive relative to the question of whether Mr. Williams had an expectation that he would be paid.

Mr. Eric Lauter  
Page Five  
April 4, 1977

disqualification provision of Section 87100.

I hope the foregoing will enable you to resolve this matter and I apologize for the long delay in forwarding our advice. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Alfredo Flores  
Research Specialist

AF:KF:jo



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JAN 10 8 39 AM '77

CITY OF GARDEN GROVE, CALIFORNIA

1391 ACACIA PARKWAY, GARDEN GROVE, CALIFORNIA 92640

OFFICE OF THE CITY ATTORNEY  
(714) 638-6881

January 7, 1977

Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California

RE: Request for Opinion

Gentlemen:

Pursuant to the provisions of Section 83114 of the Government Code and in accordance with the provisions of the Administrative Procedure Act adopted pursuant to said section, I am hereby requesting on behalf of Mayor Tilman Williams, an opinion concerning a commission fee paid under the circumstances described in my letter dated December 3, 1976, attached hereto.

The money was submitted to the City as described in my December 3rd letter, after the City had actually purchased the property. Mayor Williams did not negotiate the purchase of the property with City officials nor did he or his office participate in any negotiations regarding the property after he withdrew. For purposes of the opinion, it may be assumed that the facts stated in my December 3rd communication directed to Mayor Williams are correct.

Based on the information provided in my December 3rd communication and this letter, under Proposition Nine:

- (1) Is Mayor Tilman Williams entitled to receive any or a portion of the money paid which is presently in a trust account?
- (2) Is the representative of Mayor Williams' private business office who was involved in carrying out a portion of the initial listing, entitled to receive any portion of the money described herein under either of the two conditions: (a) that no portion is paid to the Mayor or his office; and (b) that a portion of said commission is paid to the Mayor or his office?
- (3) If neither the Mayor or representative of his business office are entitled to receive any of the funds derived, is the City of Garden Grove entitled to retain any portion of the money and if not, to whom is the money required to be paid or returned?

Fair Political Practices Commission  
Page Two

1/7/77

Mayor Williams would like to appear and be present in the event a hearing is held in connection with the issuance of an opinion and in the interest of economy, would request that, if possible, such a hearing take place in Southern California.

Respectfully,

A handwritten signature in cursive script that reads "Eric Lauterer". The signature is written in dark ink and is positioned directly below the word "Respectfully,".

ERIC LAUTERER  
City Attorney

EL:mes



CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, GARDEN GROVE, CALIFORNIA 92640

OFFICE OF THE CITY ATTORNEY  
(714) 638-6881

December 3, 1976

Honorable J. Tilman Williams, Mayor  
City of Garden Grove  
11391 Acacia Parkway  
Garden Grove, California 92640

RE: Real Estate Commission - Garden Grove Blvd.  
Northwest corner at Euclid

Dear Mayor Williams:

In accordance with our conversation held in my office, I am providing the following information regarding the above sale and in particular, your status in connection with the receipt of any sum or commission related thereto.

You advised me that the City has received a check signed by Genevieve Crosby Marcroft made payable to Satellite Mortgage and Loan, a company located in the City of Garden Grove which you own. It is my understanding the check was submitted to you in connection with the sale of property located at the northwest corner of Euclid and Garden Grove Boulevard in the City of Garden Grove and more particularly, Parcel No. 64, Project No. 148. *Mayor*

As I understand the circumstances you relate, sometime during the period of time you were running for election of Mayor in the City of Garden Grove prior to March 9, 1976, you came in contact with an individual as a part of your normal business solicitation, who represented the owner of the parcel. The parties at that time were made aware you were in the real estate business and initially asked if you might be able to help with the sale of said property as a part of your professional activities.

Thereafter, following the election, the parties telephoned you to remind you of their desire to use your services and your company listed on exclusive multiple listing, the right to sell the property by yourself as well as agents working for you and did take steps towards marketing and selling the property. ?

Honorable J. Tilman Williams, Mayor  
Page Two

12/3/76

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Prior to any actual sale, the matter was brought to the attention of this office and I advised you of a potential conflict existing by virtue of Proposition Nine which establishes Government Code Sections 81000 through 81014. I indicated that because of the California Political Reform Act encompassed therein and provisions of the conflict of interest required by Proposition Nine, it appeared that a conflict did exist that would not authorize you to carry on and transfer property on behalf of the owners or receive commission therefor.

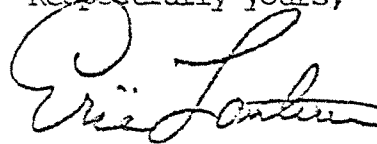
Based on my advise, you withdrew your exclusive listing and you and your agent had no further processing of the sale of this property. Ultimately the property was acquired by the City in connection with the redevelopment project area and thereafter, the prior owners who sold to the City forwarded a check made payable to your company, Satellite Mortgage and Loan, in the amount of \$4200.

It is my understanding that the check in the amount of \$4200, which represents one-half of the original commission due your company, as the result of your exclusive agreement to sell, was forwarded to you through the city. This action was taken by Mrs. Marcroft even though you had withdrawn, in writing, her legal responsibility as concerning this property on the basis of advice provided by this office.

Because of the initial advice given by this office and because of the provisions contained in Proposition Nine relevant to conflict of interest, I am hereby advising you that prior to spending any portion of the money, you set up an independent trust account, deposit the money under circumstances where you cannot obtain any funds or interest thereon without a signature of a city representative, to wit, the City Controller appearing thereon. In the interim, at your request, I am transmitting a letter stating the factual circumstances to the Fair Political Practices Commission for the purpose of obtaining an opinion from that body as to the legality of you or your agent or company, retaining any portion of the amount forwarded to you.

Should you have any further question, please contact me. I am forwarding copies to all persons listed below.

Respectfully yours,



ERIC LAUTERER  
City Attorney

*Need more info  
re:*

EL:mes

cc: City Manager  
City Council Members  
District Attorney  
Assemblyman Robinson  
The Register  
The News  
City Controller



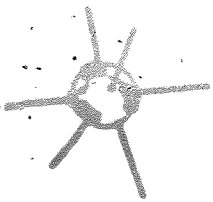


EXHIBIT #3

# SATELLITE

MORTGAGE AND LOAN COMPANY

*1 1/4 Mile South of Disneyland*

12311 Harbor Blvd.

Garden Grove, California 92642

Phone: (714) 750-4333



#R1158

9/13/76

MRS. GENEVIEVE CROSBY MARCROFT  
11311 CHAPMAN AVENUE  
GARDEN GROVE, CALIFORNIA

REFERENCE: NORTHWEST CORNER LOT OF GARDEN GROVE BLVD. & EUCLID  
AVENUE: GARDEN GROVE, CALIFORNIA

I have talked to our City Manager and City Attorney in regard to our office having a listing on the above property. They both advise me that I could not have an interest in the property and also vote as a member of the City Council in regard to any project area as that would be a Conflict Of Interest.

I am sure you can understand their position. They want to keep me out of trouble.

I am sorry for my Salesman Tom Slavin but effective this date 9/13/76 I have to terminate our listing agreement; however Tom and I will help you any way we can.

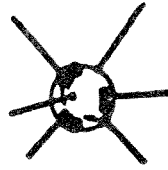
If you have any questions please phone our office.

Sincerely

J. Tilman Williams, db

EXHIBIT #4

F P P C  
JAN 24 9 50 AM '77



# SATELLITE REALTY & INVESTMENT CO.

P.O. Box 1538 • 12311 Harbor Blvd.

1/4 Mile South of Disneyland

GARDEN GROVE, CALIF. 92640

(714) 750-4333

R1158  
1/20/77

FAIR POLITICAL PRACTICES COMMISSION  
P.O. BOX 807  
SACRAMENTO, CALIFORNIA 95804

ATTENTION: MR. ALFREDO FLOREZ

REFERENCE: REAL ESTATE TRANSACTION ON THE NW CORNER OF  
EUCLID AVE. AND GARDEN GROVE BLVD: IN THE  
CITY OF GARDEN GROVE, CALIFORNIA

Per our phone conversation today, I am enclosing the following documents (copies)

1. listing takened 7/23/76
2. Letter to Mrs. Marcroft dated 9/13/76
3. Letter from Mrs. Marcroft dated 10/27/76
4. Copy of News Paper

I was mistaken when I told you today that I voted as a Redevelopment Commissioner as that action was taken before I became Mayor.

I did vote to purchase the property 9/20/76 as Mayor and member of the Garden Grove City Council.

I was shocked when you asked the question if I was Black. I assumed you meant if I was a Negro. Because of your name and because my secretary Mary Terrazas was sitting next to me, thus my answer, Not even a Mexican. In our Real Estate and Insurance office we treat all people alike whether they are Black, White, Red or Yellow and I am sure you run your office the same way. The next time you are in our area please drop by. If you have any other questions please call.

Sincerely

A handwritten signature in cursive script that reads "J. Tilman Williams".

J. Tilman Williams, db

OCT 28 10 24 AM '76

EXHIBIT #5

11311 Chapman Ave.  
Garden Grove, Cal.

OCT. 28, 1976

To:

Mayor J. Tilman Williams; City Council; Mr. Richard Powers;  
City Attorney.

Gentlemen:

I enclose my check for Forty-Two Hundred Dollars, made out to Satellite Realty, as commission for the recent sale of my property on the N.W. corner of Garden Grove Blvd. and Euclid Sts., to the City of Garden Grove.

It is true that Mr. Williams and Mr. Slavin withdrew as salesmen before the City acquired the subject property. However, before this took place, Satellite was actively engaged in trying to make a sale. I feel that a commission of the amount enclosed is due Satellite for their declaration of Mr. Williams that nothing is due.

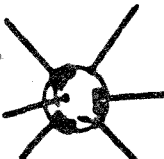
I wish to thank Mr. Powers and associates for bringing this to a satisfactory conclusion.

Sincerely,

*Genevieve Marcroft*

Genevieve Marcroft

F P P C  
MAR 23 9 44 AM '77



# SATELLITE REALTY & INVESTMENT CO.

P.O. Box 1538 • 12311 Harbor Blvd.  
1/4 Mile South of Disneyland  
GARDEN GROVE, CALIF. 92640  
(714) 750-4333

R1158  
3/21/77

FAIR POLITICAL PRACTICES COMMISSION  
P.O. BOX 807  
SACRAMENTO, CALIFORNIA 95804

ATTENTION: MR. ALFREDO FLOREZ

REFERENCE: REAL ESTATE TRANSACTION ON THE NW CORNER OF  
EUCLID AVE. AND GARDEN GROVE BLVD: IN THE  
CITY OF GARDEN GROVE, CALIFORNIA

I know the Fair Political Practices Commission is very busy investigating all the corruption in false claims, improper statements and unlawful contrubutions made by many elected officials and many that were not elected.

It has been several months since we talked on the phone and you said that I did nothing wrong, but the commission would have to review it.

On our conversation I told the Garden Grove Boys Club that they could have \$1,000.00 and I told the Garden Grove Girls Club that they could have \$1,000.00, the balance of the money \$2,200.00 will be given to other youth organizations.

I would like to get an answer in writing as you know the Dollar is getting smaller every day as prices rise and inflation increases.

Thank you for your prompt attention.

Sincerely

*J. Tilman Williams*  
J. Tilman Williams

CC: GARDEN GROVE CITY ATTORNEY  
CC:  
ORANGE COUNTY EVENING NEWS  
13261 CENTURY BLVD.  
GARDEN GROVE, CALIF.

CC: THE REGISTER  
625 N. GRAND  
SANTA ANA, CALIF. 92701

Ted Krec

Steve Eddy

### TOO BUSY

Williams added that after the election the owner called for his help but he was too busy, so he introduced the owner to his realty firm associate and his firm appraised the property and listed it at a sales price of \$190,000.

Shortly after, he said, City Manager Richard Powers and City Attorney Eric Lauterer warned him that he could not have anything to do with the site, which is in a redevelopment area, because he was mayor and this could be an interest conflict.

So Williams said he terminated the agreement with his firm and the owner and recommended several other firms to help them.

Then, he says, a few days later, Powers and the Community Development Director, Doug LaBelle, called on the owner and set up a sale for the city to get the land at \$176,000, an inflated price of \$36,500! With no realtor's commission!

But, he added, the owner wanted to pay Williams' firm for its trouble and he said they owed him nothing. That as mayor he could not accept the money.

### SENT CHECK

Despite this, the owner sent a check to the Administrative Service Department for \$4,200 payable to William's firm and the city told Williams that he had to deposit the money in a trust account which takes the signature of both the city and Williams' firm to withdraw funds while conflict of interest is explored with the state.

He publicly deplored this \$36,500 hike and asked action.

By TED KNEC

An obviously disturbed Mayor J. Tilman Williams Monday night asked a state investigation of the processes which enable private property to be sold at elevated prices to the city when it could have been acquired at much less cost through private channels.

He referred to the recently publicized realty deal in which he was named and in which the Garden Grove city attorney issued an opinion regarding a possible conflict of interest by Williams, also carried in the press.

He asked the city staff at Monday night's council meeting to draw up a resolution seeking inequities in such action and the Garden Grove Council went along with him unanimously.

### EXPLAINS DEAL

According to Williams, he said he met the owners of some property at the northwest corner of Euclid Street and Garden Grove Boulevard while he was campaigning for mayor earlier this year. They told him that an oil firm had agreed to buy the site if it could build a service station. The owner got the plans and went to the city building department where he was told that the site was too small for a station, but if the owner were to buy the strip just north, the plan would be OKd.

They bought the property and then went back for an OK of the service station, only to be told that the city had changed its mind.

Williams said that he would come back after the election and help them sell the property.

EXHIBIT #1.

GARDEN GROVE  
STANTON-LOS ALAMITOS  
PUBLISHED IN GARDEN GROVE SINCE 1903

16 Pages

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Orange County, Calif., Wednes

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