

Interest in a Probate Estate is a Present Disclosable Interest

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Memorandum

To : Opinion Request Meeting Participants Date : Feb. 3, 1977

From : FAIR POLITICAL PRACTICES COMMISSION
Ed Kerry

m 77-237

Subject: Present or future interest?

The spouse of an ARB "designated employee" is 1/2 beneficiary to a large estate. The estate, in the name of _____, is made up entirely of investments in various stocks. As the original owners of the investments is now deceased, the estate is in probate which is expected to last for an uncertain time period - 6 months - 1 year - 1-1/2 yrs. No disbursements have taken place. Does the employee now have an indirect investment within the meaning of §87103 because of his spouse's 1/2 beneficial interest in the estate? Other than the mechanics of clearing probate, no event must occur before spouse's 1/2 beneficial interest vests. Or, is this a future interest at present, and hence, not within the definition of financial interest in §87103, unless the designated employee, through the spouse, can be said to have a substantial interest in a trust? Notwithstanding the current inaccessibility to these investments because of the probate delay, my tentative conclusion is that the designated employee now has one or more indirect investments in a business entity and these interests may be the subject both of disclosure and disqualification, depending on the ARB code.

EK:jo

State of California



Fair Political Practices Commission

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

June 14, 1977

Furman B. Roberts
City Attorney, Orange
300 East Chapman Avenue
Orange, California 92666

77-06-238

Dear Mr. Roberts:

This letter is to confirm the substance of our telephone conversation of 13 June 1977. As I indicated to you, the staff came to the conclusion that the matters raised in your letters of 9 March and 5 May could not be resolved without presentation of the issue to the full Commission. We further concluded that the previously issued interim advice, to wit: that Mr. Barrera should not make or participate in the making of any decision having a material financial effect, distinguishable from its effect on the public generally, on Union Oil, must stand until the full Commission hears this matter, hopefully at its July meeting.

I will be in touch with you concerning the time and place of that meeting. Thank you again for your continuing cooperation concerning this matter.

Sincerely,

Kenneth W. Goshorn

Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division
(916) 322-6444

KWG:mfa

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city of orange



incorporated 1888

orange civic center • 300 east chapman avenue • orange, california 92666
post office box 449

city attorney
(714) 532-0351

June 16, 1977

Mr. Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Dear Mr. Goshorn:

Since my last letter to you, I have been informed by Councilman Barrera that effective July 1, 1977, the Union Oil Company will not renew its lease on the property at the northwest corner of Batavia Street and Chapman Avenue now devoted to a Union Oil Service Station operated by Mr. Barrera. The lease period expires as of the aforementioned date. Rather, Mr. Barrera will execute a lease with the fee owner, a trust administered by the First National Bank of Orange County. Thereupon, Mr. Barrera and Union Oil Company intend to execute a contract containing somewhat different terms from the present agreement between them. Under the revised agreement, as I understand it, Mr. Barrera will have the right to purchase Union Oil products but will not be obligated to purchase Union Oil products exclusively. Mr. Barrera apparently will be able to purchase any products from any oil company he chooses. Of course, should he elect to pump other than Union Oil gasoline, he would have to so advertise the brand of gasoline dispensed by appropriate advertising on his pumps.

As I understand your request in our telephone conversation of Wednesday, June 15, you are interested in receiving a copy of this revised agreement to be executed by and between Mr. Barrera and the Union Oil Company effective July 1, 1977. I have informed Mr. Barrera that you will require a copy of this agreement in order to render an opinion concerning conflict of interest.

Mr. Kenneth W. Goshorn
June 16, 1977
Page Two

Thank you for expediting consideration of this conflict-
of-interest question by the Fair Political Practices
Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Furman B. Roberts". The signature is written in dark ink and is positioned above the typed name and title.

FURMAN B. ROBERTS
City Attorney

FBR:gg

cc: Councilman Barrera

State of California



Fair Political Practices Commission

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

JUNE 2, 1977


Mr. Fred Barrera
430 North Harwood
Orange, California 92666

Dear Mr. Barrera:

This is in reply to your letter to me dated May 23. I am in the final stages of preparing a draft response to yours and Mr. Roberts' questions. I will address that response to Mr. Roberts since he originally contacted us. Please be assured that I will make every possible effort to bring this matter to the attention of the Commission next week (week of June 6) so that you may receive a reply by June 14.

Thank you for writing. We will be in touch.

Sincerely,


Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division
(916) 322-6444

KWG:mfa

MAY 27 1977

411 N. Barwood
Orange, California

May 23, 1977

Mr. Kenneth Goshorn
Conflicts Division
Fair Political Practices Commission
1100 "K" St.
Sacramento, Ca 95814

Dear Mr. Goshorn:

On May 5, 1977, I send you copies of my lease agreement with Union Oil Company and a request for an opinion as to whether or not I would have a conflict of interest in voting on a piece of property owned by Union Oil Co.

As you recall, I am a councilman in the City of Orange, lease a Union Oil Station, and faced with an item coming before the City Council for a proposed amendment to the Land Use Element of the General Plan on property owned by Union Oil Company.

In my letter of May 5, I indicated this would be heard by the Orange City Council on Tuesday, May 10, 1977. At that time the item was continued to June 14, 1977 for the express purpose of giving enough time for a response from the Fair Political Practices Commission.

The purpose of my writing this letter is to inform you that action was not taken on May 10, and I would urge you to expedite my request as quickly as possible so that I may vote on this matter on June 14, 1977.

Thank you for your attention to this request.

Sincerely,

Fred Barrera
Fred Barrera

/s/

87103

State of California



Fair Political Practices Commission

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

March 31, 1977

Mr. Furman B. Roberts
City Attorney, Orange
300 East Chapman Avenue
Orange, California 92666

Re: Your Letter to the Commission of 9 March

Dear Mr. Roberts:

This is to acknowledge receipt of your letter of 9 March 1977. As we have discussed on the telephone, the franchisor-franchisee relationship between Councilman Barrera and Union Oil presents a novel question of interpretation of what constitutes an "investment" and/or a "source of income" within the meaning of the Political Reform Act (Government Code §§82030, 82034 and 87103).

In addition, we will need more information before we can respond to your inquiry. Accordingly, pursuant to 2 Cal. Adm. Code §18329(b), I am extending the 21-working day time period for issuance of written advice on this matter. Moreover, as I indicated to you on the telephone, the Commission ultimately may decide to issue a formal opinion in response to your question pursuant to Government Code §83114, and this would necessitate additional time.

It is my understanding that you will be in touch with Councilman Barrera concerning our attaining additional information, specifically a copy of all relevant contracts, leases, or agreements between Mr. Barrera and Union Oil.

As I further indicated to you on the telephone on 8 March and 28 March, it is the staff's interim advice, pending our final resolution of this matter, that Councilman Barrera should not make, participate in making, or in any way use his official position to influence the decision on revision of the general plan to the extent that the decision will affect the Union Oil Company.

Furman B. Roberts
March 31, 1977
Page Two

Thank you for writing and for your interest in the Political Reform Act. I shall continue to be in touch with you concerning the matter.

Sincerely,



Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division

KWG:glb

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city of orange



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orange civic center • 300 east chapman avenue • orange, california 92666
post office box 449

city attorney
(714) 532-0351

March 9, 1977

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Re: Request for Opinion - Councilman Fred Barrera
Councilman, City of Orange

Gentlemen:

Enclosed herein is a copy of a letter received from Mr. Fred Barrera, Councilman of the City of Orange, addressed to my office and dated February 16, 1977.

As I understand the situation, Mr. Fred Barrera is a Union Oil franchised dealer and operates a service station at the northwest corner of Batavia and Chapman in the City of Orange. Some five or ten miles away in the eastern portion of the City of Orange is vacant property owned by the Union Oil Company which a subdivider and developer of residential houses is interested in purchasing. This purchase is contingent upon certain amendments to the Land Use Element of the General Plan in order that the plan will be consistent with the present R-1-10 (single family residential, 10,000 square foot minimum lot size) zoning which now exists on the property. Councilman Barrera, as you can see from his letter of February 16, has asked that I inquire of your Commission to render an opinion concerning the question of whether a conflict of interest would exist if he chooses to vote on this General Plan amendment. Councilman Barrera has informed me that he is a franchised dealer operating under a contract with the Union Oil Company on land which is leased by Union Oil from a certain private trust. The private trust leases to Goode Oil Company, Goode leases to Union Oil Company, and Union in turn leases to Mr. Barrera.

Councilman Barrera informs me that he owns no stock in Union Oil nor does he have any other ownership interest in Union Oil nor does he have any interest in Union Oil other than as a lessee and as a contracting party to a contract with the Union Oil Company to distribute and merchandise Union products. Normally, neither this lease nor this contract are cancellable

March 9, 1977

Page Two

by the Union Oil Company unless Mr. Barrera should fail to comply with the terms of the lease or contract by violating the provisions thereof such as falling in arrears in his lease payments or by failing to exclusively merchandise Union Oil products or for similar economic reasons. Similarly, Councilman Barrera has no ownership or any other interest in the Union Oil property on Santiago Canyon Road which is the subject of the General Plan Amendment.

I have read and considered the definitions of "Income" contained in §82030, "Investment" contained in §82034 of the Government Code, and "Interest in Real Property" set forth in §82033 of the Government Code. Although I have not examined the written documents setting forth the terms of the sublease and the Franchise Agreement between Councilman Barrera and the Union Oil Company, I would strongly suspect that Councilman Barrera has a financial interest in the decision on the parcel being considered for a General Plan Amendment since the Councilman receives by far his major source of income from Union Oil and he may also have an investment worth more than \$1,000 in the franchise agreement.

The key issue is whether any decision by the Councilman on the General Plan Amendment could, by reasonable foreseeability, have a material financial effect on these financial interests.

2 Cal. Adm. Code §18702 was not extremely helpful to me in defining "material". It is difficult for me to say that his decision on the General Plan Amendment would directly affect the amount of income to be received by the Councilman. I feel certain that a vote by Councilman Barrera favorable to Union Oil's interest on the General Plan Amendment would not favorably affect the Councilman's source of income which he earns as a franchised dealer from Union Oil. I feel less certain that a vote by the Councilman on the Plan Amendment adverse to Union's interest would not in any way adversely affect his source of income from Union which he earns as a dealer. I do not believe his adverse vote would directly affect his source of income adversely but I cannot say that subtle, unprovable adverse effects are beyond the realm of possibility. For example, how can I (or anyone) prove that the Councilman was denied certain supplies of gasoline if he voted adversely to Union's interest on the General Plan Amendment? Therefore, there could be an indirect adverse effect on his income.

When I read the regulation as set forth in 2 Cal. Adm. Code §18702 in its entirety, I found that I could probably escape or explain away the consequences of the language in subsection (b) of §18702. However, subsection (a) appears

March 9, 1977
Page Three

to contain the basic operative language of the regulation and the effect of this language is not so easy to escape if the Councilman votes on the General Plan Amendment. Unless Councilman Barrera has sources of income which makes him relatively financially independent of Union Oil, then it would seem that any vote by the Councilman which was adverse to Union Oil would be a difficult vote indeed. If this voting difficulty exists, then how can the Councilman perform his voting duties in an impartial manner as required by subsection (a) of §18702?

I may be incorrect in this analysis, but I would appreciate your consideration of this problem in any event.

Very truly yours,

A handwritten signature in black ink that reads "Furman B. Roberts". The signature is written in a cursive, flowing style.

Furman B. Roberts
City Attorney

FBR:pan
Enclosure



Fred Barrera
430 North Harwood
Orange, California
February 16, 1977

Mr. Furman Roberts
City Attorney
City of Orange
300 East Chapman
Orange, California 92666

Dear Mr. Roberts:

As a member of the City Council and as a dealer in Union Oil Company products, I hereby request that you hereby write to the State of California Fair Political Practices Commission in Sacramento to find out if I would have a conflict of interest by voting on the forthcoming proposed General Plan Amendment on the Union Oil property on Santiago Canyon Road across from the Sully-Miller batch plant.

It is my understanding that the Planning Commission has postponed a decision on this until March 7, so I would imagine it will come to the City Council a week or so later. An answer from them will need to be received prior to the City Council meeting.

Thank you for your help and cooperation.

Sincerely,

Fred Barrera
Member, City Council

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

<p>ENDORSED APPROVED FOR FILING (Gov. Code 11380.2) JAN 22 1976 Office of Administrative Hearings</p> <p>DO NOT WRITE IN THIS SPACE</p>	<p>Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:</p> <p>FAIR POLITICAL PRACTICES COMMISSION (Agency)</p> <p>Date of adoption, amendment, or repeal: January 7, 1976</p> <p>By: <i>H. Anthony Bennett</i> Executive Director (Title)</p> <p>DO NOT WRITE IN THIS SPACE</p>	<p>ENDORSED FILED In the office of the Secretary of State of the State of California JAN 22 1976 At 3:45 o'clock P.M. MARCH FONG EU, Secretary of State</p> <p>DO NOT WRITE IN THIS SPACE</p>
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ORDER ADOPTING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 87103 of the Government Code, the Fair Political Practices Commission hereby adopts its regulation in Division VI, Title 2, California Administrative Code, as follows:

Chapter 7, Article 1: Conflicts of Interest; General Prohibition
18702. Material Financial Effect (87103)

(a) The financial effect of a governmental decision on a financial interest of a public official is material if, at the time the official makes, participates in making or attempts to use his or her official position to influence the making of the decision, in light of all the circumstances

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CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11330.1)

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and facts known at the time of the decision, the official knows or has reason to know that the existence of the financial interest might interfere with the official's performance of his or her duties in an impartial manner free from bias.

(b) In determining the existence of a material effect upon a financial interest, consideration should be given, but not be limited to, an analysis of the following factors:

(1) In the case of a business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000), or in the case of a public official who is a director, officer, partner, trustee, employee, or holds any position of management in a business entity:

(A) Whether the effect of the decision will be to increase or decrease the annualized gross revenue of the business entity by one percent or more or the annual net income of the business entity by .5 percent or more;

(B) Whether the effect of the decision will be to increase or decrease the assets or liabilities of the business entity by \$50,000 or more, or by .5 percent of its current assets or liabilities, whichever is less.

(2) In the case of any real property in which the public official has a direct or indirect interest

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CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

worth more than one thousand dollars (\$1,000):

(A) Whether the effect of the decision will be to increase the income-producing potential of the real property by \$100 or five percent per month, whichever is less;

(B) Whether the effect of the decision will be to increase the fair market value of the real property by \$1,000 or more or by .5 percent, whichever is greater.

(3) In the case of a source of income of a public official as defined in Government Code Section 87103(c):

(A) The decision will affect the source of income in the manner described in subsection (b) (1) above;

(B) Whether the governmental decision will directly affect the amount of income to be received by the official;

(C) Whether there is a nexus between the governmental decision and the purpose for which the official receives income.

The specific dollar or percentage amounts set forth above do not constitute either absolute maximum or minimum levels, but are merely intended to provide guidance and should be considered along with other relevant factors in determining

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CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

whether a financial interest may interfere with the official's exercise of his or her duties in rendering a decision.

(c) Subsection (a) of this section notwithstanding, the making or participation in the making of an governmental decision by a contract consultant or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively on a project or contract.

* * * * *

This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

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State of California



Fair Political Practices Commission

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

April 29, 1977

Mr. Furman Roberts
City Attorney
Orange Civic Center
300 East Chapman Avenue
Orange, California 92666

Dear Mr. Roberts:

This is in response to your letter of April 21, 1977 inquiring into the potential conflict of interest of Councilman Beam and his pending vote on matters dealing with the Union Oil Company. Please be advised that on the basis of the representations in your letter of April 21, there does not appear to be any potential conflict of interest under the Political Reform Act of 1974. See Government Code Sections 87100 and 87103.

If I can be of further assistance to you, please do not hesitate to call me at 916/322-6444.

Sincerely,

[Handwritten signature]
Delbert L. Spurlock, Jr., Chief
Conflicts of Interest Division

DLS:mfa

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city of orange



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orange civic center • 300 east chapman avenue • orange, california 92666
post office box 449

city attorney
(714) 532-0351

April 21, 1977

Fair Political Practices Commission
1100 K Street Building
Sacramento, California 95814

Gentlemen:

Enclosed herein is a copy of a request from Councilman James Beam to my office requesting me to seek an opinion as to his ability to vote on the pending General Plan amendment covering certain Union Oil property. This property has been the subject of a similar inquiry by my office on March 9, 1977, concerning Councilman Fred Barrera's ability to vote on this General Plan amendment.

However, in the present case, Councilman Beam was the owner of one-quarter interest in a planning firm which performed some planning services on the subject parcel of property sometime in 1974 before he was ever elected as a councilman of the City in early March of 1976. I have inquired as to whether Union Oil Company still owes his planning firm any money for this planning effort. I am informed that no money is now owed to Mr. Beam or his planning firm for their services. Indeed, no money has been received by Councilman Beam or the firm from Union Oil other than on this one occasion in 1974. Moreover, I understand, from speaking with Councilman Beam, that the planning firm is no longer actively engaged in business.

I would appreciate your opinion concerning this matter since it comes before the City Council on Tuesday, April 26. If you require any further information, please feel free to call.

Very truly yours,

FURMAN B. ROBERTS
City Attorney

FBR:gg

city of orange

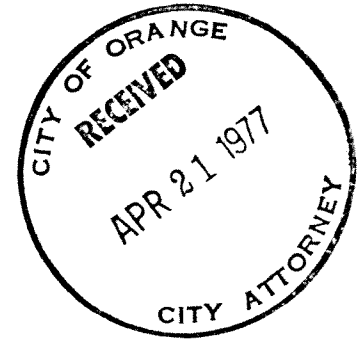


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orange civic center • 300 east chapman avenue • orange, california 92666
post office box 449

office of mayor
(714) 532-0321

April 20, 1977



Mr. Furman Roberts
City Attorney
City of Orange
300 East Chapman Avenue
Orange, California 92666

Dear Mr. Roberts:

This is a formal request for you to solicit an opinion from the Fair Political Practices Commission regarding my ability to vote on the pending General Plan amendment covering the Union Oil property.

The facts of the situation are that in 1974 I was a 25% owner and president of a planning consulting firm which was employed by Union Oil Company to do some planning analysis of the subject property. Does this prior employment prohibit me from voting on the pending General Plan amendment?

Sincerely yours,

A handwritten signature in cursive script that reads "James Beam".

James Beam
City Councilman

JB:sh