

87100

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

January 3, 1978

78-01-054

Mr. Christopher C. Foley
 Deputy Attorney General
 Department of Justice
 3580 Wilshire Blvd.
 Los Angeles, California 90010

Dear Mr. Foley:

Thank you for your letter asking for our views concerning the disqualification provisions of the Political Reform Act. Initially, we request that your opinion be contained in an indexed letter rather than a published opinion.

Briefly stated, you have asked whether a member of the California Coastal Commission who owns property in the coastal zone has a conflict of interest by virtue of the fact that the Commission has permit authority over property near the official's real estate interest.

The Political Reform Act in no way prohibits a public official from assuming a position with any governmental body, including the California Coastal Commission. However, an official may be disqualified from participating in governmental decision-making pursuant to Government Code §87100,* which 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.

*All statutory references are to the Government Code unless otherwise indicated.

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Section 87103(b) states that,

An official has a financial interest in a decision within the meaning of §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);

....

Thus, the Commissioner must disqualify herself if it is reasonably foreseeable that the particular governmental decision in which she participates will have a material financial effect on her real property interest that is distinguishable from its effect on the public generally.

Both foreseeability and materiality must be judged in light of the facts surrounding the specific case in question. With respect to materiality, the Commission has promulgated guidelines by Regulation 2 Cal. Adm. Code §18702. Subsection (b)(2) of that regulation provides that,

(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:

...

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

Christopher C. Foley
January 3, 1978

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(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.

Subsection (b)(2) of that regulation provides that the effect of the decision is material if the income-producing potential of the official's real property is increased by \$100 or more or five percent per month, whichever is less. Materiality may also be present if the fair market value of the real property is increased by \$1,000 or more or one-half of one percent, whichever is greater.

These guidelines are not conclusive, but should be evaluated in light of all the facts surrounding the decision, with a view of determining whether the existence of the financial interest might interfere with the official's ability to make impartial decisions free from bias. See §18702(a).

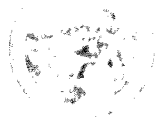
Lastly, even if it is reasonably foreseeable that the decision will have a material financial effect on the public official, that effect must be distinguishable from the effect of the decision on the public generally before the official need disqualify herself. The Commission has provided by Regulation 2 Cal.Adm. Code §18703 standards for determining when the effect of a decision on an official's financial interest is not distinguishable from its effect on the public generally. In addition, I am enclosing a copy of a letter to Christopher Ames of your office, which contains a discussion of the "public generally", which you may find helpful.

Im summary, the disqualification provisions of the Act must be applied on a case-by-case basis. Unfortunately, you have not provided us with sufficient facts to determine whether the official in question must disqualify herself from participating in any decisions of the Coastal Commission. Nevertheless, I hope this general discussion of the Act's disqualification provisions has been helpful. If you have any questions, please do not hesitate to contact me or Dwight Dickerson, an attorney in our Conflicts of Interest Division, concerning this matter.

Sincerely,

Ted Prim
Ted Prim, Chief
Conflicts of Interest
Division

780-4



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

TELEPHONE 736-2283

December 7, 1977

Mr. Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
1100 "K" Street
P. O. Box 807
Sacramento, California 95814

Re: Opinion Request No. CV 77/230 IL
Conflict of Interest, Coastal Zone
Conservation Commission

Dear Mr. Lowenstein:

This office has received an opinion request on a question which may be stated as follows: Is a member of the California Coastal Zone Conservation Commission subject to a conflict of interest because the member owns substantial property interests within the zone and the commission acts on permit applications applicable to properties in the area of the properties owned by the member?

Pursuant to our policy of requesting the views of interested parties and associations, you are invited to submit whatever views you may wish on this question. Such views would be of maximum benefit to us if received by December 30, 1977. If you do not wish to submit any views, we would appreciate being so advised.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

By
CHRISTOPHER C. FOLEY
Deputy Attorney General

July 12, 1977

Christopher M. Ames
Deputy Attorney General
Office of the Attorney General
State Building
350 McAllister Street
San Francisco, CA 94102

Dear Mr. Ames:

This letter is in response to your inquiry of May 12, 1977, concerning the Coastal Commission. Initially, we request that your opinion be contained in an indexed letter rather than a published opinion.

The facts as we understand them are as follows: The owner of a ten acre rural parcel in Mendocino County has asked the Coastal Commission for permission to subdivide into approximately four parcels. The question is whether a coastal commissioner who has no interest in the subject parcel but who does own a similar parcel in the same county may participate in this decision. The statutory standards which govern the subdivision of property within the coastal zone are set forth in Public Resources Code Section 30250(a):

New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Emphasis added.

The underlined phrases are the ones which the Coastal Commission is expected to interpret. You have advised us that pursuant to Public Resources Code Section 30625(c), the Coastal Commission's decision on this matter will have precedential effect with respect to similar decisions in the future.

Christopher M. ...
July 12, 1977
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Your letter asks us to assume that the decision in question will cause the value of all rural property in the coastal zone, numbering approximately 30,000 to 50,000 parcels, to appreciate by \$1,000 or more. However, our reading of the statutory provisions which the Coastal Commission intends to interpret suggests that the decision will cause some parcels to appreciate in value while causing others to remain the same or decline in value. This is because the decision will permit development of some parcels thereby increasing their value while simultaneously prohibiting development of other parcels which therefore will decline in value. Depending on the way in which the decision is framed, still a third group of parcels may not be affected at all.

Turning then to the provisions of the Political Reform Act that are involved, Government Code Sections 87100 and 87103 provide that four elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably foreseeable that the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally. See Opinions requested by Tom Thorner, 1 PPFC Opinions 198, 202 (No. 75-089, Dec. 4, 1975); William L. Owen, 2 PPFC Opinions 77 (No. 76-005, June 2, 1976).

In the instant case, you have stated that the commissioner owns the requisite interest in real property. Your letter also asks us to assume that the elements of foreseeability and materiality are met with respect to all rural parcels located within the coastal zone.^{1/} Thus, the

^{1/} We agree that it is theoretically possible that the Coastal Commission's decision interpreting Public Resources Code Section 30250(a) could foreseeably and materially affect all rural parcels in the coastal zone. However, as we have noted, the material effect may be positive with respect to some parcels and negative with respect to others. Moreover, once the potential boundaries of the decision are framed, it is also possible that some parcels will be so removed from the areas affected that it will not be reasonably foreseeable that these parcels will be affected at all. Thus, the owners of those parcels would not be disqualified from voting.

Christopher M. Ames
July 12, 1977
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only question we need to address is whether the effect of the decision on the commissioner's real property will be distinguishable from the effect on the public generally.

The Commission has provided by regulation that the effect of a decision is distinguishable from the effect on the public generally "unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public..." (2 Cal. Adm. Code Section 18703). In order for an official to avoid disqualification because of the public generally exception, therefore, it is necessary that the effect of the decision be roughly uniform in nature on a significant segment of the public.

The Commission has applied this standard in at least three types of situations. In the Owen opinion, for example, the Commission determined that owners of businesses in the downtown redevelopment core area represented a significant segment of the public since the decisions in question would affect all businesses in a generally favorable manner and would not specially assist or inhibit any individual business interest. Similarly, with respect to landowner voting districts, landowners have been deemed a significant segment of the public if the decision in question would affect all landowners equally. Pursuant to the regulation which provides that in some cases an industry, trade or profession may be a significant segment of the public (2 Cal. Adm. Code Section 18703(c) and (d)), however, we advised a legislator who owned a dairy farm that the public generally exception did not apply to a situation where certain legislation was likely to affect some dairy farmers differently than others.

As we have noted, the instant decision respecting subdivision of the property in Mendocino County is likely to increase the value of some rural parcels in the coastal zone, decrease the value of others, and leave the value of still a third group unchanged. Thus, whether or not rural property owners in the coastal zone constitute a significant segment of the public,^{2/} the test set forth in regulation 18703 is not met since the effect of the decision of the

^{2/} We need not address that question here. It may well be that all rural property owners in the coastal zone would not represent a significant segment of the public since their interest in development of the coastal area may be quite different from that of a sizable portion of the state's population.

Christopher P. Jones
July 12, 1977
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commissioner's property will not be the same as the effect on all rural property owners in the coastal zone. Moreover, we do not believe that only those rural property owners whose land will appreciate in value by virtue of the decision constitute a significant segment of the public. The members of this class will not even be determined until it is initially decided what the parameters of the decision will be. Once that decision is made, moreover, the affected class will be neither large enough nor sufficiently representative of any major interest group in the state or in the coastal zone to be considered a significant segment of the public.

In conclusion, we think that the coastal commissioner in question must disqualify himself from making, participating in the making or using his official position to influence the decision in question if it is foreseeable that the decision will materially affect his financial interests. However, if the elements of either foreseeability or materiality are not present in this case, the commissioner may vote on the permit decision in question.

If you have any further questions, please do not hesitate to call either me or Ted Prim, an attorney with the Commission's Legal Division.

Sincerely,

Michael Bennett
Executive Director

MB:plh

Department of Justice

May 12, 1947

Mickey Bennett, Executive Director
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Opinion No. 80 77/19 IL

Dear Mr. Bennett:

The California Coastal Commission has asked us for an answer to the following question:

"May a member of the (State) Coastal Commission participate in a Commission permit decision involving a proposed division of real property, (subject parcel), where the commissioner has no direct financial interest in the subject parcel, but where the commissioner does own a similarly situated parcel elsewhere within the coastal zone. The commissioner's property is approximately 1/4 mile from the subject parcel in the same county and is substantially similar in physical characteristics to the subject parcel".

Further inquiries of the Coastal Commission and the Commissioner involved, have elicited the following facts. The permit decision before the Commission involves a request for a minor subdivision of an undeveloped rural parcel of land. The issue on appeal before the Commission concerns the correct interpretation and application of Public

Mickey Bennett, Executive Director

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May 12, 1977

Resources Code section 3025) and the regulations adopted thereunder. We are to assume that the effect of the decision, because of the precedential nature of the State Commission's decisions (Public Resources Code section 30625(c)), would be to affect the value of all rural parcels in the coastal zone which are suitable for subdivision by more than \$1,000.00. For purposes of this opinion we are told that there are in excess of 3,000 similar undeveloped parcels in the portion of the Coastal Zone which lies within the county in which the subject parcel and Commissioner's parcel are located, and that there are tens of thousands of similar undeveloped parcels in the Coastal Zone statewide.

We have been asked to treat this question with some urgency, as it may have some substantial effect on the ability of many state and regional commissioners to participate in matters now pending before the various Coastal Commissions. I would therefore ask that you provide me with any views you may have as to the correct analysis of this question, no later than June 3, 1977.

If there are any questions concerning the factual context in which the question arises, please do not hesitate to contact either myself, or Deputy Attorney General Richard Jacobs (415-557-0235).

Very truly yours,

AVELLE J. FRANKS
Attorney General

CHRISTOPHER M. HILL
Deputy Attorney General

CMA:cw

Handwritten signature
4712 Bucknall Road

4712 Bucknall Road
San Jose, Calif. 95130
Telephone: (408) 378-3740
May 12, 1977

Certified Mail - RR
313064

Fair Political Practices Commission
1110 "K" Street
Sacramento, California 95814

Dear Chairperson and Members:

Your attention is invited to the enclosed attachment which was presented to the Santa Clara County Board of Supervisors on May 10, 1977.

Be advised that:

1. Seven (7) copies of the enclosed attachment were presented immediately prior to the presentation, (one for each of the five supervisors, one each for the Clerk of the Board and one for the County Counsel).
2. Supervisor McCorquedale commented during the proceedings that only \$157. was being expended in accordance with his quick calculations of the pro-rated salaries of the public employees present. While this figure was challenged, the fact is the board acknowledged that public funds were being used and must be reported on Schedule C as it exceeds the \$50 non-reportable limit.
3. The resolutions being used to influence the electorate was again confirmed during the hearing on the agenda item, when Mr. Howard Campen, (Chairman of the Committee seeking passage of the Measure and a signer of the ballot argument for the Measure) boastfully stated that every city in the County of Santa Clara passed similar resolutions. This fact clearly establishes that the resolutions are being used in support of the Measure and are therefore political in nature and fall within the provisions of the Political Reform Act.
4. The attached new article(s) (San Jose Mercury, May 12, 1977, pages 2 and 16) make public announcement of the public bodies' endorsement. No one can deny that this influences the electorate and the resolution must have a political value.

In view of the above, it is requested that the Fair Political Practices Commission determine the applicability of the public body endorsement(s) in question.

Be advised that the undersigned is available for any further questions associated with this issue. Contact may be made through the address or telephone accompanying the signature below.

Public employees has right to labor in position on public issues
Mayor Commission

Respectfully,
Handwritten signature of Joseph H. Donohue

Joseph H. Donohue
4712 Bucknall Road
San Jose, Calif. 95130
Tel. Normal Working Hours (408) 732-2710
All other times: (408) 378-3740

Attachments (2)

SANTA CLARA COUNTY'S Board of Supervisors joins the county's 15 cities in endorsing Prop. H, the proposed \$58 million bond issue to finance the San Felipe water distribution. Page 16

Board Backs San Felipe Bond Issue

The Santa Clara County Board of Supervisors joined the county's 15 cities in a unanimous endorsement of Prop. H, the San Felipe \$58 million water project bond issue facing voters on May 31.

Supervisors added their support after being asked by Santa Clara Valley Water District directors that water reclamation will be a key component of its water plans.

The bond issue earlier this week also drew support from the Santa Clara County Taxpayers Association Inc. Its president-executive director William C. Hill said the association reviewed both cost of the San Felipe project and need for imported water in the future in making its decision.

The supervisors' session was attended by a large contingent of the water measure's supporters. Led by former County Executive Howard Campen, they claimed near-unanimous community support.

The only negative voice heard was that of Joseph H. Donohue of San Jose, one of the five signers of a ballot argument opposing the measure.

He unsuccessfully asked the board to table the endorsement resolution. He alleged that the county is failing to abide by the state's Political Reform Act which requires the reporting of all non-monetary contributions regarding ballot measures.

He said copies of his two-page statement are being submitted to the state attorney general and the Federal Political Practices Commission for a determination of the act's applicability to resolutions by electing bodies.

"Does the act only apply to citizens and businesses or does it also apply to government and its bureaucracies?" he asked.

County Counsel Selby Brown told the board that some sections of the act apply, and some do not. In this case, there is no conflict with the law, he said.

Donohue said that "While ordinances are subject to a people's referendum or initiative, resolutions are not. Therefore, a resolution passed by this body is not a referendum and in that you are the representative body of all county residents, you speak for each resident of this county."

"I can assure you that all residents of the county do not agree with your position, whether it be pro or con on the issue under discussion."

He explained he was not debating the worthiness of the bond issue, only the propriety of passing such a resolution.

Donohue, noting the board spends more than \$1 per day in tax money, estimated the value of the resolution at \$500. That, he declared, makes it subject to the Political Reform Act.

ATTACHMENT 2 of 2