

State of California



Fair Political Practices Commission

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

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| (916) 322-5660 | | 322-5901 | | 322-6441 | | 322-6444 |

January 4, 1978

78-01-055

John Flitner
City Attorney, Rohnert Park
6750 Commerce Boulevard
Rohnert Park, CA 94928

Re: Opinion Request No. 77-041

Dear Mr. Flitner:

Thank you for your letter of November 1, 1977, regarding the disqualification provisions of the Political Reform Act. Since your question raises no substantial questions of interpretation under the Political Reform Act, the Commission will not issue a formal opinion. However, I hope that the following advice pursuant to Government Code Section 83114(b) will be helpful.

The facts as I understand them are as follows: Sonoma Racquet Club's application for final subdivision map approval is before the Rohnert Park City Council. Mayor Beary, who is a plastering contractor, has bid on the stucco portion of the homes to be erected within the subdivision. Councilman Hollingsworth, an insurance agent for Farmers Insurance Company, is one of the vendors offering insurance to the subdivision. The question presented for our consideration is whether Mayor Beary and Councilman Hollingsworth must abstain from voting on the final subdivision map approval question before them.

Government Code Section 87100^{1/} provides that:

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.

[Emphasis added.]

^{1/} All statutory references herein are to the Government Code unless otherwise noted.

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The Commission has provided by regulation that making or participating in the making of a governmental decision shall not include actions of public officials which are solely ministerial. 2 Cal. Adm. Code Section 18700(d)(1).

Mayor Beary and Councilman Hollingsworth need not disqualify themselves if voting to approve the final subdivision map is in fact a ministerial action. The approval of a final subdivision map by a city council is, in most cases, a ministerial action under the Subdivision Map Act (Sections 66410, et seq.) and local ordinances implementing that Act. As was stated by the court in Great Western Sav. & Loan Assn. v. City of Los Angeles, 31 Cal. App. 3d 403, 107 Cal. Rptr. 359 (1973):

It is clear that the governing body's function [in reviewing a final map] is administrative, ministerial and mandatory where the final tract map complies with the state and local laws and has complied with the conditions to the tentative tract map...The final map must be in conformance but if it is, it is approved even without action by the governing body either to approve the final map or determine its conformance to laws and conditions.

31 Cal. App. 3d at 410.

The Subdivision Map Act and Rohnert Park's ordinances require the city engineer and planning director to certify that the subdivider's final map conforms to the law and conditions imposed during the tentative map approval stage. Once the final map has been certified by these officers, the city council is required by law to approve the plan absent any circumstances which would create discretion on the part of the council to approve or deny the final map. Great Western Sav. & Loan Assn. v. City of Los Angeles, supra, at 413. Therefore, in the absence of circumstances permitting the council to disapprove the subdivision map, the decision on the final map is ministerial once the city engineer and city planner certify the final map. Accordingly, it would appear that Mayor Beary and Councilman Hollingsworth may participate in the final map approval.

The Great Western Sav. & Loan Assn. court pointed out that a city council may not be required to approve the final map in certain cases such as where there has been fraud or misrepresentation. In a case where there are allegations of fraud or misrepresentation, a council, in connection

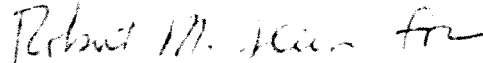
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with review of the final map, would be required to exercise its discretion in determining whether fraud or misrepresentation occurred and in determining if the map should be approved. This discretionary decision would involve governmental decision-making from which those with a material financial interest in the project must abstain.

In summary, whenever the Council has the legal capability to disapprove the final plan, the Council's actions to approve or disapprove the plan will not be considered ministerial, and those with material financial interest in the action must abstain from participation. The facts concerning the Rohnert Park Council's review of the Sonoma Racquet Club final subdivision map which you have provided us with do not indicate that there are circumstances which would create discretion in the Council to approve or deny the final map. Accordingly, assuming these facts, Mayor Beary and Councilman Hollingsworth may vote on the final subdivision map.

If you wish to appeal the denial of your opinion request, you may do so pursuant to 2 Cal. Adm. Code Section 18321. I hope that this information has been helpful. If you have any questions, please do not hesitate to contact me or Dwight Dickerson, an attorney in the Commission's Conflicts of Interest Division.

Sincerely,



Michael Bennett
Executive Director

MB:DD:jo