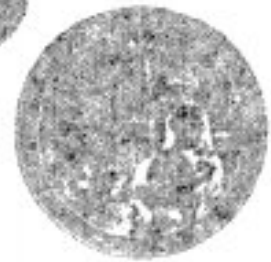


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State of California



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 5460 | | 322 5901 | | 322 6441 | | 322 6444 |

June 13, 1978

78-06-070

Mr. Edwin A. Peterson
 Director, San Lorenzo Valley
 County Water District
 13060 Central Avenue
 Post Office Box H
 Boulder Creek, California 95006

Dear Mr. Peterson:

You will recall that in a letter dated May 22, 1978, Mr. Bennett informed you that the Commission had denied your request for a formal opinion. However, at that time, he promised you that staff advice would be forthcoming in the near future. This letter contains that advice.

At the outset, it should be emphasized that the advice set forth in the attached letter from Mr. Bennett dated October 7, 1977, to Mr. Amrhein, District's counsel, remains applicable and is incorporated herein. I specifically direct your attention to responses 1-3 of that letter as establishing certain guideposts for determining when you should disqualify yourself from participating in District decisions.

In the first response, you were advised that the decision of whether to lift the moratorium would foreseeably and materially affect your financial interests in a manner different from the public generally and, therefore, you should disqualify yourself from participating in any such decision. The second response stated that you should similarly disqualify yourself from a stage-by-stage lifting of the moratorium. The third response stated that you should disqualify yourself from participating in decisions which are prerequisites or preparatory steps to the lifting of the moratorium. In other words, you should disqualify yourself from participating in any decision, including the passage, repeal, or modification of a policy or resolution

3-A.16

which lifts the moratorium either totally or partially, has the effect of lifting the moratorium, or constitutes a prerequisite or preparatory step to the lifting of the moratorium. With this as a background, I turn to your specific questions. The numbering in this letter corresponds to the numbering in your letter of May 9, 1978.

A.1. and 2. If you reread Mr. Bennett's letter, you will note that it is based on a twofold premise. First, the value of undeveloped real property currently without access to water will increase in value if the moratorium is lifted. Second, construction activity, including home construction activity of the type engaged in by your firm, will increase if the moratorium is lifted. Therefore, a decision to lift the moratorium would foreseeably and materially affect your financial interests in undeveloped real property in the District and your construction firm.

If this premise is incorrect, then naturally the conclusions based upon it are invalid. Accordingly, if the lifting of the moratorium would have no material effect on the value of undeveloped real property or on the amount of construction business in the District, a decision to lift the moratorium would not have a foreseeable and material effect on your financial interests. Therefore, you would not be prohibited from voting on the lifting of the moratorium.

However, we seriously doubt the claim that the lifting of the moratorium would not affect such financial interests. As we stated in our previous letter to Mr. Amrhein, "... we think it significant that the District apparently found it necessary to impose a ban on new water connections in order to prevent the District's water system from becoming overburdened. Therefore, barring the existence of other anti-growth regulation, it is reasonable to assume that if this ban is lifted, construction activity will increase in the District." Based on this finding, the letter goes on to conclude that the lifting of the moratorium would have a foreseeable and material effect on your financial interests. This conclusion is bolstered by two additional pieces of evidence. First, we are aware of the fact that the question of whether to lift the moratorium on new water connections is being hotly contested in the District. It strikes us as unlikely that the lifting of the moratorium would be the subject of such dispute if its lifting would not affect the level of construction activity in the District. Second,

even though you state that construction activity has not been affected in the District, you allude to a "bidding up" of the value of properties with access to water. It would appear that this "bidding up" is a direct result of the fact that only a limited number of parcels in the District have access to water. If the moratorium on new water connections were lifted, construction could begin on many parcels which presently cannot be developed because they lack water. The value of such undeveloped parcels surely would rise once the moratorium is lifted and water can be obtained.

It should also be pointed out that even if the assumptions stated in Mr. Bennett's letter are incorrect, you, nevertheless, may be disqualified from participating in a decision to lift the moratorium. The Political Reform Act does not distinguish decisions which materially decrease the value of such property. Therefore, if the moratorium had the effect of increasing the value of your undeveloped real property and its lifting would materially decrease the value of your property in a manner different from the public generally, you would be disqualified from participating in a decision to lift the moratorium.

This situation could arise if your property remained developable during the moratorium because of its access to water through wells, riparian rights, or grandfather clauses. In that event, the moratorium, which prevented development of other property, would have caused your property to increase in value. A decision to lift the moratorium would equalize all undeveloped real property in terms of its access to water. Therefore, property which remained developable during the moratorium would most likely decrease in value if it were lifted while property which could not be developed during the moratorium would correspondingly increase in value.

In light of our different interpretation of the effects of the lifting of the moratorium, you may wish to consider the following. As you know, we are not on the scene in a position to make an authoritative finding of fact with respect to the effects of the lifting of the moratorium. However, based on the information available to us, we think you should refrain from participating in decisions respecting the lifting of the moratorium. If you disagree with this advice, you are free to disregard it and participate in District decisions as you see fit. If you are correct in your belief that the lifting of the moratorium

would not foreseeably and materially affect your financial interests, then your participation in the lifting of the moratorium would not be a violation of the provisions of the Political Reform Act. However, if the lifting of the moratorium would have a foreseeable and material effect on your financial interests in a manner different from its effect on the public generally, your participation in its lifting would be a violation of the Political Reform Act, and injunctive relief could be obtained to restrain the violation. In addition, you could be liable for civil and criminal penalties for the violation. These remedies could be sought by our Commission, the District Attorney, or a citizen residing in the jurisdiction. If you choose to follow our advice in good faith and disqualify yourself as we have advised, you would be immune from prosecution by the Commission and, as a practical matter, from prosecution by any other source.

B.1. You asked whether you could participate in decisions implementing the Olympia Well project once the project was approved without your participation. Generally, this question is answered in response 3 of Mr. Bennett's letter which involves decisions affecting a water treatment project. The general standard to keep in mind at all times is that you are prohibited from making, participating in making, or using your official position to influence any governmental decision which would foreseeably and materially affect your financial interests in a manner different from the effect on the public generally. Unfortunately, I do not have sufficient facts to comment further on the Olympia Well project.

B.2. You asked whether you could participate in decisions affecting a sewage treatment plant or other facilities once the decision to proceed with such facilities is made without your participation. I believe response 3 of Mr. Bennett's letter satisfactorily answers this question.

B.3. You asked whether you may vote on policy questions, such as water shortage declarations. Presumably, you are referring to declarations such as District Resolution 75 (77-78). That Declaration provides:

Resolved, that the Board of Directors of the San Lorenzo Valley County Water District finds and declares that due to ending of the drought and to numerous improvements in District facilities in the past four years there is no longer a District-wide water shortage emergency within the meaning of either Sections 350 or 31026 of the California Water Code.

This finding shall have no effect on Resolution No. 526 as amended unless and until (1) the environmental impact of its repeal or replacement is determined and (2) an engineering evaluation of District facilities is complete to define what specific areas of the District may still be deficient in water distribution or storage; or until (3) a court of jurisdiction orders otherwise.

It is my understanding that the findings contained in Resolution 75 (77-78) are essential to repealing the regulations and restrictions on the moratorium on water connections. See Water Code Section 355. Therefore, adoption of Resolution 75 is a "prerequisite or preparatory step" to the lifting of the moratorium. As stated previously, you should disqualify yourself from participating in decisions which constitute prerequisites or preparatory steps to the lifting of the moratorium. The fact that the Declaration states that it will not affect the moratorium is not persuasive when the natural and legal effect of the Declaration will be to put the District on record as favoring the lifting of the moratorium as soon as satisfactory environmental impact reports and engineering studies can be completed.

B.4. You asked whether you may participate in decisions regarding "reconnection" of services. It is my understanding that Section 10 of Resolution 526 prohibits the granting of water connections to persons unless three criteria are satisfied:

(1) The property must have been used for residential purposes since March 11, 1974;

(2) There must be a habitable structure upon the real property; and

(3) That property must have been served by a water source different from that of the District's source on or before March 11, 1974, and the well or source, after March 11, 1974, fails.

Decisions concerning whether to grant "reconnections" pursuant to these standards would not appear to involve the lifting of the moratorium. Therefore, you would not be required to disqualify yourself from participating in such decisions. However, to the extent that the standards set forth in Resolution 526, Section 10, are modified, you

should disqualify yourself from participation. Section 10 is essentially an exception to the moratorium on new water connections. Therefore, a change in the Section 10 standards would constitute a partial modification of the moratorium. As stated previously, you should disqualify yourself from participating in decisions, including the passage, repeal or modification of policies or resolutions which lift the moratorium either fully or partially.

You asked whether you may vote on additions or amendments to the moratorium which adopt policies for the staff to handle hardship cases or reestablish prior services. As stated previously, you should disqualify yourself from participating in decisions affecting the moratorium. Therefore, you should not participate in decisions to amend the moratorium with respect to hardship or reconnection cases.

B.6. You asked whether you may vote on amendments to the District's Conflict of Interest Code regarding procedures for discretionary postings of votes. Based on the information available to us, you may participate in such decisions.

B.7. You asked whether the quantitative standards of Regulation 2 Cal. Adm. Code Section 18702(b) were applicable in determining materiality with respect to all of your votes. In determining materiality, one must look to both the general standards set forth in Section (a) of the Regulation and the quantitative standards set forth in Section (b) of the Regulation. We consulted both standards in developing the advice set forth in this letter and in Mr. Bennett's previous letter.

B.8. As stated in response 9 of Mr. Bennett's letter, we are unable to determine, from the information available to us, whether you should disqualify yourself from participation in decisions regarding the connection fee. As was the case last fall, we still are not in possession of the facts which would enable us to answer this question. Therefore, I refer you to the standards set forth in the earlier letter.

B.9. You asked whether you could participate in decisions affecting the location of fire hydrants along the main from the Olympia Well project. It is my understanding that this question is related to the Olympia Well project. Therefore, you should refer to the answer set forth in Section B.1. of this letter.

Edwin A. Peterson
Page 7

C.1. and 2. All of my answers to questions B.1. through B.9. are premised on the fact that the lifting of the moratorium would foreseeably and materially affect your financial interest in a manner different from the effect on the public generally. As stated in my answers to Part A of your letter, if this conclusion is incorrect, you would not be disqualified from voting on matters affecting the moratorium.

Sincerely,

Ted Prim

Ted Prim, Chief
Conflicts of Interest Division

TP:gb

cc: Raymond A. Amrhein
R. W. Johnson, P.E.
John C. Gee
Joseph Cucchiara
Andy Kamkoff
Phil Harry
Denise Siebenthal



SAN LORENZO VALLEY WATER DISTRICT

13060 Central Avenue • Post Office Box H • Boulder Creek, CA 95006 • (408) 338-2153

March 21, 1984

MAR 23 5 33 AM '84

Ms. Barbara Milman
Chief of Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Milman:

I am writing as follow up to a telephone conversation with Ms. Janis McLean on March 20, 1984.

I am currently a staff member of the San Lorenzo Valley Water District in Santa Cruz County, California. I report to the Board of Directors and make recommendations to them.

Our District is in the process of implementing a wastewater management program which includes the installation and operation of a collection system and sewage treatment facilities for selected areas within our District boundary. Additionally, we have been named as lead agency by the County to implement a similar program in selected areas outside our District boundary.

These identified areas have been divided into three classifications based on severity of the problem and possible solutions to it:

- Class I: Areas with severe problems (surfacing effluent, etc.) for which no on-site solution exists, for which the collection system and treatment facilities are proposed.
- Class II: Areas with severe problems as above, but for which on-site systems can be upgraded to be functional.
- Class III: Areas where problems are not so severe.

Approximate population breakdown for these areas is as follows (based on estimates drawn from District records):

Within District Boundary:

| | |
|-----------|--------|
| Class I | 3,814 |
| Class II | 2,136 |
| Class III | 6,443 |
| | <hr/> |
| | 12,393 |

Ms. Barbara Milman
March 21, 1984
Page Two

MAR 23 5 33 AM '84

Outside District Boundary:

| | |
|----------|-------|
| Class I | 1,457 |
| Class II | 3,280 |
| | <hr/> |
| | 4,737 |

I own real property within our District boundary in a Class I area, which I use as my principal residence. I believe that decisions that affect the Class I areas would have a significant effect on this real property in that its fair market value could decrease should the collection system and treatment facilities not be constructed.

However, recommendations made by me regarding this project have an effect on a significant segment of the general public (over 5,000 people), and therefore exempt me from being in conflict of interest as stated in Regulation 18703 of the Fair Political Practices Commission, Title 2, Division 6 of the California Administrative Code.

I would appreciate your firm opinion on this matter as quickly as possible. The telephone number here is (408) 338-2153. You recently gave an opinion to our President of the Board in a letter dated January 30, 1984, Advice Letter No. A-83-284 (copy attached).

Sincerely,



Al Haynes
Watershed and Planning Analyst
San Lorenzo Valley Water District

AH:dl
Enc.

State of California



Fair Political Practices Commission

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• Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-3662 322-3660 322-5901 322-6441 322-6444

January 30, 1984

Frederick W. Nitz
San Lorenzo Valley Water District
12711 East Street
Boulder Creek, CA 95006

Re: Advice Letter No. A-83-284

Dear Mr. Nitz:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act. The facts relied upon in my analysis were provided in your letter and in telephone conversations with Snelly Emerson, the San Lorenzo Valley Water District's legal counsel, and Gwen Buccholz, an engineer for the District. You are the President of the District's Board of Directors.

The District is in the process of implementing a waste water management plan which will apply to parcels of land both inside and outside of the District.^{1/} The plan divides the parcels into three categories, each of which requires a different solution to its waste water problems. The classifications are:

Class I: Parcels in areas with severe problems for which no on-site solution exists. It is proposed that these parcels will require the installation of collection systems and sewage treatment facilities.

Class II: Parcels in areas with severe problems, but for which on-site systems can be upgraded to be functional.

Class III: Parcels in areas where problems are not so severe.

^{1/} The District has been given authority over certain parcels outside of the District in order to fully implement the plan throughout the area.

You stated in your letter that you own real property^{2/} in a Class I area and your question is whether you can participate in the decisions concerning the waste water management plan.

DISCUSSION

Government Code Section 87100^{3/} provides that no local public official shall make, participate in the 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.

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:

* * *

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

* * *

(Section 87103.)

In the case of a decision affecting an interest in real property, the effect will be "material" if it will increase or decrease:

* * *

^{2/} The real property interest is your principal residence.

^{3/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

(2 Cal. Adm. Code Section
18702(b) (2) (B).)

You stated in your letter that the decisions implementing the plan in the Class I areas will have a material financial effect on your property. If the collection system and treatment facilities are not constructed, the fair market value of the property will decline \$10,000 or more.

In the case of a decision affecting an official's income, a decision's effect will be "material" if it will directly increase or decrease the amount of income to be received by the official, or confer a financial benefit or detriment upon the official, in an amount of \$100 or more. (2 Cal. Adm. Code Section 18702(b) (3).) You stated that, if a system is not constructed for your property, you will have to pay over \$100 per month in haul-away expenses for sewage handling.

Although the decisions concerning the Class I areas will have a material financial effect on your property and your income, you are permitted to make and participate in the decisions if the effect on your financial interests is substantially similar to the effect on the public generally, or on a significant segment of the public generally. (Section 87102 and 2 Cal. Adm. Code Section 18703, copy enclosed.) You stated in your letter that all of the parcels in Class I will be similarly affected by the Board's decisions. This was confirmed during my conversations with Shelly Emerson and Gwen Buccholz. Ms. Buccholz provided me with the following statistics:^{4/}

^{4/} In your letter, you provided me with statistics based upon population, rather than parcels. Your figures indicated that there are 5,271 people in Class I and a total of 17,130 people in Classes I, II and III. Using these statistics, approximately 30% of the total population will be similarly affected.

| <u>Class</u> | <u># of Parcels In the Class</u> |
|--------------|----------------------------------|
| I | 3,104 |
| II | 4,040 |
| III | <u>5,356</u> |
| Total | 12,500 |

Your parcel will be affected in substantially the same manner as 25% of the total parcels in Classes I, II and III.^{5/} This constitutes a "significant segment" of the total parcels and, therefore, you are permitted to make, or participate in the making of, the decisions on the waste water plan.

If I can be of any additional assistance to you, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosure

^{5/} As required by the Ferraro Opinion, No. 78-009, Nov. 7, 1978 (copy enclosed), the similarly affected group is both large in number and heterogeneous in quality.