

87200

# 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  
322 5640 322 5901 322 6441 322 6444

May 12, 1978

*A 78-252*

Mr. Jeremiah F. Hallisey  
O'Brien and Hallisey  
One California Street  
San Francisco, California 94111

Dear Mr. Hallisey:

Thank you for your letter of May 4, requesting an opinion or advice with respect to the obligations of Mr. Gene Rhodes, Mayor of Fremont, regarding the filing of Statements of Economic Interests. This letter is for staff use. Internal staff advice pursuant to Government Code Section 26140(b).

Based on the information set forth in your letter, it would appear that Mr. Rhodes had an obligation to file three Statements: an annual Statement, Form 721, covering the period from January 1, 1977, through December 31, 1977; a leaving office Statement, Form 721, covering the period from January 1, 1978, through March 8, 1978; and a assuming office Statement, Form 720, covering the date March 14, 1978. The annual Statement should have been filed no later than April 3, 1978. The deadline for the filing of the leaving office Statement was April 7 and the deadline for the assuming office Statement was April 13.

Set forth below are three alternative ways in which Mr. Rhodes may satisfy his filing requirement. However, we wish to make it clear that Mr. Rhodes remains potentially liable for late fines as well as other sanctions with respect to all three Statements regardless of which alternative he exercises.

Alternative 1: Mr. Rhodes may file one Form 721 covering the period from January 1, 1977, through March 14, 1978.

Alternative 2: Mr. Rhodes may file two Statements -- a Form 721 covering the period from January 1, 1977, through March 8, 1978, and a Form 720 covering the date of March 14, 1978.

Mr. Jeremiah E. [redacted]  
May 12, 1978  
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Alternative 3: Mr. Rhodes may file three Statements -- an annual Statement, Form 721, covering the period from January 1, 1977, through December 31, 1977; a leaving office Statement, Form 721, covering the period from January 1, 1978, through March 8, 1978; and an assuming office Statement, Form 720, covering the date March 14, 1978.

On April 11, 1978, the Commission advised Mr. Rhodes that he was subject to a fine for not filing his annual Statement of Economic Interests. He was requested to file within ten (10) days of receipt of notification and to provide the Commission with a reason which might justify full or partial waiver of his fine.

Since we have received no response from him to this date, his full fine of \$100 is due. He is therefore required to remit promptly to this office his Statement of Economic Interests and a check or money order in the amount of \$100, made payable to the "State of California". The full amount will be deposited into the General Fund of the State of California.

In addition, please be advised that the Commission has not received Mr. Rhodes' leaving office Statement and assuming office Statement, as described above. Government Code Section 91013 provides that persons who file Statements after their deadlines are liable in the amount of \$10 per day up to a maximum of \$100. Therefore, Mr. Rhodes is potentially liable for a fine of \$100 per Statement for a total of \$200. The Commission has limited discretion to fully or partially waive any fines if he provides adequate reasons for filing late and if the Statements are filed within ten (10) days after he has been sent written notification. This letter constitutes specific written notice to Mr. Rhodes of his filing obligations with respect to a leaving office Statement due April 7, 1978, and an assuming office Statement due April 13, 1978.

Please contact me with any questions you may have.

Sincerely,

[redacted]  
Ted Primm  
Chief, Compliance &  
Integrity Division

TP:mfa

# Memorandum

78252

To : Opinion Request Meeting Participants

Date : May 5, 1978

From : FAIR POLITICAL PRACTICES COMMISSION  
Roger Brown 

Subject: Letter from Jeremiah Hallisey Regarding Gene Rhodes

The attached letter was received by the Commission after Gene Rhodes was sued by local residents to compel his filing of the required statement of economic interests. In addition, Mr. Rhodes has received a mailgram from the Conflicts Division notifying him that his annual statement was due April 1, 1978, and several letters from the Fremont City Manager's office notifying him of his obligation to file by April 1, 1978.

This matter is of some concern to the Enforcement Division because we have been investigating a formal complaint against Mr. Rhodes since March 13, 1978, which alleged certain conflicts of interest and failure to disclose various economic interests.

It is important that this matter be resolved as expeditiously as possible.

RB:nc

Attachment

LAW OFFICES  
O'BRIEN AND HALLISEY

ONE CALIFORNIA STREET  
SAN FRANCISCO, CALIFORNIA 94104

P P C  
MAY 4 3 36 PM '78

CHARLES A. O'BRIEN  
JEREMIAH F. HALLISEY  
CHARLENE HAUGHT JOHNSON  
STANLEY S. TAYLOR, III  
ROBERT PATRICK MURPHY  
DANIEL B. LEREAU

415 433-5300

May 2, 1978

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

Dear Members of the Commission:

This law firm represents Mayor Gene Rhodes of Fremont. The purpose of this letter is to request a formal opinion, or in the alternative, written advice, pursuant to Government Code, §83114 and 2 Cal. Adm. Code, §18320 et seq., concerning the duties and responsibilities of Gene Rhodes, Mayor of Fremont with respect to the filing of statements of economic interest pursuant to Government Code, §87200, et seq.

The material facts are as follows: Mr. Rhodes was, at all times during calendar year 1977, a member of the City Council of the City of Fremont. On or about March 30, 1977, he filed, in a timely fashion, FPPC Form 721 covering the period from March 9, 1976 to December 31, 1976. On or about December 29, 1977, along with his declaration of candidacy for the office of Mayor of the City of Fremont, he filed FPPC Form 720 disclosing certain investments and interests in real property as required by Government Code, §87201.

Prior to this election, the office of Mayor of The City of Fremont had been filled by vote of the City Council from

among its members. Mr. Rhodes held that position for the years 1975 through 1977. By way of initiative action, the Office of Mayor was made a distinct elective office, and a special election was held accordingly. Pursuant to this revision, the newly elected mayor would continue to hold a voting position on the City Council.

The mayoralty election took place on March 7, 1978, and Mr. Rhodes emerged the winner. He had previously stated that regardless of the outcome of the election, he would immediately resign from the City Council in order that a successor might also be chosen by special election. On March 8, he so resigned effective that date. On March 14, 1978, he was sworn in as Mayor.

The basic question posed by these facts is this: Is Mayor Rhodes required to comply with the provisions of Government Code, §87204 with respect to his resignation from the City Council, and Government Code, §87202 with respect to his assumption of the Office of Mayor? Or may he satisfy the filing requirements of the Political Reform Act by complying with the provisions of Government Code, §87203 in filing an annual statement for calendar year 1977?

Government Code, §87205 provides:

A person who completes a term of office specified in §87200 and on the same day begins a term of the same office or another such

office in the same jurisdiction is not deemed to assume office or leave office.

The Commission has provided by Regulation, 2 Cal. Adm. Code, §18723, that:

If a person assumes an office specified in Government Code §87200 between October 1 and December 31 and files a Statement of Economic Interests pursuant to Government Code §87202, that person need not file a Statement of Economic Interests pursuant to §87203 until one year later than the date specified in subsection (b).

This regulation further provides that in certain circumstances, a leaving office statement may be filed in lieu of an annual statement.

While neither of these provisions appears to directly control the instant situation, read in conjunction they evidence an intent to avoid unnecessary and/or repetitive filing of documents which would disclose the same or much the same information. See also, 2 Cal. Adm. Code §18732 concerning filing requirements of designated employees under Conflict of Interest Codes. At all times relevant to this matter, the "jurisdiction" with respect to Mr. Rhodes' filing obligations was the City of Fremont. Thus, if it is the Commission's interpretation that Mr. Rhodes neither left nor assumed office as Mayor under these circumstances, it would appear that he may meet the requirements of the cited provisions of the Government Code by filing an annual statement (Form 721) covering the period of January 1,

Fair Political Practices Commission  
May 2, 1978  
Page Four

1977 to December 31, 1977.

Pending determination of this matter, Mr. Rhodes is, with all deliberate speed, compiling the documents and information necessary in order that the appropriate filings may be made. Resolution of this question is, however, necessary to enable him to comply with the filing requirements at the earliest possible date. If you have any questions, please contact me.

Sincerely,

Jeremiah F. Hallisey

JFE/cl


cc: The Honorable Robert Nelson  
Assistant City Manager  
Civic Center  
Fremont, California

State of California

# Memorandum

To : Opinion Request Meeting Participants

Date : May 5, 1978

From : FAIR POLITICAL PRACTICES COMMISSION  
Roger Brown 

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May 2, 1978

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Sincerely,



Jeremiah F. Hallisey

JFH/ci

cc: The Honorable Robert Nelson  
Assistant City Manager  
Civic Center  
Fremont, California

# State of California



# Fair Political Practices Commission

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Technical Assistance/Administration	• • •	Executive/Legal	• • •	Enforcement	• • •	Conflict of Interest
(916) 322-5660		322-5901		322-6441		322-6444

January 23, 1978

*A78-253*

Honorable Raymond L. Sullivan  
 Justice, Retired  
 Supreme Court of California  
 State Building, Room 4238  
 San Francisco, California 94102

Dear Justice Sullivan:

This will confirm our telephone conversation of January 23, 1978, during which I informed you that the advice in Mr. Finney's January 28, 1977, letter is still in effect. Retired judges sitting on assignment in courts of record do not file Statements of Economic Interests pursuant to the Political Reform Act.

If you have any further questions, please feel free to contact me.

Sincerely,

*Barbara Campbell*

Barbara Campbell  
 Counsel  
 Legal Division