

# State of California



## Fair Political Practices Commission

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

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(916) 322-5662		322-5660		322-5931		322-6443		322-6444

July 11, 1979

James F. Rupp, Jr.  
 City Attorney & Agency Counsel  
 City of Port Hueneme  
 250 North Ventura Road  
 Port Hueneme, CA 93041

A-79-109

Dear Mr. Rupp:

Thank you for your letter dated May 24, 1979, seeking advice regarding the disqualification provision of the Political Reform Act. The facts as I understand them are as follows.

The Port Hueneme Redevelopment Agency has agreed to sell land to the Howard T. Lane Company which will build condominiums and develop the property as prescribed by the redevelopment agency. The agreement also requires Lane to contribute funds to the redevelopment agency for the construction of a community auditorium and cultural center. In order to preserve architectural continuity between the condominiums and the community center, the redevelopment agency wishes to hire Levitt and Turner, the same architectural firm retained by Lane. You have asked whether members of the architectural firm are public officials and, if so, whether they are making or participating in the making of governmental decisions in which they have a financial interest when they make proposals regarding the design of the community center to the redevelopment agency.

Government Code Section 1/ 87100 provides:

No public official at any level of state or local government shall make, participate in making or in

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1/ All references are to the Government Code unless otherwise noted.

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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]

The prohibition set forth in Section 87100 applies only to "public officials." That term is defined in Section 82048 to mean "every member, officer, employee or consultant of a state or local government agency." Since the members of the architectural firm clearly are not members, officers or employees of the redevelopment agency, the only question is whether they are consultants.

By regulation, the Commission has defined the term "consultant":

"Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Adm. Code Section 18700(a)(2)

Based on the information provided to us, we do not think that the members of the architectural firm are consultants. The members of the architectural firm are providing a product in the form of proposed architectural designs for the community center. The providing of that kind of product might be deemed providing "information, advice, recommendation or counsel" and make the architects consultants. However, in this case the information and recommendations provided by the architects are in response to specifications set by the redevelopment agency. All policy decisions regarding the building of the community center have been retained by the redevelopment agency which has the sole power to determine the design of the center and the facilities it will contain. Under these circumstances, we do not believe that the architects are providing the kind of "information, advice,

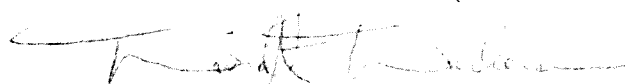
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recommendation or counsel" that would result in characterizing them as consultants under Regulation 18700(a)(2). Therefore, we conclude that the members of the architectural firm are not consultants within the meaning of the Political Reform Act.

If you have further questions, please contact me.

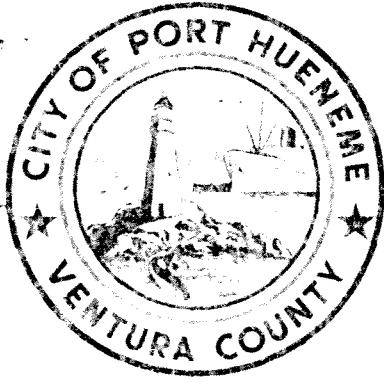
Sincerely,



Dwight Dickerson  
Legal Counsel  
Conflicts of Interest Division

DD:TP:ma

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CIVIC CENTER

# City of Port Hueneme

250 North Ventura Road • Port Hueneme, California 93041 • Phone (805) 488 3625

May 24, 1979

Dwight Dickerson  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804

On behalf of the City of Port Hueneme and the Port Hueneme Redevelopment Agency, I would like your advice pursuant to Section 83114(b) of the Government Code.

The factual setting is as follows: The Port Hueneme Redevelopment Agency (hereinafter Agency) has an agreement with the Howard T. Lane Company (hereinafter Lane) for the development of land. Generally, the agreement calls for the Agency to sell certain land to Lane in return for Lane developing the land in accordance with Agency wishes. There are two especially relevant portions of the agreement which you may wish to review and for that purpose I have enclosed the entire agreement for your reference. First, Section 306 of the agreement gives the Agency architectural control over development of all the land. Second, Section G(1) of Attachment 5 calls for Lane to pay the Agency up to \$150,000 towards the construction of a community facility appurtenant to the development. In addition to the obligation imposed upon the Agency by the contract to build the facility, the Agency is also obligated by reason of the Coastal Permit which conditions later phases of the land development upon construction of the community facility. Against this background, the City, acting on behalf of the Agency, wishes to hire the architectural firm of Levitt and Turner to design the community facility. This architectural firm has acted as the development's architects under contract with Lane.

With this background, the key question is whether the City's hiring of Levitt and Turner to design the community facility would be a violation of Section 87100. In reading that section, it seems the question can be broken into three sub-parts:

- (1) Are the architects "public official(s)"
- (2) who "make, participate in making or . . . influence a governmental decision"
- (3) in which the architects have a "financial interest"?

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Taking the first sub-part, are the architects "public official(s)"? Section 82048 defines the term "public official" as including a consultant. In turn, 2 California Administrative Code 18700(a)(2) defines a consultant. If the architectural firm is not a consultant within the meaning of the Administrative Code or Section 82048 then it seems they are not public officials and consequently not subject to the prohibition posed by Section 87100.

Second, assuming arguendo the architectural firm is a public official, does it "make, participate in making or . . . influence a governmental decision"? I think it is clear from 2 California Administrative Code Section 18700(b) that the firm does not make a governmental decision. It seems making a governmental decision involves either voting, appointing, or obligating an agency to a course of action. Thus, the question resolves to whether the architectural firm participates in making or influencing the governmental decision per 2 California Administrative Code Section 18700(c), (d), (e), and (f).

Third, if it is determined that the architectural firm is a public official who participates in making or influencing a governmental decision, there is still the question as to whether the firm has a "financial interest". As I understand it the financial interest argument runs somewhat as follows: (a) the architects are under contract to the Lane Company and, therefore, the Lane Company owes fees to the architects for services performed and to be performed; (2) conceivably the construction of the community facility appurtenant to development by the Lane Company would help or hinder sales of that development; therefore, (c) the community facility conceivably could affect the solvency of the Lane Company and its ability to pay its architects. The preceding argument seems full of "ifs" and "ands" at best. The analysis seems even more tenuous when one considers that the obligation to build a community facility is contained first in the contract between the Agency and the Lane Company and secondly, in the Coastal Permit. Therefore, I would like your opinion as to whether this is a material financial effect as defined in Section 87103 and in 2 California Administrative Code Sections 18703 and 18704.

If you have any further questions, please feel free to contact me. Thank you for your consideration of this matter.



JAMES F. RUPP, JR.  
City Attorney and Agency Counsel

JFR:dg