

21100-2

# 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	• •	Statements of Economic Interest
(916) 322-5662		322-5660		322-5901		322-6441		322-6444

February 23, 1981

J. K. Moran Jr.  
 Assistant City Attorney  
 P.O. Box 1786  
 Palm Springs, CA 92263

A-81-02-082

Dear Mr. Moran:

In our phone conversation of February 11 you requested written advice concerning the conflict of interest provisions of the Political Reform Act. The facts as I understand them are as follows.

A new bus service called the Sun Surrey has been instituted in the downtown area of Palm Springs. The Sun Surrey has a limited route through the downtown area. The purpose of the bus is to promote business. Only businesses along the bus route are currently being assessed for the service. The city council is considering proposals to:

- a) expand the route to include a loop through a shopping center approximately 2 miles from downtown.
- b) expand the assessment district to include all downtown businesses, not just those along the bus route.

Two members of the city council have businesses in the downtown area. One of the councilmembers is an accountant and belongs to a firm of four professionals which leases office space downtown; the other is in the public relations business with his spouse and also leases the office space he occupies downtown. Since neither of these businesses is located along the Sun Surrey route, neither is assessed for the service. If proposal (b) were adopted the accounting firm would be assessed an annual fee of \$300. The accountant councilmember's pro rata share would be \$75 based on four professionals in the office. The public relations firm would be assessed an annual fee of \$50.

The question you asked was whether these two councilmembers were required to disqualify themselves as to either of the proposals. The disqualification provisions of the Political

Reform Act are contained in Government Code Sections 87100-87103. Section 87100 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.

Section 87103 provides in relevant part that:

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:

(a) Any business entity in which the public official has a direct or indirect investment 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 twelve months prior to the time when the decision is made;

. . .

By regulation the Commission has provided further guidance on how to determine if a financial effect is material. 2 Cal. Adm. Code Section 18702. (See relevant portions attached.)

Thus the question for the two councilmembers is whether either of the two proposals will have a material financial effect on their downtown businesses. There is no indication from the facts you have given that a decision on proposal (a) would have any financial effect at all on the councilmembers' businesses. Therefore, they would not have to disqualify themselves from participating in a decision on that proposal.

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

J. K. Moran Jr.  
February 23, 1981  
Page Three

A decision on proposal (b) would have a financial effect on the businesses, but it is not a material financial effect within the guidelines set forth in 2 Cal. Adm. Code Section 18702. You should alert the councilmembers that, with respect to a source of income over \$250 the threshold for materiality is only \$100. 2 Cal. Adm. Code Section 18702(b)(3). Thus, as long as the annual assessment is \$100, or less, there is no requirement that the councilmembers disqualify themselves. If the assessment is over \$100, the councilmembers might have to disqualify themselves from consideration of the proposal.

I hope this advice has been helpful. Please feel free to contact me if you have further questions on this matter.

Sincerely,

*Stella Connell Levy*  
Stella Connell Levy  
Counsel  
Legal Division

SCL:plh  
Enclosure



# City of Palm Springs

CALIFORNIA

P.O. BOX 1786, PALM SPRINGS, CALIFORNIA 92263

March 2, 1981

Ms. Stella Connell Levy  
Counsel, Legal Division  
FPPC  
P. O. Box 807  
Sacramento, California 95804

Re: Your letter of February 23, 1981

Dear Ms. Levy:

Thank you for your prompt response to my request for a written opinion in the matter of the proposed changes in the bus service and the scope of fees which are charged for said service.

After receiving your letter, our Redevelopment Director requested that we make certain minor changes in the facts as set forth in the first page of your letter. It is anticipated that these changes will not affect the ultimate conclusion of your opinion, but are nonetheless necessary to conform to the current fact situation.

I have had a proposed page 1 retyped for your convenience. If you wish, you may merely have that first page retyped on FPPC letterhead and I will attach it to your original letter when received.

Thank you for your continued cooperation.

Very truly yours,

J. KENNETH MORAN, JR.  
Assistant City Attorney

JKM:lb

Mar 4 1981  
CITY OF PALM SPRINGS

March 2, 1981

J.K. Moran, Jr.  
Assistant City Attorney  
P. O. Box 1786  
Palm Springs, California 92263

Dear Mr. Moran:

In our phone conversation of February 11 you requested written advice concerning the conflict of interest provisions of the Political Reform Act. The facts as I understand them are as follows:

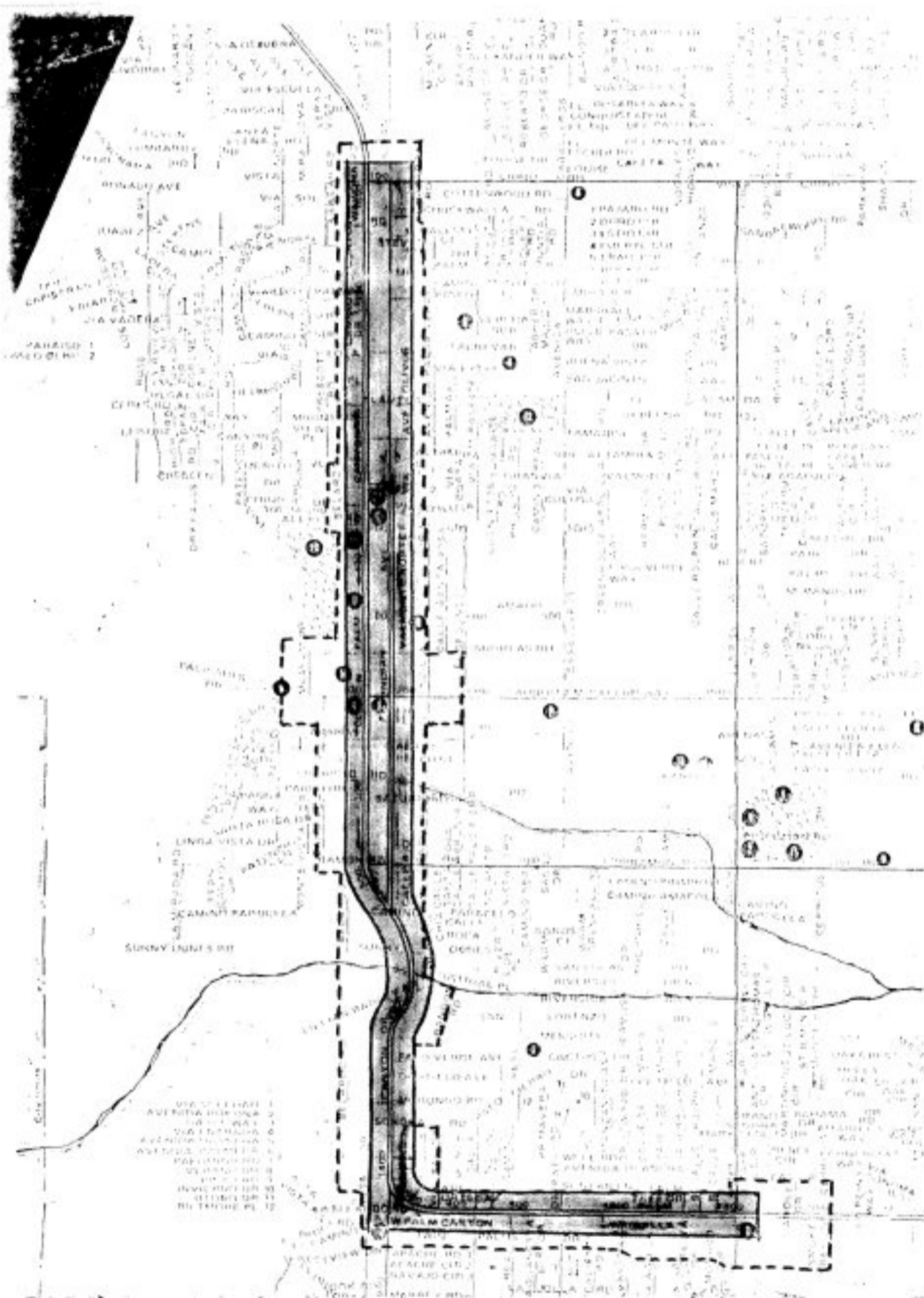
A new bus service called the Sun Surrey has been instituted in the downtown area of Palm Springs. The Sun Surrey has a limited route through the downtown area. The purpose of the bus is to promote business. Only certain businesses along the bus route are currently incurring "business charges" for the service. The City Council is considering proposals to:

a) slightly expand the route to include approximately 80 more businesses and to clarify the boundaries of the area (see map attached hereto).

b) adding additional classifications to the "business improvement area" to include those previously exempted.

Two members of the City Council have businesses in the downtown area. One of the councilmembers is an accountant and belongs to a firm of four partners which leases office space downtown; the other is in the public relations business with his spouse and also leases the office space he occupies downtown. Both the businesses were previously exempt. If proposal (b) were adopted, the accounting councilmember's pro rata share would be approximately \$75 based on four ~~professionals~~ in the office. The public relations firm would be assessed an annual fee of approximately \$50.

The question you asked was whether these two councilmembers were required to disqualify themselves as to either of the proposals. The disqualification provisions of the Political



CENTRAL CORRIDOR BUSINESS IMPROVEMENT AREA



--- EXPANDED AREA

Resolution 13237  
Adopted 1/16/80

EXHIBIT "A"

# Palm Springs California