

098

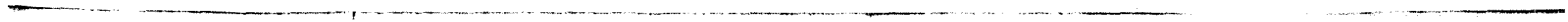
October 27, 1980

Dear Commissioners:

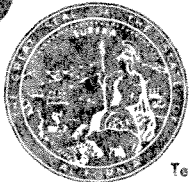
This letter came into my office on the 17th of October. It is addressed to the Commission and Mr. Hinman. I am treating it as correspondence. Each Commissioner now has a copy.



Mark A. Totten, Secretary



State of California



Fair Political Practices Commission

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

Technical Assistance
(916) 322-5662

• • Administration • •
322-5660

• • Executive/Legal • •
322-5901

• • Enforcement • •
322-6441

• • Statements of Economic Interest
322-6444

January 2, 1981

Dawson Arnold
Lassen County Counsel
P.O. Box 150
Susanville, CA 96130

A-81-01-098

Dear Mr. Arnold:

This is in response to your letter of December 18, 1980, requesting an analysis of the conflict of interest provisions of the Political Reform Act on behalf of Lassen County Planning Commissioner Tom Pearson. The following advice is provided pursuant to Government Code Section 83114(b). The facts as I understand them from your letter and from the attachments to it are as follows.

Tom Pearson, who is a member of the Lassen County Planning Commission, is an employee of Pearson Realty, but he has no ownership interest in this business. His brother, Bob Pearson, independent of any interest he might have in Pearson Realty, is a partner in a land development enterprise which is proposing a development called Eagle Lake Estates. There is no contractual relationship between Pearson Realty and the Eagle Lake partnership, nor will Pearson Realty be involved in the marketing of Eagle Lake Estates. A letter from Fred Nagel to Ken Canaday, which was an attachment to the Final EIR for Eagle Lake Estates, indicates that both Tom Pearson and Bob Pearson represented the developer (i.e., the Eagle Lake partnership) in March 1978. Tom Pearson has filed only one statement of economic interests, an initial statement filed on July 29, 1980. Although he was not required to report income on this statement, he did report that he had received income in the form of real estate commissions from Pearson Realty but did not report any income from the Eagle Lake partnership. You have asked whether these facts require Tom Pearson to disqualify himself from the Planning Commission's deliberations and decisions regarding Eagle Lake Estates.

8710 2/103

The Political Reform Act 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.

Gov. Code Section 87100.

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);

(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 twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

. . .

Gov. Code Section 87103.

If Commissioner Pearson received \$250 or more in income from the developers of Eagle Lake Estates within 12 months prior to the time the Planning Commission considers it, he must disqualify himself from the deliberations. However, if he did not receive any income from the developers, or if he received income but more than 12 months have passed since,


Dawson Arnold
January 2, 1981
Page Three

the mere fact that he may have represented them at some time in the past does not require his disqualification.

Pearson Realty is a source of income to Tom Pearson as well as a business entity in which he is an employee. If it is not foreseeable that the income, gross receipts or assets or liabilities of Pearson Realty will be affected materially by any decisions regarding Eagle Lake Estates, Commissioner Pearson is not required to disqualify himself from those matters merely because of his financial relationship to Pearson Realty. 2 Cal. Adm. Code Section 18702. However, if Bob Pearson is the sole owner of Pearson Realty, or if he is a majority shareholder who exercises complete management and control of Pearson Realty, Tom Pearson may be considered an employee not only of Pearson Realty but also of Bob Pearson. In such a situation, Bob Pearson would constitute a source of the income Tom Pearson receives, and Commissioner Pearson would be required to disqualify himself from decisions which would have a material financial effect on Bob Pearson, whether or not there would be an effect on Pearson Realty directly. As a member of the partnership that is developing Eagle Lake Estates, Bob Pearson will undoubtedly be affected in a material manner by many of the Planning Commission's decisions concerning that development. Even in this situation, however, there would be no bar to Commissioner Pearson's participation in Planning Commission decisions which would not have a material financial effect on the Eagle Lake partners.

Finally, this analysis addresses the question only of conflicts of interest under the Political Reform Act. It does not address any questions that may arise concerning common law conflicts of interest or the due process considerations of fairness in quasi-judicial decisions. If you have any further questions concerning this matter, please do not hesitate to contact me again.

Sincerely,


Sarah Cameron
Deputy Chief for
Conflicts of Interests
Legal Division

SC:plh

4471098



OFFICE OF THE
COUNTY COUNSEL

COUNTY OF LASSEN
P.O. Box 150
Susanville, California
96130

Rm. 208 Knoch Bldg.
617 Main Street
(916) 257-5192

DAWSON ARNOLD
County Counsel

BRIAN HUSSEY
Deputy County Counsel

December 18, 1980

Fair Political Practice Commission
1100 K Street, P.O. Box 807
Sacramento, California 95804

Gentlemen:

I am enclosing herewith a request made to this office for opinion as to a possible conflict of interest of Tom Pearson, a member of the Lassen County Planning Commission, with respect to matters which might affect certain lands owned by a partnership in which the member's brother is a partner, together with a copy of my letter to that member stating the opinion of this office that the brother's partnership activities are not attributable to the member within the meaning of Government Code Section 87103.

Planning Commissioner Pearson has requested that I submit his financial interest statement together with the materials submitted by a group of Lassen County citizens supporting their contention that the circumstances require Mr. Pearson's disqualification from participation in all Planning Commission activities which might effect his brother's partnership. It should be pointed out that the member of the Planning Commission has represented in an open meeting of the Planning Commission, that the realty business set forth in the member's disclosure statement has no contractual relationship with his brother's land development partnership and that the member's realty business would not be involved in the marketing of any land developed or sold by the brother's partnership.

Your early attention to this request for your review and opinion will be appreciated. Do not hesitate to telephone this office if we can furnish any further information.

Very truly yours,

DAWSON ARNOLD
Lassen County Counsel

DA: jm
Enclosures

December 18, 1980

Tom Pearson, Member
Lassen County Planning Commission
Courthouse Annex
Susanville, California 96130

Re: Conflict of Interest

Dear Tom:

You have requested the opinion of this office as to whether Conflict of Interest exists with respect to your participation in the hearings conducted by the Lassen County Planning Commission on the proposed Eagle Lake Area Plan and certain activities of your brother with respect to certain lands within the area encompassed by the proposed plan owned by a limited partnership of which your brother is a member and you are not. I have previously orally advised you of my opinion that the partnership activities of your brother do not constitute a financial interest within the meaning of Section 87100 of the Government Code as a direct or indirect interest. I continue in that view.

By letter of December 2, 1980, you have requested that I submit your current disclosure statement together with certain materials which have been received by the Chairman of the Lassen County Planning Commission alleging that your brother's activities constitute a conflict of interest within the meaning of the Political Reform Act such as to require your disqualification from all Planning Commission determinations which would effect the lands owned by the partnership of which your brother is a member.

By separate cover I am proceeding to comply with your request. I will advise as soon as I have received a reply from the Fair Political Practices Commission.

Very truly yours,

DAWSON ARNOLD
Lassen County Counsel

DA:jm

December 2, 1980

Dawson Arnold
Lassen County Counsel
P.O. Box 150
Susanville, Ca. 96130

Dear Mr. Arnold:

This letter is in response to our discussion of the possibility of a conflict of interest relating to my position as a member of the Lassen County Planning Commission and matters presented to the Commission for our comments, recommendations or approval whichever the case may be. I refer specifically to the present hearings being conducted by the Planning Commission on the proposed Eagle Lake Nolte Plan and activities of a member of my family (brother) proposing development at Eagle Lake.

May I request that you submit my current disclosure statement along with stated concerns expressed as to conflict of interest in the above mentioned hearing to F.P.P.C. May I also request that you submit your stated position on this matter to them at the same time.

Thank you for your cooperation.



Tom Pearson
Lassen County Planning Commission

FORM 730

FILED

JUL 30 1980

Statement of Economic Interests For Designated Employees

JACQUELYN FULLER
LASSEN COUNTY CLERK

BY *Jacquelyn Fuller*

(Instructions attached on Page 13)

Please type or print in ink

NAME <i>Thomas F. Pearson</i>		POSITION <i>Planning Comm.</i>
STATE DEPARTMENT AND UNIT OR LOCAL AGENCY <i>Lassen County</i>		
MAILING ADDRESS <i>P.O. Box 38 Bieber, CA.</i>		TELEPHONE NUMBER <i>294-5402</i>

Check the appropriate box:

INITIAL STATEMENT: The Conflict of Interest Code for your agency becomes effective on 6-30-80 ~~2-27-80~~
 You must file a Statement within thirty days after this date disclosing your reportable interests held on this date. You are not required to disclose income, gifts or loans on this Statement.

ASSUMING OFFICE STATEMENT: You have assumed office on _____.

- Civil service position – file thirty days after assuming office.
- Non-civil service position – file ten days after assuming office.
- Position subject to Senate confirmation – file ten days after appointment or nomination.

You must disclose all reportable interests, other than income, gifts and loans, held on the date you assume your position.

ANNUAL STATEMENT: You are required to file a Statement no later than _____ disclosing all reportable interests held or received during the period from January 1, 1979, * through December 31, 1979.

LEAVING OFFICE STATEMENT: You are leaving or have left your position on _____ and must file a Statement within thirty days of that date. You must disclose all reportable interests held or received during the period from January 1, 1979, * through the date you left office.

CANDIDATE STATEMENT: You are a candidate for elective office. You must disclose all reportable interests, other than income, gifts, and loans, held on the date you filed nomination papers. You must file this Statement within five days after the final date for filing nomination papers.

NOTICE TO ALL FILERS: In the event you are given an assignment which may affect your financial interests you should consult your agency's Conflict of Interest Code for guidance concerning disqualification.

FILING OFFICER <i>Jacquelyn Fuller</i>	TELEPHONE NUMBER <i>916-257-7191</i>
---	---

* If this is your first annual Statement or if you wish to combine a leaving office Statement and an annual Statement, see the instructions attached to this form for directions on modifying the period covered by this Statement.

THE FOLLOWING SUMMARY MUST BE COMPLETED BY ALL FILERS

SCHEDULE A - Investments

Schedule completed & attached No reportable interests Schedule not applicable to my disclosure category

SCHEDULE B - Interests in Real Property

Schedule completed & attached No reportable interests Schedule not applicable to my disclosure category

SCHEDULE C - Investments and Interests in Real Property Held by Business Entities or Trusts

Schedule completed & attached No reportable interests Schedule not applicable to my disclosure category

SCHEDULE D - Income (other than Gifts and Loans)

Schedule completed & attached No reportable interests Schedule not applicable to this type of statement or to my disclosure category

SCHEDULE E - Loans

Schedule completed & attached No reportable interests Schedule not applicable to this type of statement or to my disclosure category

SCHEDULE F - Gifts

Schedule completed & attached No reportable interests Schedule not applicable to this type of statement or to my disclosure category

SCHEDULE G - Income of Business Entities

Schedule completed & attached No reportable interests Schedule not applicable to this type of statement or to my disclosure category

SCHEDULE H - Employment and Management Positions in Business Entities

Schedule completed & attached No reportable interests Schedule not applicable to my disclosure category

IMPORTANT: If boxes are checked for all schedules above to indicate "No reportable interests" or "Schedule not applicable..." you should detach the schedules and file only pages 1 and 2. If you need more space on any schedule, obtain a supplemental schedule from your filing officer.

VERIFICATION

I declare under penalty of perjury that I have used all reasonable diligence in preparing this Statement and to the best of my knowledge it is true and complete.

Executed on July 29, 1980, at Bishop, Calif

SIGNATURE

Thomas E. Pearson

All of the information required by this form is mandatory, is required by the provisions of the Political Reform Act, Government Code Section 81000 et seq., and will be available to any member of the public upon request. This information is to be used to reveal to public scrutiny certain financial interests of public officials and employees in order to disclose potential conflicts of interests and to aid in the prevention of actual conflicts of interests.

SCHEDULE A - INVESTMENTS

Investments (of the type described in your disclosure category) owned by the filer, spouse and dependent children aggregating \$1,000 or more in value.

NAME OF ENTITY <u>TOM PEARSON TRUCKING</u>		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input checked="" type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTERESTS, E.G., COMMON STOCK, PARTNERSHIP INTEREST, ETC. <u>OWNER</u>			
GENERAL DESCRIPTION OF BUSINESS ACTIVITY <u>CONTRACT LOG HAULING</u>	<input checked="" type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE <u>1970</u>	
NAME OF ENTITY <u>BIG VALLEY INDUSTRIAL</u>		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input checked="" type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTERESTS, E.G., COMMON STOCK, PARTNERSHIP INTEREST, ETC. <u>OWNER</u>			
GENERAL DESCRIPTION OF BUSINESS ACTIVITY <u>EQUIPMENT REPAIR</u>	<input checked="" type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE <u>1976</u>	
NAME OF ENTITY <u>THE ROUND UP</u>		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input checked="" type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTERESTS, E.G., COMMON STOCK, PARTNERSHIP INTEREST, ETC. <u>GEN. PARTNER</u>			
GENERAL DESCRIPTION OF BUSINESS ACTIVITY (blank)	<input checked="" type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE <u>1979</u>	
NAME OF ENTITY <u>PEARSON REALTY BUILDING</u>		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input checked="" type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTERESTS, E.G., COMMON STOCK, PARTNERSHIP INTEREST, ETC. <u>OWNER</u>			
GENERAL DESCRIPTION OF BUSINESS ACTIVITY <u>REAL ESTATE AND INSURANCE OFFICES</u>	<input checked="" type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE <u>1979</u>	

SCHEDULE B - INTERESTS IN REAL PROPERTY

Interests in Real Property (of the type described in your disclosure category) in which the filer, spouse and dependent children have an aggregate interest of \$1,000 or more in value.

STREET ADDRESS OR PRECISE LOCATION OF PROPERTY <u>CORNER MKT. ST. & Hwy 299 E</u>		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input checked="" type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTEREST, E.G., EQUITY, OPTION <u>OWNER</u>			
<input checked="" type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE <u>1979</u>		
STREET ADDRESS OR PRECISE LOCATION OF PROPERTY <u>NORTH MKT. ST.</u>		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input checked="" type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTEREST, E.G., EQUITY, OPTION <u>OWNER</u>			
<input type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE <u>1976</u>		
STREET ADDRESS OR PRECISE LOCATION OF PROPERTY (blank)		CHECK ONE <input type="checkbox"/> VALUE DOES NOT EXCEED \$10,000 <input type="checkbox"/> VALUE EXCEEDS \$10,000 BUT DOES NOT EXCEED \$100,000 <input type="checkbox"/> VALUE EXCEEDS \$100,000	
NATURE OF INTEREST, E.G., EQUITY, OPTION (blank)			
<input type="checkbox"/> ACQUIRED <input type="checkbox"/> DISPOSED	DATE (blank)		

NAME THOMAS E. PEARSON

SCHEDULE D - INCOME (OTHER THAN GIFTS AND LOANS)

Income aggregating \$250 or more from reportable sources of income (of the type described in your disclosure category).

NAME OF SOURCE OF INCOME <u>Tom Pearson TRUCKING</u>		CHECK ONE <input type="checkbox"/> AMOUNT OR VALUE RECEIVED DOES NOT EXCEED \$1,000	
ADDRESS OF SOURCE OF INCOME <u>P.O. Box 38 BIEBER</u>		<input type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$1,000 BUT DOES NOT EXCEED \$10,000	
BUSINESS ACTIVITY OF SOURCE OF INCOME, IF ANY <u>TRUCKING</u>		<input checked="" type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$10,000	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED <u>CONTRACT HAULING</u>			
NAME OF SOURCE OF INCOME <u>BIG VALLEY INDUSTRIAL</u>		CHECK ONE <input type="checkbox"/> AMOUNT OR VALUE RECEIVED DOES NOT EXCEED \$1,000	
ADDRESS OF SOURCE OF INCOME <u>P.O. Box 38 BIEBER</u>		<input checked="" type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$1,000 BUT DOES NOT EXCEED \$10,000	
BUSINESS ACTIVITY OF SOURCE OF INCOME, IF ANY <u>EQUIPMENT REPAIR</u>		<input type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$10,000	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED <u>REPAIR & MAINTENANCE OF EQUIPMENT FOR GENERAL PUBLIC</u>			
NAME OF SOURCE OF INCOME <u>PEARSON REALTY ROUNDUP PARTNERSHIP</u>		CHECK ONE <input type="checkbox"/> AMOUNT OR VALUE RECEIVED DOES NOT EXCEED \$1,000	
ADDRESS OF SOURCE OF INCOME <u>P.O. Box 38 BIEBER</u>		<input checked="" type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$1,000 BUT DOES NOT EXCEED \$10,000	
BUSINESS ACTIVITY OF SOURCE OF INCOME, IF ANY <u>ROUNDUP BAR</u>		<input type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$10,000	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED <u>ON-OFF SALE ALCOHOLIC BEVERAGES</u>			
NAME OF SOURCE OF INCOME <u>PEARSON REALTY</u>		CHECK ONE <input type="checkbox"/> AMOUNT OR VALUE RECEIVED DOES NOT EXCEED \$1,000	
ADDRESS OF SOURCE OF INCOME <u>P.O. Box 38 BIEBER</u>		<input checked="" type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$1,000 BUT DOES NOT EXCEED \$10,000	
BUSINESS ACTIVITY OF SOURCE OF INCOME, IF ANY <u>REAL ESTATE SALES</u>		<input type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$10,000	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED <u>REAL ESTATE COMMISSIONS</u>			
NAME OF SOURCE OF INCOME		CHECK ONE <input type="checkbox"/> AMOUNT OR VALUE RECEIVED DOES NOT EXCEED \$1,000	
ADDRESS OF SOURCE OF INCOME		<input type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$1,000 BUT DOES NOT EXCEED \$10,000	
BUSINESS ACTIVITY OF SOURCE OF INCOME, IF ANY		<input type="checkbox"/> AMOUNT OR VALUE RECEIVED EXCEEDS \$10,000	
DESCRIPTION OF THE CONSIDERATION FOR WHICH INCOME WAS RECEIVED			

See explanations on reverse side

October 27, 1980

Dear Commissioners:

This letter came into my office on the 17th of October. It is addressed to the Commission and Mr. Hinman. I am treating it as correspondence. Each Commissioner now has a copy.


Mark A. Totten, Secretary

RECEIVED

Lassen County Planning Commission
Frank Hinman, Chairman
Courthouse Annex
Susanville CA 96130

OCT 17 1980

PURCHASING DEPT.
COUNTY OF LASSEN

October 17, 1980

Dear Mr. Chairman:

As the Planning Commission prepares to act on the Nolte Plan for the Eagle Lake Area, we would like to request your action on a possible conflict of interest.

Commissioner Tom Pearson has been a sales agent of Pearson Realty, for which his brother Bobby Joe Pearson is a broker. Bobby Joe Pearson is a partner in Eagle Lake Investors, owners of 1374 acres of land in the Eagle Lake basin. Tom Pearson has served as a representative of the developer, according to the Final E.I.R. for Eagle Lake Estates (Appendix E). It can be expected that Pearson Realty, furthermore, will handle lot sales for Eagle Lake Estates.

According to California Government Code, Section 87100:

No public official at any level of state or local government shall make, or participate in making or in any way attempt to use his official position to influence a government decision in which he knows or has reason to know he has a financial interest.

And according to the County of Lassen Conflict of Interest Code, Section 600, Disqualification:

Designated employees shall disqualify themselves from making or in any way attempting to use their official position to influence a government decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

.... (c) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

It appears "reasonably foreseeable" that the decision by the Planning Commission on the Nolte Plan for Eagle Lake "will have a material financial effect" both on Pearson Realty and on the Eagle Lake Estates project. This appears to be grounds for disqualification.

Therefore, we respectfully request that Commissioner Pearson disqualify himself from voting and participating in Commission discussion on the Nolte Plan. This is consistent with his past abstentions from Long Valley Investors and Diamond Mountain Investors decisions. We request this in accordance with the Fair Political Practices Act of 1974, and with the public's right to fairness in county decision making.

Respectfully,

Curtis C. Spalding
Curtis C. Spalding

Jacqueline Tripp
Jacqueline Tripp

Jane A. Mattocks
Jane A. Mattocks

Joanna C. Christant
Joanna C. Christant

Yvonne P. Crane
Yvonne P. Crane

Marguerite J. Crane
Marguerite Crane

Mr. Frank Hinman, Chairman
Courthouse Annex
Susanville CA 96130

RE: Conflict of Interest Question
Commissioner Tom Pearson

Wednesday Nov. 5, 1980 8:15 am.

Dear Mr. Chairman:

In addition to our letter to you of Oct. 17, 1980, we would like to submit the attached supporting material, Attachments 1-8. They indicate the apparent conflict of interest which is grounds for disqualification from hearings on the Eagle Lake Area Plan.

Secondly, it was my understanding that this question would be placed on the agenda for this Planning Commission meeting. However, it was not. Therefore, I would request a few minutes to address the Commission, under the "Correspondence" agenda item. Thank you.

We encourage you to resolve this question before hearings on the Eagle Lake Area Plan continue. The reason is, if after-the-fact a conflict of interest is proven to exist, then a court can nullify any decisions rendered and require proceedings to start over again (California Government Code 91003 - see Attachment 4; Buell vs. Bremerton, 1972; 39 Opinions California Attorney General 165, 168, 1962).

To avoid this, and to protect the Commission and its work, it is advisable to abstain if there is even a question of a conflict of interest.

The proper procedure for avoiding a conflict is prescribed in 58 Ops. Cal. Atty. Gen., p. 356 (Attachment 8):

The conflict of interest may be avoided by the affected member by immediately disclosing the interest, withdrawing from participation in the matter, refraining from voting, refraining from attempting to influence other members, and having all these matters reflected in the minutes.

We believe this is the proper procedure at today's 8:30 am hearing.

.

As evidence of the apparent conflict, please refer to the following Attachments 1 through 8.

- (1) Pearson Realty Ad, showing B.J. Pearson, broker, and Tom Pearson (his brother), sales agent.
- (2) Letter in the Final EIR, Eagle Lake Estates, Appendix E, stating a meeting occurred on the site:
... with Mr. Tom Pearson and Mr. Bob Pearson representing the developer.
- (3) Lassen County Conflict of Interest Code, stating in pertinent part:
SECTION 600. Disqualification. Designated employees shall disqualify themselves from making or in any way attempting to use their official position to influence a government decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:
... (b) Any reportable source of income... aggregating two hundred fifty dollars (\$250) or more in value received within twelve months prior to the time the decision is made;
(c) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

Please note the phrase underlined - "reasonably foreseeable". It need not be unmistakable evidence - only "reasonably foreseeable" that a financial benefit will result.

- (4) California Government Code, Section 87100, stating in pertinent part:

No public official at any level of state or local government shall make, or participate in making or in any way attempt to use his official position to influence a government decision in which he knows or has reason to know he has a financial interest.

And the accompanying Fair Political Practices Commission opinion (1 FPPC Opin. 71):

Councilman who had a real estate business within a redevelopment area and who owned property within and near such area had a conflict of interest precluding participation in the decision to adopt the redevelopment plan.

(5) Planning Commission abstention record for Commissioner Pearson. This shows he abstained from decisions involving entities involving his brother Bobby Joe Pearson: Diamond Mountain Investors, Long Valley Ranchos, Long Valley Investors, and most significantly, Eagle Lake Investors. These abstentions verify to the public that a conflict of interest exists, and that it is recognized by the Commissioner.

(6) Letter to Santa Cruz County from a law firm regarding the appearance of fairness doctrine. It states that courts are requiring the appearance of fairness just as much as actual fairness:

In later cases, the court has held that, in order to show a violation of the appearance of fairness doctrine, it is necessary only to show an interest in a planning commissioner or city councilman which might have influenced a member of the commission and not that it actually so affected him.

(7) Buell v. Bremerton (1972) decision. This states:

A ground for disqualification of a planning commission member exercising quasi-judicial functions is the actual or apparent presence of an interest whereby one stands to gain or lose by a decision either way.

It also states:

The self-interest of one member of a planning commission destroys the appearance of fairness and affects the actions of the other members of the commission regardless of their impartiality.

(8) California Attorney General Opinion 58, p. 354. This quotes the state's Terry v. Bender (1956) decision:

When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services.

It also quotes California Attorney General Opinion 40, p. 210:

It is important to note that the California courts have traditionally predicated conflict of interest decisions on the dual basis of (a) the statutory restriction; and (b) the prohibition of sound public policy evolved from common law principals.

Therefore, Opinion 58 concludes, common law does apply even in absence of statutes:

It strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.

.

To summarize : It is "reasonably foreseeable that the decision (on the Eagle Lake Plan) will have a material financial effect" on Eagle Lake Investors and Pearson Realty. Pearson Realty is a "reportable source of income" under Section 600(b), Lassen County Conflict of Interest Code. Pearson Realty and Eagle Lake Investors are both "business entities" under Section 600(c). Planning Commissioner is a designated position, under Section 200. Therefore, the mandate of Section 600, Disqualification, applies:

Designated employees shall disqualify themselves from making or participating in the making or in any way attempting to use their official position to influence a government decision...

We request compliance with county and state Conflict of Interest statutes, and common law.

Attachments: 1 through 8.

Sincerely, *Curtis Spalding*
Curtis Spalding

ing the designation of more than 5 mil- planning for growth should be carried

from "Prime Property Week"
Supplement to Lassen Advocate

April 11, 1980

ATTACHMENT (1)



PEARSON REALTY



Homes - Ranches
Small Acreage - Investment Properties



Tom Pearson
294-5402

Thea Henning
294-5536

Eric Beck
294-5507


(916) 294-5261

Corner of Market & 299 East

P.O. Box 38

Bieber, CA. 96009

B.J. PEARSON
BROKER



REALTOR

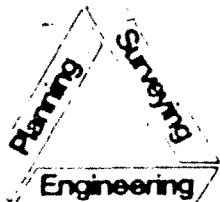
ATTACHMENT (2)

Paul E. Simpson & Associates

45 SOUTH ROOP STREET • SUSANVILLE, CALIFORNIA 96130 • TELEPHONE 916/257-5173

California • Oregon • Nevada

June 20, 1979



Mr. Ken Canaday
Land Use Services
628 West Main Street
Quincy, California 95971

RE: Eagle Lake Estates

Dear Ken:

In view of the questions raised by the Lassen County Sanitarian, Mr. Doug Ames, in regards to the percolation testing done for this project and appended to your draft E.I.R., I would offer the following chronological history.

For initial planning, we needed to know if the soils were generally suitable for disposal of sewage effluent. On June 25 and 26, 1977 randomly located tests were done for that purpose, with encouraging results. Subsequently a preliminary project design was prepared and on October 18 and 19, 1977 we performed additional testing in areas related specifically to this preliminary design. A relatively small backhoe was used to aid in excavating for percolation tests, and to excavate deeper where possible to develop at least a preliminary soil profile. Mr. Gerard Thibeault of the Water Quality Control Board observed open pits and testing on October 19, 1977, at which time we agreed that further investigation must be made of the deeper soils and geology of the site.

We retained a registered geologist, Mr. Wesley Paulsen, of Applied Geological Engineering, Inc. who compiled background data, our preliminary test results, and well log data. On March 2, 1978, Mr. Paul Simpson and myself from our office met with Mr. Alvin Franks, Supervising Engineering Geologist, State Water Resources Control Board, and Mr. Michael James, Water Resources Control Engineer, Lahontan Regional Water Quality Control Board, with Mr. Benny Laquori from Wesley Paulsen's office, and with Mr. Tom Pearson and Mr. Bob Pearson representing the developer, at the project site with a backhoe capable of extended depth. Test pits were excavated in specific locations designated by the Water Quality Control Board staff, and to whatever depth they felt necessary to verify the subsoils. Obvious rock outcrop areas, which everyone concurred were not suitable, were not investigated, and the sandy areas which were not under immediate consideration for development, were not investigated at this time. At that time the project

Paul E. Simpson & Associates

June 20, 1979

soils had been classified as essentially uniform (except for rock outcrop and low sand areas); several additional percolation tests were performed which generally verified the earlier testing.

With this additional data, Mr. Paulsen completed his analysis and issued his report of April 25, 1978.

The great majority of the testing revealed percolation rates in the 10-40 minutes per inch range, with an occasional test considerably higher or lower. No pattern of "good" or "poor" soils was evident either from our testing or the soils study, and I would offer that the variations observed were fairly normal for this type of soil structure. We have performed numerous percolation tests in the Eagle Lake area over the past 10-15 years, and have observed similar results.

I hope this information will be of value to those who are reviewing this draft E.I.R..

Very truly yours,



Fred R. Nagel
RCF 26319

FRN:rjw

75-25

(e) Acquisition or Disposal During Reporting Period:

If any otherwise reportable investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal shall be reported.

SECTION 600. Disqualification. Designated employees shall disqualify themselves from making or participating in the making or in any way attempting to use their official position to influence a governmental decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any reportable investment or interest in real property;

(b) Any reportable source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received within twelve months prior to the time the decision is made;

(c) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

GOVERNMENT CODE

§ 87100

that, an employee of the State of California, other than a legislative official, who attempts to influence legislative action and who would be required to register as a lobbyist except for the provisions of this subdivision shall not make gifts of more than ten dollars (\$10) in a calendar month to an elected state officer or legislative official.

(b) Any newspaper or other periodical of general circulation, book publisher, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisement, which directly or indirectly urge legislative or administrative action if such newspaper, periodical, book publisher, radio or television station or individual, engages in no further or other activities in connection with urging legislative or administrative action other than to appear before a committee of the Legislature or before a state agency in support of or in opposition to such action: or

(c) A person when representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church. (Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1975, c. 1079, p. —, § 1.)

1975 Amendment. Added proviso in subd. (a).

CHAPTER 7. CONFLICTS OF INTEREST

Article	Section
1. General Prohibition	87100
2. Disclosure	87200
3. Conflict of Interest Code	87300

Chapter 7, proposed by Initiative Measure, was approved by the electors at the primary election held June 4, 1974, eff. Jan. 7, 1975.

ARTICLE 1. GENERAL PROHIBITION

Sec.

- 87100. Public officials; state and local; financial interest.
- 87101. Participation in legal governmental action or decision.
- 87102. Additional requirements; remedies.
- 87103. Financial interest; material effect; indirect investment or interest.

Article 1, proposed by Initiative Measure, was approved by the electors at the primary election held June 4, 1974, eff. Jan. 7, 1975.

§ 87100. Public officials; state and local; financial interest

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. (Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

1. In general

Commission has jurisdiction to issue opinions under § 83114 interpreting this chapter. (July 2, 1975) 1 FPPC Opin. 71.

Councilman who had a real estate business located within a redevelopment area and who owned property within and near such area had a conflict of interest precluding participation in the decision to adopt the redevelopment plan. Id.

Chairing a meeting at which city council considers matters relating to a utility in which mayor has a financial interest would

be a prohibited participation in the governmental decision. (July 2, 1975) 1 FPPC Opin. 54.

Mayor's future interest in a trust which owned utility stock was sufficient to prevent his vote on any matter involving the utility and the city. Id.

A legislator's investment does not give rise to a conflict of interest unless the legislator votes on a matter affecting his financial interests. (July 2, 1975) 1 FPPC Opin. 39.

Asterisks * * * indicate deletions by amendment

§ 87101

GOVERNMENT CODE

§ 87101. Participation in legal governmental action or decision

Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 87102. Additional requirements: remedies

The requirements of Section 87100 are in addition to the requirements of Articles 2 and 3 of this chapter and any Conflict of Interest Code adopted thereunder. No provision of Chapter 11 of this title is applicable to this article except the provisions of Section 91003. The remedies provided in that section may be sought against any public official other than an elected state officer, and those remedies are the exclusive remedies for a violation or threatened violation of Section 87100.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 87103. Financial interest: material effect; indirect investment or 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:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(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, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, by any business entity controlled by the public official or by a trust in which he has a substantial interest. A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

1. In general

Sale by mayor of his stock in utility proposing to contract or deal with city removed potential conflict of interest. (July 2, 1975) 1 FPFC Opin. 54.

Ownership by mayor of utility stock worth more than statutory limit created conflict of interest precluding vote on proposals involving city and utility. Id.

Mayor's future interest in a trust which owned utility stock was sufficient to prevent his vote on any matter involving the utility and the city. Id.

The fact that a legislator's investment does not give him a voice in the business does not affect the question of financial interest. (July 2, 1975) 1 FPFC Opin. 39.

Underline indicates changes or additions by amendment

§ 91001

GOVERNMENT CODE

prosecutor may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 91002. Effect of conviction on candidacy; exception; nolo contendere; felony

No person convicted of a misdemeanor under this title shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for purposes of this section. Any person violating this section is guilty of a felony.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 91003. Injunction; conflicts of interest

(a) Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require the plaintiff to file a complaint with the Commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include but are not limited to orders, permits, resolutions and contracts, but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 91003.5 Conflicts of interest; discipline

Any person who violates a provision of Article 2 or 3 of Chapter 7 is subject to discipline by his agency, including dismissal, consistent with any applicable civil service or other personnel laws, regulations and procedures.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 91004. Reporting requirements; violations; civil liability

Any person who intentionally or negligently violates any of the reporting requirements of this act shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

§ 91005. Contribution, gift or expenditure, making or receiving as violation; economic benefit of designated employee; civil liability

(a) Any person who makes or receives a contribution, gift or expenditure in violation of Section 84300, 84304, 86202, 86203 or 86204, or makes an expenditure in violation of Chapter 5 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to five hundred dollars (\$500) or three times the amount of the unlawful contribution, gift or expenditure, whichever is greater.

(b) Any designated employee who realizes an economic benefit as a result of a violation of a disqualification provision of a Conflict of Interest Code is liable in

Lassen County Planning Commission (from Minutes)

Tom Pearson - Abstentions on projects involving Bobby
Joe Pearson

- 212 March 5, 1980 INITIAL STUDY Diamond Mountain Investors, Parcel Map # 1-20-80.
"Tom Pearson was excused by the Chairman from this portion of the meeting at
2:28 PM."
- 217 March 5, 1980. TENTATIVE SUBDIVISION MAP Long Valley Ranchos, CC #87.
Fred Nagel; "Mr. (Bobby Joe) Pearson could not be here today."
(Tom Pearson absent for this portion)
- 225 March 5, 1980 PARCEL MAP WAIVER APPLICATION #2-1-80, Long Valley Investors
"Commissioner Pearson was excused from this portion of the meeting."
- 293 May 7, 1980 TENTATIVE SUBDIVISION MAP CC # 88, Eagle Lake Estates.
"Commissioner Pearson excused from this hearing."

LAW OFFICES OF
HILLIS, PHILLIPS, CAIRNCROSS, CLARK & MARTINA PROFESSIONAL SERVICE CORPORATION
403 COLUMBIA STREET
SEATTLE, WASHINGTON 98104623-1745
AREA CODE 208GLENN J. AMSTER
PETER L. BUCK
H. RAYMOND CAIRNCROSS
MARK S. CLARK
JEROME L. HILLIS
GEORGE A. KRESOVICH
GEORGE W. MARTIN, JR.
SALLY H. MILLEN
DAVID E. MYRE, JR.
LOUIS D. PETERSON
JOHN E. PHILLIPS
RICHARD S. SWANSON
RICHARD R. WILSON

October 4, 1979

Ms. Marilyn Liddicoat, Chairwoman
Santa Cruz County Board of Supervisors
County Complex
701 Ocean Avenue
Santa Cruz, California 95060

Re: Appearance of Fairness Doctrine in Land Use Matters

Dear Ms. Liddicoat:

Brian Prinn of Lowe Associates in Los Angeles has asked me to set out for you a brief explanation of the appearance of fairness doctrine as it has developed in Washington State. The Washington courts, followed by other state courts around the country, have imposed a requirement of the appearance of fairness on all "quasi-judicial" land use matters, i.e., where local decision makers decide between opponents and proponents of a land use matter after a statutorily-required public hearing. The doctrine has found its principal application in rezone hearings, but theoretically applies to any land use matter in Washington meeting this quasi-judicial test.

In brief, the appearance of fairness doctrine is a judicially-created imposition of certain due process limitations on zoning proceedings in order to ensure that zoning decisions are not only fair in fact, but appear fair, as well. The first judicial expression in the State of Washington of the appearance of fairness doctrine occurred in Smith v. Skagit County, 75 Wash. 2d 715, 453 P.2d 832 (1969). The court, in a divided opinion, held that a zoning amendment adopted during the course of proceedings is invalid where those proceedings do not meet the tests of manifest fairness. The court recognized that zoning hearings differ from other types of hearings held by local legislators in that they are required by law and are basically quasi-judicial in nature, i.e., the decision makers ultimately decide between the views of opponents and proponents of a specific land use measure. In Smith, the rezone was invalidated because the

Ms. Marilyn Liddicoat
October 4, 1979
Page two

county commissioners had held a private meeting at which proponents of a rezone had been invited to argue its merits and opponents of the rezone were excluded. The court announced the following test for appearance of fairness violations:

"The test of fairness, we think, in public hearings conducted by law on matters of public interest, vague though it may be, is whether a fair-minded person in attendance at all of the meetings on a given issue, could, at the conclusion thereof, in good conscience say that everyone had been heard who, in all fairness, should have been heard and that the legislative body required by law to hold the hearings gave reasonable faith and credit to all matters presented, according to the weight and force they were in reason entitled to receive."

75 Wash. 2d at 741.

In a following case, Chrobuck v. Snohomish County, 78 Wash. 2d 858, 480 P.2d 489 (1971), the court invalidated a rezone not merely because of private meetings between the decision makers and rezone proponents, but also because of bias evidenced by members of the planning commission in favor of the rezone. Such an expression of bias was held to violate the quasi-judicial nature of rezone hearings.

"Likewise, the members of the planning commission, as public officers impressed with the duty of conducting a fair and impartial fact-finding hearing upon issues significantly affecting individual property rights as well as community interests, must, so far as practicable, (consideration being given to the fact that they are not judicial officers,) be open-minded objective, impartial and free of entangling influences or the taint there of They must be capable of hearing the weak voices as well as the strong. To permit otherwise would impair the requisite public confidence in the integrity of the planning commission and its hearing procedures."

78 Wash. 2d at 869.

Ms. Marilyn Liddicoat .
October 4, 1979
Page three

In later cases, the court has held that, in order to show a violation of the appearance of fairness doctrine, it is necessary only to show an interest in a planning commissioner or county councilman which might have influenced a member of the commission and not that it actually so affected him.

The outer limits of the appearance of fairness doctrine are difficult to establish, since the court has expanded its application in many instances and has identified violations of the doctrine only on a case-by-case basis. However, the following are the chief kinds of violations which have been found to nullify zoning proceedings:

1. Meeting in closed session between rezone proponents and decision makers at which public and opponents are excluded, in order to discuss merits of rezone.
2. Denial of cross examination at zoning hearings.
3. Private visits by planning commission members to company headquarters in Los Angeles to inspect the operations of the rezone proponent; entertainment of planning commission members during the trip.
4. Planning commission member signing an advertisement in support of a proposed rezone and later participating in rezone proceedings, even though member disqualified himself from voting.
5. Chairman of county commissioners summarily moving to grant rezone application prior to all testimony being heard and stating his opinion in support of rezone that opponents are wasting their time in testifying. (Anderson v. Island County, 81 Wash. 2d 312, 501 P.2d 594 (1972), a copy of which is enclosed.)
6. Ownership by planning commission member of property nearby rezone site, with concomitant possibility that planning commission member's property will appreciate as a result of rezone. (Buell v. City of Bremerton, 80 Wash. 2d 518, 495 P.2d 1358 (1972), a copy of which is enclosed.)

Ms. Marilyn Liddicoat
October 4, 1979
Page four

7. Successful rezone proponents retained city councilman as their attorney less than 48 hours after critical vote on rezoning application.

8. Member of planning commission was employee of a bank which held a mortgage on property being rezoned; rezone invalidated even though bank employee did not know of mortgage, since the impression might be left in the minds of members of the public that the financial interests of the bank might possibly have affected the proceedings.

9. Member of planning commission who was also on the board of directors of the local chamber of commerce which had endorsed rezone, and member of planning commission who was employee of the chamber of commerce had sufficient interests to invalidate the rezone, even though neither member participated in the chamber's recommendation.

In addition, the California Court of Appeals has recently recognized Washington's appearance of fairness doctrine in connection with the approval of subdivision plans by the Los Angeles City Council. In a case which expands even further on what the Washington court has decided thus far, the California court held that campaign contributions by the plat applicant, his engineer, and his attorney to members of the city council invalidated the subdivision approval. Woodland Hills Residents Ass'n, Inc. v. City Council, 153 Cal. Rptr. 651 (Cal. Ct. App. 1979). It is unknown whether the Washington court will follow suit in such a situation, but the case highlights the importance which courts are now placing on the quasi-judicial nature of land use proceedings. They are thus requiring decision makers to act very much like judges in such a situation. They must therefore be free from entangling influences or even the appearance of bias or partiality.

Although Washington court cases have no binding legal effect in California, these cases may be persuasive to California courts because of the precedent-setting nature of Washington's appearance of fairness doctrine. Accordingly,

the framers of the Washington State Constitution and the legislators who proscribed lotteries.

For this court to go beyond what seems to me to be the most common-sense interpretation of the legislative intent and to interpret the applicable provisions as outlawing contests like the "Guest-Guesser" game, would be to set an unfortunate and unnecessary precedent. After such a holding, the court will find itself on a confusing and frustrating trek down a road of inescapable logic paved with luck and skill mingled contests, throwing these contests into a judicially dug ditch of dubious illegality, at the expense of common sense and in contravention of the values and intent of the drafters of the statutes and of the citizens of this state.

I cannot agree with such a result. I would declare the "Guest-Guesser" contest legal.

[No. 42259. En Banc. April 20, 1972.]

CHARLES E. BUELL *et al.*, Appellants, v. THE CITY OF BREMERTON *et al.*, Respondents.

- [1] Zoning—Equity—Laches—Defense in Zoning Challenge. Laches can operate as a defense to an action challenging zoning decisions.
- [2] Equity—Laches—Elements—In General. Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them; the elements are a knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant, an unreasonable delay by the plaintiff in commencing that cause of action, and damage to the defendant resulting from the unreasonable delay.
- [3] Zoning—Proceedings—Actual Fairness. Members of a planning commission must, insofar as is practicable, be open-minded, objective, impartial, free of entangling influences, and capable of hearing the weak voices as well as the strong.
- [4] Zoning—Proceedings—Appearance of Fairness—Single Act or Circumstance. In order to conclude that a planning commission hearing does not have the necessary "appearance of fairness" it need only be shown that a member had an interest in the outcome which might have affected his decision. A single act or set of

circumstances casting a sufficient amount of suspicion on the member can destroy the appearance of fairness.

- [5] Zoning—Proceedings—Appearance of Fairness—Grounds for Disqualification. A ground for disqualification of a planning commission member exercising quasi-judicial functions is the actual or apparent presence of an interest whereby one stands to gain or lose by a decision either way.
- [6] Municipal Corporations—Records—Minutes of Public Body—Impeachment. The official records of a public body may not be impeached in the absence of fraud.
- [7] Zoning—Proceedings—Appearance of Fairness—Recommendations. The self-interest of one member of a planning commission destroys the appearance of fairness and affects the action of the other members of the commission regardless of their impartiality. The fact that the vote of the tainted member is not counted, or the fact that the planning commission makes recommendations only, leaving a final decision on a zoning matter to the city council or other body, does not validate the proceeding (overruling *Chestnut Hill Co. v. Suchonishi*, 76 Wn.2d 741 insofar as it is inconsistent). [See Ann. 10 A.L.R.3d 694; 58 Am. Jur., Zoning (1st ed. § 7).]
- [8] Zoning—Spot Zoning—Arbitrary and Capricious Action—What Constitutes. In order to disturb the action of a city council in making a zoning change on grounds that the change constitutes spot zoning, it must be found that the council acted in an arbitrary and capricious manner, i.e., willful and unreasonable action, without consideration and in disregard of facts or circumstances. Where there is room for two opinions, action is not arbitrary and capricious when exercised honestly and upon due consideration though it may be felt that a different conclusion might have been reached.
- [9] Zoning—Spot Zoning—Deviation From Comprehensive Plan. Deviation from a comprehensive plan by increasing the area in which a particular use is permitted is not automatically spot zoning; each case depends on its own facts.
- [10] Zoning—Comprehensive Plan—Function. A comprehensive plan is generally a blueprint suggesting or proposing regulatory measures to be implemented by the actual zoning enactment.
NELL and HUNTER, JJ., dissent in part by separate opinion.
- Appeal from a judgment of the Superior Court for Kitsap County, No. 57230, Jay W. Hamilton, J., entered December 6, 1971. *Affirmed in part; reversed in part.*
- Action to review zoning decisions of a city council. Plaintiffs appeal from a judgment in favor of the defendants.
- Derrill T. Bastian, for appellants.

Also, sections 8920-8926 do not apply since by its terms it does not extend to city officials.

We turn to a consideration of the common law of conflict of interest which we find applicable. It was stated in 42 Ops. Cal. Atty. Gen. 151 at 155 (1963):

"The courts have made clear that even though a specific conflict of interest situation does not come within the statutory proscription—such a conflict may still be condemned by the courts as violative of public policy which is always susceptible to broader interpretation than the express statutory provisions." Kaufmann & Widiss, *The California Conflict of Interest Laws*, 36 So. Calif. L. Rev. 186, 187 (1963). The fundamental policy is that 'A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated . . . to discharge their responsibilities with integrity and fidelity. . . . [T]hey may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. . . .'*Terry v. Bender*, 143 Cal. App. 2d 198, 206 (1956)."

And further in 40 Ops. Cal. Atty. Gen. 210, 212 (1962):

"It is also important to note that the California courts have traditionally predicated conflict of interest decisions on the dual basis of: (a) the statutory restriction; and (b) the prohibition of sound public policy evolved from common law principles. See *City of Oakland v. California Const. Co.*, 15 Cal. 2d 573, 576 (1940); *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 290 (1956). Thus, in *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928), the court concluded that, 'A public officer is impliedly bound to exercise the powers conferred on him with *disinterested skill, zeal, and diligence*. . . .' (Emphasis added.) *Fidelity in the public officer must be maintained, and the law does not permit a public officer to place himself in a position in which he might be tempted by his own private interest to disregard the interests of the public.* See *Stigall v. City of Taft*, Cal. Sup. Ct. Dkt. No. S.F. 20906 (Oct. 23, 1962); *People v. Darby*, 114 Cal. App. 2d 412, 425 (1952)."

in the contract. See *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 291-292 (1956). 40 Ops. Cal. Atty. Gen. 74 (1965) re advisors. See *Stigall v. City of Taft*, 58 Cal. 2d 567 (1962); *Milbrae Assn. For Residential Survival v. City of Milbrae*, 262 Cal. App. 2d 222, 236-237 (1968), re other participants.

However, we believe that under the *unique* circumstances of this case a court would probably not so apply section 1090 if the Commission members complied with the subsequently discussed common law rules regarding full disclosure and nonparticipation. The unique circumstances herein are (1) that there is a *multiple* member Commission instead of a single "advisor" or other participant, as was the case in the authorities above cited, and (2) the advisory or participation status is one step removed from the actual contract itself. The public should be sufficiently protected by disclosure and abstention as hereafter set forth. Under similar circumstances we have similarly concluded. Letter to Hon. Sig Hansen, Director, Department of Human Resource Development, August 16, 1972, 11, 73, 143.

ATTACHMENT (8)

This office has further pointed out that, "The general common law conflict of interest rule is not restricted to contractual relationships. . . . It strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public." 46 Ops. Cal. Atty. Gen. 74, 86 (1965).

The gist of the common law of conflict of interest is to prevent the doing of an official act where the official may have a direct or indirect interest in the outcome. The courts of this state have held that an interest may be so remote and speculative as not to create any conflict of interest. *Hotchkiss v. Morim*, 109 Cal. App. 321, 323 (1930). What constitutes a remote and speculative interest is not clearly defined. For example, in *People v. Darby*, 114 Cal. App. 2d 412 (1952), the court used language that might suggest that any interest that might affect an official's conduct creates a conflict. In *Darby*, the Court, approving the instructions of the trial court, stated (at page 435):

" . . . Whether the interest was *direct or indirect, remote or contingent*, the sum and substance of the three instructions read as a whole is that if the interest of the member is sufficient to cause him to be *swayed in the slightest degree* from his duty to the public, it is a violation of section 1097 as well as 1011." (Emphasis added.)

In light of the language in *Darby*, extreme caution should be exercised in concluding that an interest is too remote. It would appear not to be too remote an interest where the interest of the member of the Commission was that the member's spouse leased tie-down space from the City (e.g., see the last paragraph of section 87103 where the interest of the spouse is deemed that of the official). Further it would appear that an interest would not be too remote where a member of the Commission leases tie-down from a private party at the Airport. This is so because a member could hypothetically keep the City rates low and thereby through the forces of competition keep the private rates low. We have been informed that two of the Commission members fall within these two examples.

We turn finally to the question of the remedy that is to be applied when it is determined that a conflict exists. Several opinions of this office have dealt with situations wherein matters have come before boards or commissions wherein a member of the board had an interest in the matter. In 26 Ops. Cal. Atty. Gen. 5 (1955) we were required to rule upon the question whether a supervisor could participate in the deliberations and decision regarding the relocation of a county road where the supervisor owned property traversed by one of the two routes under consideration. We held that he could not, stating at pages 6-7:

"The question which arises at this point is whether the supervisor who owns the affected land may participate in the prior deliberations and decision concerning the route the relocated road is to take. It is obvious that this decision will directly affect a private interest of the supervisor; that is, whether or not his land will be condemned by the county. While Government Code section 1090 does not forbid his participation, since

CONFLICT OF INTEREST CODE
OF THE
COUNTY OF LASSEN

SECTIONS 100. Purpose. Pursuant to the provisions of Government Code Sections 87300, et seq., the Board of Supervisors of the County of Lassen hereby adopts the following Conflict of Interest Code for all departments of the County of Lassen. Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code Section 81000). The provisions of this Code are additional to Government Code Section 87100 and other laws pertaining to conflicts of interest (including, but not limited to, Government Code Sections 1090, et seq.). Except as otherwise indicated, the definitions of said Act and regulations adopted pursuant thereto are incorporated herein and this Code shall be interpreted in a manner consistent therewith.

SECTION 200. Designated Positions. The positions listed on Exhibit "A" are designated positions. Officers and employees holding those positions are designated employees and are deemed to make, or participate in the making of, decisions which may foreseeably have a material effect on a financial interest.

SECTION 300. Disclosure Statements. Designated positions shall be assigned to one or more of the disclosure categories set forth in Exhibit "B". Each designated employee shall file an annual statement disclosing the employee's interest in investments, real property, and income, designated as reportable under the category to which the employee's positions is assigned on Exhibit "A".

SECTION 400. Place and Time of Filing. (a) Agency heads and members of boards or commissions shall file the original with the agency which shall make and retain a copy and forward the original to the Clerk of the Board of Supervisors.

(b) All other designated employees required to submit a statement of financial interests shall file the original with the agency.

(c) A designated employee required to submit an initial statement of financial interest shall submit the statement within 30 days after the effective date of this code.

(d) Classified service employees appointed, promoted, or transferred to designated positions shall file initial statements within 30 days after date of employment.

(e) All other employees appointed, promoted, or transferred to designated positions shall file initial statements not less than 10 days before assuming office unless an earlier assumption of office is required by emergency circumstances, in which case the statement shall be filed within 30 days thereafter.

(f) Annual statements shall be filed during the month of February by all designated employees. Such statements shall cover the period of the preceding calendar year or from date of filing initial statement.

(g) Closing statements shall be filed within 30 days of leaving a designated position. Such statements shall cover the period from the closing date of the last statement filed to the date of leaving the position.

SECTION 500. Contents of Disclosure Statements. Disclosure statements shall be made on forms supplied by the Department, and shall contain the following information.

(a) Contents of Investment and Real Property Reports:

When an investment, or an interest in real property is required to be reported, the statement shall contain:

- (1) A statement of the nature of the investment of interest;
- (2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
- (3) The address or other precise location of the real property;
- (4) A statement whether the fair market value of the investment, or interest in real property, exceeds ten thousand dollars (\$10,000), and whether it exceeds one hundred thousand dollars (\$100,000).
- (5) Disclosure of location or value of principal residence and personal recreational property is not required.

(b) Contents of Personal Income Reports:

When personal income is required to be reported, the statement shall contain:

- (1) The name and address of each source of income aggregating two hundred and fifty dollars (\$250) or more in value, or twenty-five dollars (\$25) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
- (2) A statement whether the aggregate value of income from each source was greater than one thousand dollars (\$1,000), and whether it was greater than ten thousand dollars (\$10,000);
- (3) A description of the consideration, if any, for which the income was received;
- (4) In the case of a gift, the amount or value and the date on which the gift was received.

(c) Contents of Business Entity Reports:

When income of a business entity, including income of a sole proprietorship, is required to be reported under this article, the statement shall contain:

- (1) The name, address, and a general description of the business activity of the business entity;
- (2) In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the filer's pro rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000);
- (3) In the case of a business entity not covered by paragraph (2), the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(d) Initial Statement:

The first report filed by an employee appointed to a designated position shall disclose any reportable investments and interests in real property. Income shall not be reported.

(e) Acquisition or Disposal During Reporting Period:

If any otherwise reportable investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal shall be reported.

SECTION 600. Disqualification. Designated employees shall disqualify themselves from making or participating in the making or in any way attempting to use their official position to influence a governmental decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

- (a) Any reportable investment or interest in real property;
- (b) Any reportable source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received within twelve months prior to the time the decision is made;
- (c) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

EXHIBIT "A"
DESIGNATED POSITIONS BY DEPARTMENT

<u>POSITION</u>	<u>CATEGORY</u>
Agricultural Commissioner	1,2,3,4,5
Sealer of Weights & Measures	1,2,3,4,5
Air Pollution Control Officer	1,2,3,4,5
Agricultural Extension Agent	1,2,3,4
Agricultural Coordinator	1,2,3,4
Assessor	1,2,3,4
Appraisers	1,2,3,4
Supervisor of Appraisers	1,2,3,4
Auditor/Recorder	1,2,3,4
Chief Deputy	1,2,3,4
Board of Supervisors	1,2,3,4
County Clerk	1,2,3,4
Chief Deputy	1,2,3,4
County Conservator/Public Guardian	1,2,3,4
Deputy	1,2,3,4
County Counsel	1,2,3,4
Deputy County Counsel	1,2,3,4
Secretary	1,2,3,4
Constable, Lassen Consolidated Judicial District	1,2,3,4
Director of Civil Defense	0
District Attorney/Public Administrator	1,2,3,4
Assistant District Attorney	1,2,3,4
Fair Manager	1,2,3,4
Fair Advisory Board	1,2,3,4
Health Administrator	1,2,3,4
Store Keeper (Hospital)	2,3,4
Public Health Assistant	1,2,3,4
Mental Health Director	1,2,3,4
Director of Recovery House	1,2,3,4
Public Health Officer	1,2,3,4
Judge, Lassen Consolidated Judicial District	1,2,3,4
Chief Clerk	1,2,3,4
Librarian	1,2,3,4
Probation Officer	1,2,3,4
Chief Deputy	1,2,3,4
Purchasing Agent/Planning Director	1,2,3,4
Assistant Planning Director	1,2,3,4
Associate Planner	1,2,3,4
Assistant Planner	1,2,3,4
Planner Draftsman	1,2,3,4
Housing Coordinator	1,2,3,4

EXHIBIT "A" (continued)

Director of Public Works	1,2,3,4
Deputy Director (Buildings & Grounds)	1,2,3,4
Deputy Director (Engineering)	1,2,3,4
Deputy Road Commissioner	1,2,3,4
Chief Building Inspector	3,4
Superintendent of Buildings & Grounds	3,4
Road Superintendent	1, 3,4
Road Foreman	1, 3,4
Garage Foreman	3,4
Parts Supervisor	3,4
Sheriff/Coroner	1,2,3,4
Undersheriff	1,2,3,4
Sergeants	3,4
Chief Jailer	3,4
Investigator	3,4
Surveyor	1,2,3,4
Deputy Surveyor	1,2,3,4
Treasurer/Tax Collector	1,2,3,4
Chief Deputy	1,2,3,4
Planning Commission	1,2,3,4
Veteran Service Officer	1,2,3,4
Welfare Direcotr	1,2,3,4,5
Program Manager I	1,2,3,4,5
Eligibility Supervisor	1,2,3,4,5
Social Service Supervisor	1,2,3,4,5
Clerk Supervisor	4,5
Secretary	4,5
All other Staff Positions	5

EXHIBIT "B"

Category 1.

Persons in this category shall disclose all interests in real property within the jurisdiction. Real property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

Persons shall not be required to disclose property used primarily as their residence or for personal recreational purposes.

Category 2.

Persons in this category shall disclose all investments.

"Investment" means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value exceeds one thousand dollars (\$1,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government agency. Investments of an individual include a pro rata share of investments of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.....(Government Code Section 82034)

Category 3.

Persons in this category shall disclose all income received from any source located or doing business within the jurisdiction or expecting to do business within the jurisdiction. Income received from a public agency need not be disclosed.

Category 4.

Persons in this category shall disclose all income from and investments in businesses that provide or sell services or supplies of the type associated with job assignment and utilized by the Department.

Category 5.

Persons in this category shall disclose all items (including real property) valued over \$25.00 received as a gift, purchased from, or sold to any person applying for or receiving any services from the department.