

A 81-12-502

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

January 28, 1982

James Rozek, Esq.
District Counsel
Santa Maria Public Airport
3249 Skyway Drive
Santa Maria, CA 93455

Dear Mr. Rozek:

This letter is sent in response to your letter dated December 8, 1981, requesting advice from this office; the following advice is provided pursuant to Government Code Section 83114(b).^{1/}

My understanding of the facts is as follows. The Santa Maria Public Airport District ("District") is a public airport district which generates revenues by leasing buildings, building space and land parcels located on District land. The District owns the 88-unit Village Mobilehome Park ("Park") on the airport, which had been leased to a lessee-park operator under a long-term lease that expired on March 31, 1981. Prior to expiration of the lease, the District's Board of Directors had voted 4-1 to close the Park when the lease expired. The operator vacated the Park upon expiration of the lease, but the residents refused to move. They have brought a class action suit against the District seeking predisplacement benefits under the California Relocation Assistance Act (Sections 7620, et seq.). The court has enjoined the District from evicting the Park residents pending the outcome of the lawsuit.

Since the expiration of the lease, the District has refused to accept rent from the Park residents so as not to create a landlord-tenant relationship between the District and the residents. The Park is being operated and maintained by an association made up of the residents. The residents including Mr. Wayne Warner, a newly elected District Director,

^{1/} All statutory references made are to the Government Code.

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have been voluntarily paying \$110 monthly (the same as their prior rent) to the association for the Park's operation and maintenance. Any excess funds are held on deposit in a bank by the association.

Mr. Warner has resided in the Park since October 1976. You asked whether the Political Reform Act ("Act") prohibited Mr. Warner's participation in decisions of the Board of Directors regarding the possible operation or lease of the Park by the District and decisions regarding the pending litigation between the Park residents and the District. Our conclusion is that he may not participate in such Board decisions based upon the following analysis.

Section 87100 of the Act contains the basic prohibition against conflicts of 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.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on

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

(c) Any source of income, ... aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made....

Section 87103.

Under the facts presented, Mr. Warner's residency in the park does not constitute an "interest in real property" within the meaning of Section 87103(b). Although a short-term residential leasehold is recognized as a interest in real property, the value of Mr. Warner's interest, if any, does not exceed the \$1,000 minimum threshold for a financial interest.

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The value of a leasehold is normally computed by multiplying the amount of rent by the period of time left remaining on the lease. Commission Regulation, 2 Cal. Adm. Code Section 18233. Since Mr. Warner's former rent was \$110 per month and he has neither the legal right nor the reasonable expectation to occupy the premises for ten more months, the value of his interest falls short of the \$1,000 minimum threshold contained in Section 87103(b).^{2/}

However, we do find that Mr. Warner has a conflict of interest with respect to the above described Board decisions under Section 87103(c).

We have interpreted Section 87103(c), an effect on a source of income, to include a direct financial effect on the official, i.e., where a public official will either avoid or incur out of pocket payments as a direct result of a governmental decision. In this situation, the decision on whether to continue the operation of the Park will directly affect whether Mr. Warner incurs or avoids relocation expenses. Under Commission guidelines, a \$100 effect on the official is generally considered to be material. See 2 Cal. Adm. Code Section 18702(b)(3)(A)-(D). Our understanding is that the relocation costs for a mobile home could well exceed \$1,000. Thus Board decisions on whether the Park will be operated would have a material financial effect on Mr. Warner, and he would be prohibited from participating; as to other Board decisions on the Park, Mr. Warner would not have to disqualify himself.

Mr. Warner cannot participate in Board decisions involving the pending litigation for the same reasons. These decisions could also foreseeably affect whether he will incur relocation costs. In summary, the direct connection

^{2/} The Commission discussed short-term residential leases in its Overstreet Opinion, 6 FPPC 12 (No. 80-010, March 2, 1981) (copy enclosed). In Overstreet, the tenant's rent was much higher than Mr. Warner's, and as a result of the rent control ordinance, she had both the legal right to remain in her apartment and the reasonable expectation that she would stay for the four or five months necessary to place the value of her interest at over \$1,000.

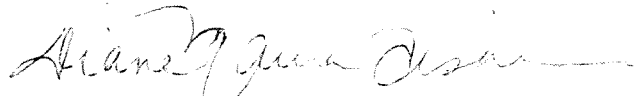
We cannot assume from the temporary court stay on eviction proceedings that Mr. Warner has either the right or expectation to remain in the Park for any particular period of time.

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between the Board decisions on the operation of the Park and on the litigation and whether Mr. Warner will incur out of pocket expenses creates a conflict of interest within the meaning of Sections 87100 and 87103, and Mr. Warner's participation in these decisions is prohibited.

If I can be of further assistance or you would like to discuss this letter, please feel free to contact me at (916) 322-5901.

Very truly yours,



Diane Maura Fishburn
Counsel
Legal Division

DMF:km
Enclosure
cc: W. Kenneth Rice

TWITCHELL AND TWITCHELL

ATTORNEYS AT LAW
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December 30, 1981

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

Attention: Ms. Diane Fishburn

Re: Opinion Request dated December 10, 1981,
from James Rozek, Attorney for Santa
Maria Public Airport District

Dear Ms. Fishburn:

This letter is written on behalf of Wayne Warner and is intended to supplement the above referenced opinion request, since Mr. Rozek's recitation of the underlying facts is not complete. These additional facts are as follows:

The issue of the future of Village Mobilehome Park has, from the beginning (early 1981), been a political one. There was extensive media coverage on the harms that would be suffered by the residents of the mobile home park as a result of the District's decision to close the park, and there was extensive coverage of the District's purported justification for that decision.

The decision to close the mobile home park was the major issue in the November 1980 election. All challengers favored retention of the mobile home park; only the two incumbents supported the decision to close the park. Mr. Warner and Ms. Hale, the winners in the election, were clearly the most vocal in their support of the mobile home park residents.

During the campaign, at debates, television and radio appearances, approximately 50% of the questions from the public concerned the Village Mobilehome Park. It was a well known fact that Mr. Warner was a resident of the park, and a full disclosure of this fact was repeated in the candidate's statement in the voter pamphlets. As can be seen from the attachment, the voters' choice was very clear. Mr. Perry and Mr. Stahl were resoundingly defeated. It is Mr. Warner's belief and it is generally accepted that the results are a reflection of the way the voters felt about the Village Mobilehome Park situation.

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Mr. Warner believes he has an obligation to those who voted for him to vote to reverse the decision to close the mobile home park.

The 1980 vote by the Board to close the park was four to one. Two of the majority were defeated and replaced by Mr. Warner and Ms. Hale. Thus, if Mr. Warner is not permitted to vote, it is very possible that a vote to reverse the prior decision would not succeed (two to two), as clearly intended by the voters.

In addition to the facts surrounding the election of Mr. Warner discussed above, Mr. Rozek's letter fails to indicate that there is no contractual relationship between Mr. Warner and the District regarding Village Mobilehome Park, and there will be no such relationship until the Board decides otherwise. (Mr. Warner does have a contractual relationship with the District in regard to an airplane hangar he leases.)

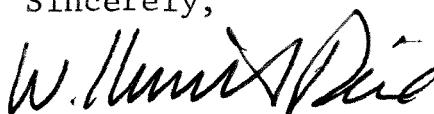
Please assume these facts are accurately represented for purposes of advising Mr. Warner.

Since a primary purpose of the Fair Political Practices Act is to insure an open forum in which voters are given real choices that are not influenced by financial considerations and to insure full disclosure of "special interest" support, it cannot have been the Legislature's intent to prohibit activity such as that represented by Mr. Warner's situation. In fact, it was the Legislature's intention to promote the purity of the election process and every person's right to meaningfully petition government for redress of grievances.

The facts clearly show that Mr. Warner won the election by a wide margin precisely because of his identity with the mobile home park residents. Accordingly, it is respectfully suggested that in answering Mr. Rozek's opinion request, the Commission should construe the Act to promote its purposes consistent with the constitutional right to petition government for redress of grievances. When these additional factors are considered, we are confident that the voters will not be disenfranchised and that the Commission will agree that Mr. Warner should be allowed to vote to reverse the decision to close Village Mobilehome Park.

If you have any questions or if any additional information is needed, please do not hesitate to contact me.

Sincerely,



W. Kenneth Rice

WKR:DB
cc: Mr. James Rozek

A-81-12-503

State of California



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January 4, 1982

James Rozek, Esq.
 District Counsel
 Santa Maria Public Airport
 3249 Skyway Drive
 Santa Maria, CA 93455

Dear Mr. Rozek:

Ms. Milman asked me to respond to your letter requesting advice from this office pursuant to Government Code Section 83114(b). I am in the process of preparing a response to your first question and other questions raised by your letter concerning Mr. Warner's participation in certain Board decisions.

However, I will not be able to answer your second and third questions regarding the legality of Board decisions to enter into certain contracts. These questions do not present issues for interpretation under the Political Reform Act. I refer you to the Attorney General for assistance in resolving these questions.

If you have any questions or would like to discuss this matter, please feel free to contact me at 916/322-5901.

Very truly yours,

Diane Maura Fishburn
 Counsel
 Legal Division

DMF:km

SANTA MARIA PUBLIC AIRPORT

3249 SKYWAY DRIVE • SANTA MARIA, CALIFORNIA • 93455

December 8, 1981

EVERETT W. BERRY
GENERAL MANAGER

AIRPORT DISTRICT DIRECTORS
WILLIS C. PERRY, PRESIDENT
DANIEL J. KIRK, VICE PRESIDENT
CHRISTINE M. CASTELLANOS
SECRETARY
THOMAS A. LANG
ROBERT C. STAHL

JAMES ROZEK, COUNSEL

Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Attention: Barbara A. Milman,
Chief of the Legal Division

Dear Ms. Milman:

Advice is respectfully requested pursuant to section 83114(b) of the Government Code on the following questions:

(1) Is a director of the board of directors of the Santa Maria Public Airport District (District) prohibited under the conflict of interest provisions of the Political Reform Act of 1974, as amended, (Government Code sections 87100 et seq.) from participating in the making of a decision by the board of directors as to whether or not the District will operate or lease for operation of a mobilehome park owned by the District in which the director now resides?

(2) If the board of directors of the District decide to operate the park, would the District be prohibited from renting space in the park to the director for his mobilehome in which he would reside?

(3) If the answer to question (2) is in the affirmative, would the director be able to remain and rent space as a tenant of a lessee-operator of the park, if the District decides to lease the park facilities for operation by the lessee rather than operate it itself?

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The facts and circumstances raising the foregoing questions are as follows:

The District is a public airport district formed and existing under the California Airport District Act (Public Utilities Code sections 22001 et seq.). It owns and operates the Santa Maria Public Airport in Santa Maria, California. It generates revenues by leasing buildings, building space and land parcels located on the airport.

The District owns an 88-unit mobilehome park on the airport, which had been leased to a lessee-park operator under a long term ground lease that expired on March 31, 1981. The lessee-operator vacated the park upon expiration of the lease. However, the residents (subtenants) of the park refused to move from the park and brought a class action against the District in Superior Court seeking the predisplacement benefits under the California Relocation Assistance Act (Government Code sections 7260 et seq.). The court has enjoined the District from taking any eviction action against the park residents pending the outcome of the lawsuit.

A district-wide election was held on November 3, 1981, for election of two directors of the District. Both incumbent directors were defeated in the election, and two new directors were elected to take their place. They took office on November 27, 1981. One of the two newly elected directors, Wayne Warner, has been a resident of the mobilehome park since October 1976. Prior to the expiration of the park ground lease on March 31, 1981, he leased space from the then park lessee-operator for his mobilehome in which he has since resided. Since the expiration of the ground lease on March 31, 1981, the District has refused to accept any tender of rent by the park residents, so as not to create a landlord-tenant relationship between the District and the residents. The park is operated and maintained by an association made up of residents of the park. Mr. Warner has been paying, as other residents have, a monthly amount to the association, which funds are used in part to operate and maintain

the park. Any excess funds over and above the operation and maintenance costs are held on deposit in a bank by the association.

The board of directors of the District with its two new members may decide to reverse the previous decision of the board to close the park and to operate the park itself or lease the park land and facilities to a lessee for operation. Such a decision would be followed by a leasing program by the District (or a lessee-operator) with the existing residents of the park to lease the space now occupied by them. Leasing of space in the park to the existing park residents may result in such residents withdrawing as members of the class in the pending litigation against the District referred to above. However, the action may continue as to those residents who have moved from the park. Mr. Warner is a member of the class certified in the action by the court since he is a "resident of the mobilehome park."

The first question presented is whether director Wayne Warner may participate as a member of the board of directors of the District in the consideration of a decision by the board of directors as to whether or not the District will operate the park or will lease it for operation as a mobilehome park?

If the board of directors does decide to operate the park, or cause it to be operated, may the District (or its lessee-operator) rent coach space in the park to Mr. Warner while he is a director of the District, even though the rental rates, terms and conditions to Mr. Warner are those uniformly applied to tenants of the other 87 spaces rented in the park to others?

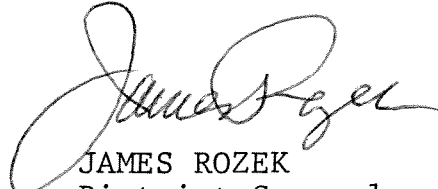
The question also arises as to whether or not Mr. Warner may participate in any deliberation, action, consideration, or decision by the board of directors in connection with the pending class action by residents of the park of which Mr. Warner is a class member, or, in any executive session of the board in which the litigation is discussed or action is taken in executive session with respect to the litigation?

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Advice is requested to these questions and any other questions of a possible prohibited conflict of interest that may be presented.

If you feel that an opinion should be requested of the commission pursuant to subsection (a) of Section 83114 of the Government Code on any of the questions posed in this letter or other questions presented, please let me know.

Very truly yours,



JAMES ROZEK
District Counsel

JR:ld

cc: Directors, SMPAD
General Manager, SMPAD