

A-81-12-507

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

December 2, 1981

Paul H. Morgan
City Attorney of Westminster
5660 Newport Center Drive, Suite 295
Newport Beach, CA 92660

Re: Your Request for Advice
on Behalf of Evar Peterson

Dear Mr. Morgan:

On November 2, 1981, you telephoned the Fair Political Practices Commission seeking written confirmation of oral, telephone advice which you received in April 1980 relative to a possible conflict of interest of City Councilman Evar Peterson. The question arose in the context of consideration of an ordinance for mediation of rent increases in mobile home parks. Because of a turnover in staff during the intervening year and one-half, we are unable to verify that such advice was given to you at that time. On November 3, 1981, you wrote to the Commission seeking advice on a possible future decision by Mr. Peterson involving essentially identical facts.

Based upon the facts you have supplied to us relating to your April 1980 telephone advice request, I can confirm that our advice to you at that time would have been that Mr. Peterson had no conflict of interest requiring his disqualification. At that time, we would have advised you that his mobile home park tenancy did not constitute an "interest in real property" within the meaning of the Political Reform Act. We also would have advised you that if he did have such an interest, the effect of the ordinance, if any, upon such an interest would not be distinguishable from its effect upon a "significant segment of the public generally." Either of these conclusions, standing alone, would suffice to negate a conflict of interest on Mr. Peterson's part.

However, in March 1981 the Commission adopted its opinion in the case of Martin Overstreet (Overstreet, 6 FPFC Opinions

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12, No. 80-010, March 12, 1981), which altered the Commission's interpretation on the issue of whether a month-to-month tenancy could constitute an "interest in real property" for disqualification purposes under the Act. Post-Overstreet, our advice would have changed as to whether Mr. Peterson had an interest in real property. However, there has been no change in our interpretation of what constitutes the "public generally."

For the record, the material facts relating to Mr. Peterson's decision, as provided to us by you, are as set forth below. The advice which I have stated that we would have given is based upon these facts.

1. Councilman Peterson is a tenant in a mobile home park in Westminster.

2. Councilman Peterson owns his mobile home and rents the space on which it is located on a month-to-month basis for \$255.36 per month. This is the general level for space rentals in Westminster mobile home parks.

3. Pursuant to California law [Civil Code Section 798.55(b)], it requires a 60 day notice to terminate such a mobile home park tenancy (his mobile home is of sufficient size to come within this statutory provision).

4. Pursuant to California Law [Civil Code Sections 798.55(b) and 798.56], eviction may only be "for a reason specified" in that law ("for cause" eviction).

5. Westminster consists of 24,220 dwelling units; of those, 2,642 are mobile homes situated in mobile home parks. The vacancy rate in mobile home parks is virtually nil; the vacancy rate overall for Westminster is 2.14%. Thus, mobile home households constitute 10.9% or more of the households in Westminster.

6. There are 17 mobile home parks in Westminster, with a population of 4,791; the total population of Westminster is 71,133. Thus, mobile home dwellers constitute 6.7% of the total Westminster population.

Government Code Section 87100^{1/} provides:

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

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

Section 87103 provides further, in pertinent part, as follows:

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:

* * *

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

The question of whether or not the decision would have an effect on Mr. Peterson which would be distinguishable from its effect on the "public generally" is determinative in this type of situation. Our regulation, 2 Cal. Adm. Code Section 18703 refines this term to include "a significant segment of the public generally." While that phrase has never been quantified by the Commission, it has been satisfied by such segments as (1) owners of less than ^{2/}four units of residential rental property, in Los Angeles; ^{3/}(2) all tenants, in Berkeley; ^{4/}(3) homeowners, in Davis; ^{5/}and shopowners who lease their shop space, in Davis.

A recurring analysis applied by the Commission to any segment in question has been the extent to which that segment is made up of diverse members, whose only "common bond" is their membership in this grouping. ^{6/}Turning to the segment in question here, mobile home owners residing in mobile home

^{2/} Ferraro, 4 FPPC Opinions 62, No. 78-009, November 7, 1978 (copy attached).

^{3/} Overstreet, supra.

^{4/} Owen, 2 FPPC Opinions 77, No. 76-005, June 2, 1976 (copy attached).

^{5/} Id.

^{6/} Ferraro, supra, at 66 and Overstreet, supra, at 17-18.

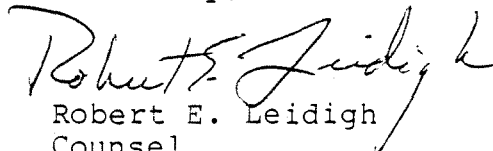
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parks in Westminster, these households make up 10.9% or more of all the households in Westminster.^{7/} Mobile home owners are members of virtually all occupations and are similarly diverse in their other characteristics. Our advice would have been that mobile home owners in Westminster's 17 parks constituted a significant segment of the public generally.

However, if the effect of Mr. Peterson's decision was distinguishable from its effect on other mobile home owners, then a conflict would exist. The ordinance on its face affects all mobile home owners alike, subject to the future, contingent actions of groups of park residents, "Park Committees," and arbitrators, as set forth in the ordinance. As the Commission held in Overstreet, supra, so long as the ordinance adoption decision affected all the mobile home owners (as opposed to only his park, or himself, etc.), then there would have been no conflict of interest for Mr. Peterson.^{8/}

We regret that we were unable to confirm that we gave you this advice in the past. However, we are confident that this is the advice which would have been given to you at that time based upon these facts. In the future, you may wish to obtain our written advice pursuant to Section 83114(b). In the meantime, if I can be of any further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Attachments

^{7/} The vacancy rate for mobile home spaces is smaller than for other housing units, consequently the actual percentage of households is slightly higher than the direct ratio of spaces to dwelling units. Mobile home owners constitute 6.7% of the population of Westminster; however, population was not the basis for the Commission's analysis in Owen.

^{8/} Overstreet, supra at 18; and Owen, supra at 81.

State of California

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November 13, 1981

Paul H. Morgan
City Attorney of Westminster
660 Newport Center Drive, Suite 295
Newport Beach, CA 92660

Re: Your request for written advice.

Dear Mr. Morgan:

Thank you for your recent letter requesting the Commission's written advice about the possible conflict of interest of one of the Westminster City Council members. Government Code Section 83114(b) and 2 Cal. Adm. Code Section 18329 require that: "The identity of the person whose duties are in question shall be provided with the request for written advice."

Before we can issue written advice, which carries with it certain immunities, we must have the name of your client, as well as all the material facts. What percentage (or number) of Westminster's residents are non-mobile/home/park renters? What percentage (or number) are homeowners? What percentage of Westminster's households are in the 17 mobile home parks; are renters; are homeowners?

If you have any questions, please feel free to contact me at 916/322-5901.

Sincerely,
Robert E. Leidigh
Robert E. Leidigh
Counsel
Legal Division

REL:km

Law Offices

Paul H. Morgan

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660 Newport Center Drive

Suite 295

Newport Beach, California 92660

Telephones (714) 644-5421

(714) 644-5423

November 3, 1981

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

Attention: Mr. Robert E. Leidigh

Gentlemen:

Will you kindly furnish us with a written opinion with respect to whether or not a conflict of interest would exist for a City Councilman who is a resident of a mobile home park to vote for an ordinance or an amendment to the ordinance establishing an arbitration procedure for resolving mobile home rental rate adjustment disputes. The population of the city in which the councilman serves (Westminster) is 71,133, and there are 17 mobile home parks with a population of 4,791.

We would appreciate receiving a prompt reply.

Thank you.

Very truly yours,


PAUL H. MORGAN
City Attorney

PHM/np

cc: Orange County Legal Aid Society
Attention: Mr. Richard Spix

State of California



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November 13, 1981

Richard L. Spix
Law Clerk
Legal Aid Society of Orange County
2700 North Main, 11th Floor
Santa Ana, CA 92701

Re: Westminster Mobile Home Ordinance

Dear Mr. Spix:

I am writing in response to your recent request for advice concerning the proper application or interpretation of the Political Reform Act. Under Government Code Section 83114(b), any person may request the Commission to provide written advice with respect to his or her duties under the Political Reform Act. It is the Commission's policy to give advice only to persons, or their representatives, whose duties under the Act are in question. See the Commission's Regulation, 2 Cal. Adm. Code Section 18329(b). Since you are not a person whose duties under the Act are in question, we cannot provide you with advice regarding the application of the Political Reform Act to the specific factual situation you have described.

Although we cannot respond to your request for advice regarding the specific factual situation described, we have received a request for advice concerning the same situation from Paul H. Morgan, attorney for a Westminster City Councilman, whose duties are in question under the Act. We will give careful consideration to the facts as you describe them in determining what advice to give to Paul H. Morgan. I hope this answers your questions.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Leidigh".

Robert E. Leidigh
Counsel
Legal Division

REL:km
Enclosure



LEGAL AID SOCIETY OF ORANGE COUNTY

2700 North Main, 11th Floor, Santa Ana, California 92701
(714) 835-8806

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November 4, 1981

Mr. Robert E. Leidigh
Fair Political Practices Commission
1100 "K" Street
Sacramento, CA 95814

Re: Westminster Mobile Home Ordinance

Dear Sir:

Enclosed for your review in the written opinion requested by the City of Westminster is a copy of Ordinance No. 1928, which has been adopted by a 3-2 vote of the Council with Councilman Peterson voting in favor. Mr. Peterson owns a mobile home in a rented space in the City of Westminster. Please note that the ordinance in Section 2.63.190 reveals that the arbitrated rent procedure is intended to be accomplished within 60 days, which is consistent with existing state law notice requirements to park residents.

Ordinance No. 1928 has been challenged in Orange County Superior Court, No. 35-95-72, alleging inter alia constitutional infirmities. A temporary restraining order is currently in force with a preliminary injunction hearing now set for December 9, 1981. There are only two possibilities which could occur on that date. First, the ordinance could be upheld, in which case no amendment would be required, or a preliminary injunction could issue. In that event, the City faces the choice between seeking extraordinary relief, waiting for trial, or adopting an amended version of the ordinance. Could Councilman Peterson vote for this amended ordinance?

Sincerely,

RICHARD L. SPIX
Law Clerk

RLS: fmb
cc: Paul Morgan, Esq.
City Attorney