

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
(916) 322-5662 322-5660 322-5901 322-6441

May 29, 1984

James Rozek
District Counsel
Santa Maria Public Airport District
3249 Skyway Drive
Santa Maria, CA 93456

Re: Your Request for Advice
Our No. A-84-108

Dear Mr. Rozek:

You have written requesting advice on behalf of three directors of the Santa Maria Public Airport District ("District") as to whether or not they are required to disqualify themselves from voting on increases in the rents for hangar space at the District's facilities, given that they each have such a hangar space lease.

CONCLUSION

If the effect of any decision on the hangar rentals will be to confer a financial benefit or detriment upon the official or a member of the official's immediate family (spouse and dependent children), in an amount of \$100 or more within a one-year period, then disqualification will be required.

FACTS

Your letter provides the following facts:

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

James Rozek
May 29, 1984
Page 2

The governing body of the District is a five-member board of directors elected by the resident voters of the District, with staggered terms. Three incumbent directors were elected in November 1983. Two of these three directors and the husband of the third director* had sometime prior to the election entered into leases with the District for leasing of hangar space to store their aircraft in certain T-hangars at the airport under standard form leases at rental rates then in effect.

There are a total of 8 T-hangars at the airport with 5, 10 or 14 units in each, having a total of 79 spaces or units leased by the District for storage of aircraft at the following monthly rates: 74 units at \$88 per month each; 5 units at \$60 each. The two directors and husband of the third director lease the T-hangar space at \$88 per month.

The T-hangar leases are on a month-to-month basis and may be terminated by either the District or the tenant upon 30 days prior written notice. The leases provide that the rental rates may be increased by the District from time to time upon at least 30 days prior written notice of the increase, provided any increase will be applied equally to other tenants of the T-hangar. A proposal for increase of the rental rates for the T-hangar spaces is first studied by District staff and then submitted to the board of directors with staff's recommendation for the directors to decide by a majority vote whether or not there will be an increase and the amount thereof.... If the board of directors decide to increase T-hangar rental rates they have also, in the past, directed that the new rents be placed in effect uniformly (in the particular class of T-hangar) among the existing tenancies as of a given date after at least 30 days prior written notice is given [by] the District to the tenants of such increase and that the new rates would apply to new leases in the future. There have been no reduction of T-hangar rental rates since inception of the District in 1962.

*In a telephone conversation of May 22 you advised me that the two directors are Messrs. Burt L. Fugate and Richard A. Hulme; director Susan Mann's husband also has a hangar space lease.

The rental rates apply uniformly to the seven T-hangars that have 74 of the 79 total T-hangar units at the airport. Rent for the spaces in the one 5-unit hangar is generally lower than the spaces in the other T-hangar, but are uniformly applied to tenants.

QUESTIONS

You have posed the following questions:

1. Are these three directors required to disqualify themselves from making or in any way participating in the decisions of the District's Board of Directors on the following matters:

(a) Changes in the terms and conditions of existing and future leases used by the District in renting hangar space for storage of aircraft, when two of the directors and the husband of one of the directors are present lessees of hangar space.

(b) Whether or not to increase the amount of rent charged by the District for hangar space to present and future tenants, and the amount of the increase, if an increase is to be made.

2. If the three directors are determined to be disqualified from participating in the decisions of the board on the matters described above, whether the attendance of the three disqualified directors at a regular meeting at which other matters are to be acted upon may be considered in determining that there is a quorum, given that the District's rules require 3 for a quorum. If not, what process is followed?

3. Are the leasehold interests of the three directors reportable interests in real property that should be disclosed in their Statements of Economic Interests for designated employees, Form 730?

ANALYSIS

An "interest in real property" is defined for purposes of the Political Reform Act,^{1/} as follows:

^{1/} Government Code sections 81000-91014. All statutory references are to the Government Code.

"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is greater than one thousand dollars (\$1,000), provided that a leasehold interest does not include a lessee's interest in a lease on real property which expires within 10 years of the first day of the period covered by the filer's statement of economic interest. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater.

Section 82033. (Emphasis added.)

In response to your third question, it is clear from Section 82033 that a tenancy of less than 10 years duration need not be disclosed on an official's Statement of Economic Interests. However, under the Commission's ruling in its Overstreet Opinion, 6 FPPC Opinions 12 (No. 80-010, March 2, 1981), for disqualification purposes, a tenancy may be an interest in real property and is valued by multiplying the monthly rental rate by the number of months remaining in the tenancy. In the case of a month-to-month tenancy, an estimate must be made as to the reasonable expectation of continued tenancy. Overstreet, supra. When the value exceeds \$1,000 then the tenancy constitutes an interest in real property for purposes of Section 87103(b).

In this particular instance, an estimate is difficult to make in light of the fact that the directors in question are both tenant and landlord.^{2/} However, we will assume that this is a month-to-month tenancy in the instant situation and, therefore, not an interest in real property.

^{2/} This raises a question as to whether they may participate under the provisions of Sections 1090, et seq. Because Section 1090 is beyond the scope of the Political Reform Act, we do not provide advice on such questions, but would suggest that you direct an inquiry to the Office of the Attorney General. Section 1090 may impact upon this situation in a different manner than the Political Reform Act.

James Rozek
May 29, 1984
Page 5

As we stated in a previous advice letter to you regarding District board member Wayne E. Warner, if the reasonably foreseeable effect of a decision will be:

... to directly increase or decrease the amount of income (other than rents) to be received by the official, or to confer a financial benefit or detriment upon the official or a member of the official's immediate family, in an amount of one hundred dollars (\$100) or more...

2 Cal. Adm. Code Section
18702(b) (3) (A).

their disqualification will be required so long as the effect is distinguishable from the effect upon the public generally. Here, the maximum number of persons affected will be very small (79) when compared to the number of persons in the jurisdiction. Consequently, the effect upon the three board members will be distinguishable from the effect upon the public generally.

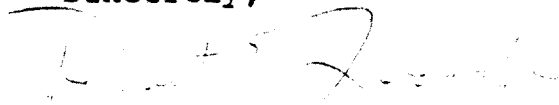
The only remaining question regarding disqualification is whether the magnitude of the decision's effect will meet the above-quoted standard for being considered "material." If the proposed rent increase or decrease will equal \$100 or more over the period of one year, then it will be material. 2 Cal. Adm. Code Section 18702(b) (3) (A).

In response to your second question, if these members (a majority), of the board are required to disqualify themselves, then the procedures for reconstituting a quorum are set forth in the Commission's Hudson Opinion, 4 FPPC Opinions 13 (No. 77-007, Feb. 7, 1978) (copy enclosed). In short, the Hudson Opinion allows one of the three disqualified directors, chosen at random, to be permitted to participate. In the District's situation, this will result in two disinterested members of the board being permitted to vote while only one interested member will be permitted to vote. Thus, the decision will be controlled by the disinterested members since a majority (2) of the quorum (3) can make the decision.

James Rozek
May 29, 1984
Page 6

Should you have any questions regarding the advice contained in this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure



SANTA MARIA PUBLIC AIRPORT

3249 SKYWAY DRIVE • SANTA MARIA, CALIFORNIA • 93458

APR 20 9 57 AM '84

April 20, 1984

DAN J. HOBACK
General Manager

BRENT S. SHINER
Asst. General Manager

AIRPORT DISTRICT DIRECTORS
ELAINE A. HALE
President
BURT L. FUGATE, Vice President
RICHARD A. HULME, Secretary
SUSAN MANN
WAYNE E. WARNER

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 requested pursuant to section 83114(b) of the Government Code as to whether or not three directors of the board of directors of the Santa Maria Public Airport District (District) would be prohibited or disqualified under the conflict of interest provisions of the Political Reform Act of 1974, as amended, (Government Code sections 87100 et seq.) from voting on, making, or in any way participating in the decisions of the board of directors of the District on the following matters:

(1) Changes in the terms and conditions of existing and future leases used by the District in renting hangar space for storage of aircraft, when two of the directors and the husband of one of the directors are present lessees of hangar space.

(2) Whether or not to increase the amount of rent charged by the District for hangar space to present and future tenants, and the amount of the increase, if an increase is to be made.

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

The governing body of the District is a five-member board of directors elected by the resident voters of the District, with staggered terms. Three incumbent directors were elected in November 1983. Two of these three directors and the husband of the third director had sometime prior to the election entered into leases with the District for leasing of hangar space to store their aircraft in certain T-hangars at the airport under standard form leases at rental rates then in effect.

There are a total of 8 T-hangars at the airport with 5, 10 or 14 units in each, having a total of 79 spaces or units leased by the District for storage of aircraft at the following monthly rates: 74 units at \$88 per month each; 5 units at \$60 each. The two directors and husband of the third director lease the T-hangar space at \$88 per month.

The T-hangar leases are on a month-to-month basis and may be terminated by either the District or the tenant upon 30 days prior written notice. The leases provide that the rental rates may be increased by the District from time to time upon at least 30 days prior written notice of the increase, provided any increase will be applied equally to other tenants of the T-hangar. A proposal for increase of the rental rates for the T-hangar spaces is first studied by District staff and then submitted to the board of directors with staff's recommendation for the directors to decide by a majority vote whether or not there will be an increase and the amount thereof, if the directors decide there should be an increase in the rental rates. If the board of directors decide to increase T-hangar rental rates they have also, in the past, directed that the new rents be placed in effect uniformly (in the particular class of T-hangar) among the existing tenancies as of a given date after at least 30 days prior written notice is given the District to the tenants of such increase and that the new rates would apply to new leases in the future. There have been no reduction of T-hangar rental rates since inception of the District in 1962. The rental rates apply uniformly to the seven T-hangars that have 74 of the 79 total T-hangar units at the airport. Rent for the spaces in the one 5-unit hangar is generally lower than the spaces in the other T-hangar, but are uniformly applied to tenants.

April 20, 1984


The T-hangar leases used by the District are on standardized forms with blanks for insertion of the name and address of the tenant, description of the space leased, commencement date, and monthly rent at the rate in effect for the type of hangar. In January 1984 the District revised the form of lease, which had been in use since 1964.

If the terms and conditions of all of the existing T-hangar leases are to be amended by action of the board of directors, for example, adding a provision for late charges in case rent is paid late, the amendment would most likely be evidenced by a written amendment of each lease signed by the District and each tenant. If the three directors are determined to be disqualified from participating in the decisions of the board on the matters described therein, would you please advise whether the attendance of the three disqualified directors at a regular meeting of the directors at which other matters are to be acted upon may be considered in determining that there is a quorum of three directors required by the Administrative Code of the District to hold the meeting. If the three directors may be counted for meeting quorum purposes, but they refrain from any participation or decisions on the subject matters at the meeting, it is my opinion (and please correct me, if I am wrong) that the one or two remaining members of the board present at the meeting may act on and decide the subject matters.

An additional related question is presented. Are the leasehold interests of the two directors, who are lessees of the T-hangars, and the leasehold interests in the T-hangar lease of the husband of one of the directors reportable interests in real property that should be disclosed in the Statement of Economic Interests For Designated Employees, Form 730, filed by them?

Your advice on the questions raised on the first page and elsewhere in this letter, and on any other aspects that should be considered, will be greatly appreciated.

Sincerely yours,


JAMES ROZEK
District Counsel

JR/rr