



California Fair Political Practices Commission

March 20, 1986

C. Anders Holmer
Archer, Holmer & Basile
P.O. Box 6339
Tahoe City, CA 95730

Re: Your Request for Advice
Our File No. A-86-051

Dear Mr. Holmer:

This is in response to your request for advice on behalf of the Squaw Valley County Water District. Your request is based on the following facts.

FACTS

The Squaw Valley Ski Corporation (Ski Corp.) has applied to the Squaw Valley Water District for a one-time refund of approximately \$20,000. The \$20,000 represents water service fees paid by the Ski Corp. for water permits. Since there were no actual water hook-ups on those permits, the Ski Corp. is asking that the money be refunded.

The Ski Corp. is not entitled to a refund of the money under any policy of the water district. The board of directors must decide whether or not to grant the request for a refund.

Two of the directors of the water district, Frank I. Aldridge and Stan Tomlinson, are seasonal employees for the Ski Corp. working as ski instructors, and receiving in excess of \$250 income during the previous 12 months.

A third director, Joseph Marillac receives from the Ski Corp. \$5,000 per year and a seasonal ski pass valued at \$550, as a result of a settlement agreement.

The Squaw Valley Ski Corporation is a privately held corporation located in Placer County. It is the largest employer and land owner within the jurisdiction of the water district.

According to J. W. Mott, Jr., President of the Ski Corp., the corporation has net tangible assets of at least \$18 million

and pre-tax income for the last fiscal year of at least \$2.5 million.

ANALYSIS

The Political Reform Act^{1/} provides that a public official may not make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she has a financial interest. 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 the official or a member of his or her immediate family or on:

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

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

(c) Any source of income, other than gifts and 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 12 months prior to the time when the decision is made.

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

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

within 12 months prior to the time when the decision is made.

Section 87103. (Emphasis added.)

The Commission has adopted a regulation, 2 Cal. Adm. Code Section 18702.1, which states in pertinent part that a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if any person, including a business entity, which has been a source of income to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision. A person or business entity appears before an official in connection with a decision when that person or entity initiates the proceeding in which the decision will be made or is a named party in the proceeding.

The Fair Political Practices Commission has further adopted a regulation which defines when a decision will have an affect on the public generally. Regulation 2 Cal. Adm. Code Section 18703 provides that a material financial effect of a governmental decision on an official's interests, as described in Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Subsection (b) further provides that in the case of an elected official (other than an elected state official), an industry, trade or profession of which that official is a member is a significant segment of the public generally if that industry, trade or profession is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the official.

This provision was adopted to deal with the "company town" situation where virtually everyone is employed by the same company or in the same industry. During my telephone conversation with you of March 13, 1986, you indicated that the Board of Directors for the water district are elected; that the other entities within the district consist of a ski shop and a restaurant, both of which are concessionaires of the Ski Corp., a gas station, a small grocery store and various condominiums.

Here, Ski Corp. is virtually the only industry in the district and those few other employers which do exist are much smaller and are concessionaires of Ski Corp. and ancillary to its operations.

C. Anders Holmer
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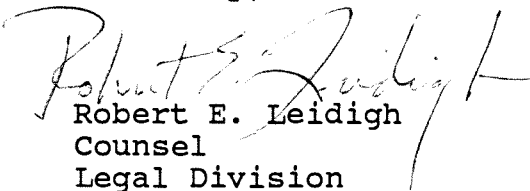
We believe that Board Members Aldridge and Tomlinson are members of the ski industry and as such are subject to the provisions of Regulation 18703(b). Director Marillac, however, is not employed in that industry and is not covered by 18703(b). The Ski Corp. is a source of income to Director Marillac of \$250 or more and is appearing before the district in connection with the decision. Director Marillac is subject to the provisions of Regulation 18702.1.

CONCLUSION

Based on the information provided it appears that the Ski Corp. and the remaining entities of the district represent the predominant industry within the district. Accordingly, Directors Frank I. Aldridge and Stan Tomlinson are not disqualified from making or participating in the making of the decision to make a refund to the Squaw Valley Ski Corporation, because it represents the public generally in this instance. However, Director Marillac is not a part of the ski industry and is, therefore, disqualified.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JET:plh
cc: Robert C. Maddox

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(916) 583-0164

February 25, 1986

Ms. Jeanette E. Turvill
Legal Assistant, Legal Divn.
California Fair Political
Practices Commission
P.O. Box 807
Sacramento, California 95804-0807

Re: Squaw Valley County Water District -
Squaw Valley Ski Corporation

Dear Ms. Turvill:

On February 19, 1986, you wrote to C. Anders Holmer, attorney for the Squaw Valley County Water District in reply to his letter to you of February 6, 1986. In your letter you stated: "We need to know the physical size of the Squaw Valley Ski Corporation and whether it is a privately or publicly held corporation." In my telephone conversation with you today you clarified that a letter from me to you describing generally the assets and pre-tax income of Squaw Valley Ski Corporation would be sufficient to satisfy this requirement.

I am informed by Mr. J. W. Mott, Jr., President of Squaw Valley Ski Corporation, that the stock of Squaw Valley Ski Corporation is not listed on the New York Stock Exchange, or the American Stock Exchange, or the National Association of Securities Dealers National Market List. To the best of our knowledge there is no market maker for Squaw Valley Ski Corporation stock. In effect, the corporation is privately held.

I am further advised by Mr. Mott that the corporation has net tangible assets of at least \$18 million and had pre-tax income for the last fiscal year of at least \$2.5 million.

The issue before the Squaw Valley County Water District is the request of Squaw Valley Ski Corporation for a refund of approximately \$20,000 that Squaw Valley Ski Corporation has paid for water service fees on water permits held where there was no actual water hook-up. The permits would be cancelled and thus, this would be a one time refund of approximately \$20,000 if approved by the Squaw Valley County Water District Board of Directors.

Ms. Jeanette E. Turvill
February 25, 1986
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In my letter to the Fair Political Practices Commission dated February 13, 1986, dealing with this subject matter, I mentioned that the season pass which Squaw Valley Ski Corporation provides to one of the directors, Mr. Joseph Marillac, is part of the consideration in settlement of a lawsuit several years ago. I was not the attorney handling that settlement nor am I in possession of the settlement documents, nevertheless, I am informed by Squaw Valley Ski Corporation that in addition to the season pass Mr. Marillac receives payment of \$1,000 per month for five months each year for a term of years as additional consideration in connection with the settlement.

Please feel free to contact me should you have any questions or should you be in need of any additional information.

Sincerely,



ROBERT C. MADDOX

RCM/sh

cc: Mr. J. W. Mott, Jr.
Mr. C. Anders Holmer

Robert C. Maddox
Robert F. Kane
Nancy A. Cyra
Cris C. Vaughan
Robert W. Paul

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FEB 14 3 20 PM '86

(916) 583-0164

February 13, 1986

The Fair Political Practices
Commission
428 "J" Street, Suite 800
Sacramento, California 95814

Re: Letter from Attorney C. Anders Holmer to
The Fair Political Practices Commission,
Dated February 6, 1986, Regarding the
Squaw Valley County Water District

Dear Commissioners:

Attorney C. Anders Holmer, counsel for the Squaw Valley County Water District wrote to you on February 6, 1986, concerning the inability of the Board of Directors of the Squaw Valley County Water District to act on matters involving Squaw Valley Ski Corporation because three of the five Board members have a conflict of interest.

I represent Squaw Valley Ski Corporation and my client has asked that I write to you to clarify several points. Two of the members of the Squaw Valley County Water District Board of Directors are employees of Squaw Valley Ski Corporation as part time ski instructors. Mr. Stan Tomlinson has been a ski instructor at Squaw Valley since 1949 and Mr. Frank Aldridge has been a ski instructor for many years. Both of these gentlemen were employed as ski instructors long before either one became a director of the Squaw Valley County Water District.

Mr. Joseph Marillac receives a season pass valued at a minimum of \$550. Mr. Marillac's right to receive a ski pass without paying additional compensation is the result of settlement of litigation several years ago between Mr. Marillac and Squaw Valley Ski Corporation. The season pass is not a gift, but is part of the consideration to Mr. Marillac regarding settlement of the lawsuit. My client simply wishes it known that the fact they provide Mr. Marillac with a season ski pass has nothing to do with Mr. Marillac's official responsibilities as the President of the Board of Directors of the Squaw Valley County Water District.

It would seem as though you have already addressed the issue presented here in your opinion dated February 7, 1978, 4 FPPC 13. If that is correct would you please so advise Mr. Holmer.

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Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert C. Maddox". The signature is written in dark ink and is positioned above the typed name.

ROBERT C. MADDOX

RCM/sh

cc: Mr. C. Anders Holmer
Mr. J. W. Mott, Jr.

THOMAS S. ARCHER
C. ANDERS HOLMER

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LOUIS A. BASILE
GREGORY T. SHANLEY

FEB 10 4 24 AM '86

February 6, 1986

The Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Opinion by Squaw Valley County Water District

Dear Fair Political Practices Commission:

Please allow me to introduce myself as the attorney representing the Squaw Valley County Water District, a body politic organized pursuant to §30000, et. seq. of the California Water Code. The Squaw Valley County Water District (hereinafter named "District") is located in Squaw Valley, Placer County, California.

INTRODUCTION

Squaw Valley Ski Corporation is the largest employer, tax payer, and land owner located within a jurisdiction of the District. The District provides governmental services including water, sewer, fire and garbage to property owners within the boundaries of the District. The Squaw Valley Ski Corporation has requested that the Board of Directors of District entertain a motion to refund approximately \$20,000 in yearly water charges which were paid by the Squaw Valley Ski Corporation to District.

The issue as to whether or not the Squaw Valley Ski Corporation is entitled to such a refund is not, in any respect, covered by the ordinances, resolutions or policies of the District and, therefore, the Board of Directors of District must decide whether or not to grant the request for a refund.

As will be elaborated upon more hereinbelow two directors of the District are seasonal employees of the Squaw Valley Ski Corporation. Additionally, one other director received a complementary season ski pass from Squaw Valley Ski Corporation with a fair market value greater than \$250.00.

California Government Code §87100 states as follows:

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.

Further, California Government Code §87103(b) indicates that an employee of any business entity in which the public official is

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a director has a financial interest in a decision within the meaning of Government Code §87100 if it is reasonably foreseeable that the decision will have a material financial affect, distinguishable from its affect on the public generally, on the business entity. Finally, California Government Code §87103(c) indicates a similar financial interest of an official who has any source of income, other than loans, aggregating \$250.00 or more in value received by or promised to the public official within twelve months prior to the time when the decision is made.

Finally, you have entered an opinion on December 8, 1977, cited as 3 FTPC 107, which opinion indicates that the donor of a complimentary ticket which has a fair market value of \$250.00 or more is a source of income and, accordingly, the disqualification provisions of Government Code §87100 apply.

California Water Code §30525 requires a majority vote of the members of the Board of Directors of District.

PARTICULARS RE AFFECTED DIRECTORS

The particulars concerning the three directors are as follows:

1. Joseph Marillac is the President of the Board of Directors of the District. He has received, within the past twelve months, a complimentary season ski pass from the Squaw Valley Ski Corporation, which pass allows him unlimited use of the facilities of Squaw Valley Ski Corporation during the time when the Squaw Valley Ski Corporation is open to the public. The season ski pass which has been given to Mr. Marillac is identical to the season ski pass which is purchased by members of the public at a minimum price of \$550.00.

2. Frank I. Aldridge is the vice-president of the Board of Directors of the District and owns a gasoline station within the jurisdiction of the District. This gasoline station is a business which generates the vast majority of Mr. Aldridge's income on an annual basis. Mr. Aldridge is a certified ski instructor and is employed by the Squaw Valley Ski Corporation during the time when the Ski Corporation is open as a ski instructor. Mr. Aldridge generally works for the Squaw Valley Ski Corporation on the weekends and can be available for work during the week but generally conducts his gas station business during that time.

3. Stan Tomlinson is a certified ski instructor and is employed by the Squaw Valley Ski Corporation on same basis as Mr. Aldridge, although it is my belief that Mr. Tomlinson works more hours during

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the course of the week than Mr. Aldridge as Mr. Tomlinson's main source of income during the winter months is income derived from employment as a ski instructor.

ISSUES PRESENTED AND OPINIONS REQUESTED

1. Are Directors Aldridge and Tomlinson, by virtue of their seasonal part-time employment with Squaw Valley Ski Corporation, disqualified to participate in the pending decision pursuant to Government Code §87100?

2. Is Director Marillac, by virtue of his complimentary season ski pass, disqualified from participating in the pending decision by Government Code §87100?

3. Assuming that the three directors are disqualified, is there any exception, statutory or otherwise, which could allow the Board of Directors of District to act upon the pending decision in light of California Water Code §30525?

CONCLUSION

Obviously, the District, the affected directors and myself will fully cooperate with you in all respects. Further, your prompt attention to this inquiry is respectfully requested inasmuch as other issues involving the Squaw Valley Ski Corporation will involve decisions of the Board of Directors of District and the resolution of this issue is essential to allow the District to transact its business in a proper and efficient manner.

Very truly yours,



C. ANDERS HOLMER

CAH/mp

cc: Bob Maddox, Esq.
Tom Anderson
Squaw Valley County Water District



California Fair Political Practices Commission

February 19, 1986

C. Anders Holmer
Archer, Holmer & Basile
P.O. Box 5339
Tahoe City, CA 95730-5339

Dear Mr. Holmer:

We have received your February 6, 1986, letter requesting written advice concerning a possible conflict of interest.

We will be happy to provide written advice; however, in order to respond to your letter, we will need the additional information listed below. Regulation 2 Cal. Adm. Code Section 18329 (copy enclosed) requires that this information be provided before we can act on your request for advice.

In 1985 the Commission adopted a regulation (2 Cal. Adm. Code Section 18702.2) which provides guidelines for determining when a decision will have a material financial effect on a business entity. This regulation provides that a higher disqualification threshold will apply to large corporations than to small companies.

In order for us to apply this regulation to the scenarios provided in your letter, we need to know the fiscal size of the Squaw Valley Ski Corporation and whether it is a privately or publicly held corporation.

Please provide this information by March 19, 1986, so that we can respond to your letter in a timely manner. If you cannot provide the information by that date, please contact this office. If we do not hear from you by March 19, 1986, we will have to assume that you have withdrawn your request for advice.

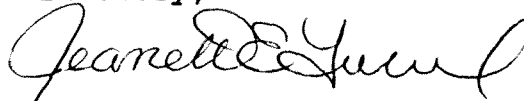
When we have received the additional information, your request for advice will be assigned to a member of our staff for review and response. Written advice is generally provided

C. Anders Holmer
February 19, 1986
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within 21 working days after all pertinent information has been received.

Please contact this office at (916) 322-5901 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanette E. Turvill".

Jeanette E. Turvill
Legal Assistant
Legal Division

JET:plh
Enclosure