



California Fair Political Practices Commission

June 12, 1986

R. R. Campagna, City Attorney
City of Kingsburg
13261 E. Shaw Avenue
Sanger, CA 93657

Re: Your Request for Advice
Our File No. A-86-070

Dear Mr. Campagna:

Thank you for your request for advice on behalf of Kingsburg City Councilmember Albert Hovnanian^{1/} regarding his duties under the Political Reform Act.^{2/}

QUESTIONS

1. If he does not participate in the decision, may Councilmember Hovnanian in his capacity as a real estate broker represent before the City Council or Redevelopment Agency a landowner who wishes to combine parcels within the Redevelopment Agency project area, by condemning adjacent land and "writing down" acquisition costs to his client?

2. If Councilmember Hovnanian cannot represent his client before the City or Redevelopment Agency, can the City or Redevelopment Agency proceed with such a proposal on its own?

^{1/}In our recent telephone conversation, you indicated that the City has already made a decision regarding upgrading the Kingsburg water system. As I indicated, the Commission does not provide advice relating to past conduct. 2 Cal. Adm. Code Section 18329(b)(8)(A). Accordingly, we have not provided advice regarding that issue.

^{2/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

CONCLUSIONS

1. Councilmember Hovnanian may not participate in any decision where his client "appears" before the City or Redevelopment Agency, or where the decision will have a reasonably foreseeable material financial effect upon his client. If he is disqualified from participating in the decision, Councilmember Hovnanian may not represent his client before the City or Redevelopment Agency regarding that decision.

2. Under the Political Reform Act, Councilmember Hovnanian's disqualification with respect to his client does not preclude the City or Redevelopment Agency from proceeding with the client's proposal. However, you should consider the possible application of Government Code Section 1090.

ANALYSIS

Government Code Section 87100 prohibits a public official from making, participating in the making, or in any way attempting 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 within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally on:

- (a) Any business entity in which the public official has a direct or indirect investment worth more than \$1,000.
- (b) Any real property in which the public official has a direct or indirect interest worth more than \$1,000.
- (c) Any source of income ... aggregating \$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.

Section 87103(a)-(d).

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You have asked whether, if he disqualifies himself, Councilmember Hovnanian may represent his client before the Redevelopment Agency or City Council with regard to the client's proposal to combine parcels within the Redevelopment Agency project area, by condemning adjacent land and "writing down" acquisition costs to his client. Assuming the client has been a source of income of \$250 or more received by or promised to Mr. Hovnanian in the 12 months preceding the decision, Councilmember Hovnanian may not make, participate in making, or in any way attempt use of his official position to influence any decision which will have a reasonably foreseeable material financial effect on his client. Section 87103(c). Commission regulations 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed) describe when the financial effects of a decision will be considered "material". In addition, Councilmember Hovnanian may not participate in or attempt to use his official position to influence any decision in which his client "appears" before the City or Redevelopment Agency. 2 Cal. Adm. Code Section 18702.1.

Commission Regulation 2 Cal. Adm. Code Section 18700.1 provides that an official uses his official position to influence a governmental decision when the official contacts, appears before, or otherwise attempts to influence, any member, officer, employee or consultant of an agency. Attempts to influence include, but are not limited to appearances or contacts by the official on behalf of a business entity, client or customer. Accordingly, if Councilmember Hovnanian is disqualified from participating in a decision before the City or Redevelopment Agency, he may not represent his client before the City or the Redevelopment Agency.

The Political Reform Act would not prohibit the City or the Redevelopment Agency from contracting with Mr. Hovnanian's client. However, there may be a potential conflict of interest under Government Code Section 1090. The Commission is not authorized to give advice concerning the application of Section 1090. You should contact the Attorney General's Office for advice concerning this issue.

I trust this answers your questions. If you have any further questions, please feel free to contact me at (916) 322-5901.

Sincerely,



John G. McLean
Counsel
Legal Division

JGM:sm

R. R. Campagna
ATTORNEY AT LAW

13261 E. Shaw Avenue
Sanger, California 93657
Telephone (209) 297-1111

F P P O
MAY 13 9 18 AM '86

May 8, 1986

California Fair Political
Practices Commission
428 J Street, Suite 800
Post Office Box 807
Sacramento, California 95804-0807

Attn: Robert E. Leidigh, Counsel

Re: City of Kingsburg, My File: 1797
Your File: A-86-070

Dear Mr. Leidigh:

Responding to yours of April 15, 1986 herewith the answers.

COUNCILWOMAN JOHNSON

1. The Johnson Lumber Company is a closely held corporation.
2. Not qualified for public sale of securities under Corporation Code §25110.
3. Mrs. Johnson herself has 28% of the outstanding shares.

COUNCILMAN HOVNANIAN

1. A sole proprietorship in the Real Estate brokerage located at 1398 Draper Street, Kingsburg.
2. Wholly owned.
3. Sole owner

BOTH

1. Yes

Mrs. Johnson and her husband have community property interests in two residential lots and the lumber yard premises.

Mr. Hovnanian has interests in five parcels, 3 as sole owner and 2 with equal shares owned by his ex-wife. With the exception of his home (sole owner) the other four are commercial properties located in downtown area - none within the Redevelopment Project Area.

R. R. Campagna

ATTORNEY AT LAW
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EFFECT OF DECISIONS

1. Will impact all future development within the city, including Redevelopment Project Area, equally by upgrading the water system and storm drain system standard requirements.
2. All property owners within city, including Project Area, who seek to develop will be affected.
3. Would be 100% if all property owners either began new development or major modifications of existing land improvements. Probably will have most impact on undeveloped or underdeveloped lands within the city and/or Project Area and that is extremely difficult to quantify. City of Kingsburg's total population is 5795 as of 1984 certified figure.

I trust this will enable you to proceed. If you have any other questions, please advise.

Very truly yours,



R. R. Campagna
City Attorney, City of Kingsburg

RRC/sjb
cc: Kingsburg Councilmembers

7/6/86
R. R. Campagna
ATTORNEY AT LAW

13261 E. Shaw Avenue
Sanger, California 93657
Telephone (209) 297-1111

F P P C
APR 7 9 48 AM '86

March 28, 1986

California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95804-0807

Attn: Robert E. Leidigh, Counsel
Legal Division

Re: REQUEST FOR ADVICE
City of Kingsburg
File: I-86-070

Dear Mr. Leidigh:

Thank you for your kind efforts to respond to my original letter request of February 18, 1986. I presented your letter to the City Council of the City of Kingsburg as a whole and they, and each of the affected councilmembers, authorized and directed me to request a formal opinion from your office. They are earnestly seeking to improve the community and do not wish to violate the laws in the process.

Accordingly, without restating the entire factual background set forth in my prior letter, I am merely providing you with the names and addresses of the officials designated only as "A" and "B" in said letter.

A-Councilwoman and Redevelopment Agency member SYLVIA JOHNSON, 2450 - 16th Ave., Kingsburg, CA 93631 (home)

B-Mayor Pro Tem and Redevelopment Agency member ALBERT HOVNANIAN, P. O. Box 396, Kingsburg, CA 93631 (home)

Both of their "official" addresses are Kingsburg City Hall, 1401 Draper Street, Kingsburg CA 93631 (209) 897-5821.

If there is anything further you need, please advise. Thanking you in advance for your continued courtesies,

Very truly yours,


R. R. Campagna
City Attorney, City of Kingsburg

RRC/sjb
cc: Kingsburg Councilmembers



California Fair Political Practices Commission

April 15, 1986

R. R. Campagna, City Attorney
City of Kingsburg
13261 E. Shaw Avenue
Sanger, CA 93657

Re: Your Request for Advice
Our File No. A-86-070

Dear Mr. Campagna:

This is in response to your letter, dated March 28, 1986, requesting formal written advice on behalf of Councilwoman Sylvia Johnson and Mayor Pro Tem Albert Hovnanian concerning their duties under the Political Reform Act (the "Act").

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 (a copy of which was enclosed in my previous letter) requires that this information be provided before we can act on your request.

With respect to Councilwoman Johnson's husband's lumber yard:

- (1) What is the nature of this business entity? (i.e. - is it a partnership, closely held corporation or publicly held corporation).
- (2) Is the business entity qualified for public sale in this state pursuant to Corporations Code Section 25110?
- (3) What percentage of the business does Mr. Johnson own?

With respect to Mayor Pro Tem Hovnanian's Real Estate business:

- (1) What is the nature of this business entity?
- (2) What percentage of the business does Mr. Hovnanian own?
- (3) Does Mr. Hovnanian own or rent the real estate office?

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With respect to both Councilwoman Johnson and Mayor Pro Tem Hovnanian:

- (1) Do they own any real property interests within the City of Kingsburg?

With respect to the decisions being considered by the City Council and/or Redevelopment Agency:

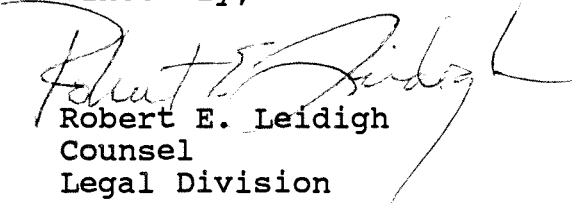
- (1) How will the decisions concerning the water supply system and storm drainage system impact development within the City?
- (2) How many other property owners will be affected by these decisions in substantially the same manner as Councilwoman Johnson and Mayor Pro Tem Hovnanian?
- (3) What percentage of Kingsburg's population do such property owners constitute?

Please provide this information by May 15, 1986, so that I can respond to your letter in a timely manner. If you are unable to provide the information by that date, please contact this office. If I do not hear from you by May 15, 1986, I will have to assume that you have withdrawn your request for advice.

When I receive this additional information I will respond to you within 21 working days.

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

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:JG:sm



California Fair Political Practices Commission

May 13, 1986

R. R. Campagna
Attorney at Law
13261 E. Shaw Avenue
Sanger, CA 93657

Re: 86-070

Dear Mr. Campagna:

Your letter requesting advice under the Political Reform Act has been received on May 13, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script, reading "Jeanette E. Turvill".

Jeanette E. Turvill
Legal Assistant
Legal Division

JET:plh