



California Fair Political Practices Commission

April 15, 1986

Joseph D. Patello
Port Attorney
Port of San Diego
P.O. Box 488
San Diego, CA 92112

Re: Your Request for Advice on
Behalf of William B. Rick
Our File No. A-86-078

Dear Mr. Patello:

This is in response to your letter, dated February 27, 1986, requesting formal written advice on behalf of Port Commissioner William B. Rick regarding his duties under the Political Reform Act (the "Act").^{1/} In that letter and subsequent communications, you and Mr. Rick have stated the material facts as follows.

FACTS

The San Diego Unified Port District ("Port District") is a public agency and tideland trustee organized pursuant to the San Diego Unified Port District Act. The Port District is governed by a Board of Port Commissioners ("Board") and has jurisdiction over certain San Diego Bay tide and submerged lands which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation. For the past several years the Board has been pursuing the construction of a major Convention Center facility, which will be located on filled tidelands of San Diego Bay presently owned and controlled by

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Our advice does not address any possible application of Section 1090. Because a contract is involved here, you may wish to review the possibility of that statute applying to these circumstances.

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the Port District. At the present time the Phase II construction contract for the Convention Center has been advertised for competitive bids and is expected to be awarded about the 15th of April 1986. The estimated cost of construction is in excess of \$100 Million and the award by law must be made to the lowest monetary responsible and reliable bidder.

Besides the award of the construction contract, the Board will be making decisions regarding other matters, such as the actual construction and changes thereto and the operating agreement with the City of San Diego, which is now effective and is for operation of the Center after its completion. Additionally, there are other pending decisions which have to do with hotels, one of which is presently constructed and in operation under a lease from the Port District; another of which is under construction, and a vacant site which will ultimately be leased as a hotel site.

Mr. Rick is a member of the Board and is Chairman of the Ad Hoc Committee for the Convention Center. Mr. Rick is also part owner, and Chairman of the Board of Rick Engineering Company. Mr. Rick owns approximately 30 percent of this company and his investment exceeds ten thousand dollars (\$10,000). Rick Engineering Co. conducts business throughout San Diego County and provides civil engineering and consultant services, land use planning and surveying services. In addition, Rick Engineering Co. owns 80 percent of Ricon Corporation, which is located in San Diego and provides environmental consultant services.

Rick Engineering Co. has provided surveying or engineering services to two of the prospective bidders for the Convention Center construction contract: McKee Construction Company and Dillingham Corporation.

McKee Construction Company is a subsidiary of Santa Fe Land Improvement Company ("Santa Fe"). During the past twelve months Rick Engineering Company received over thirty-eight thousand dollars (\$38,000) in income from Santa Fe. Additionally, Santa Fe is a joint venture partner in the Chula Vista Investment Company. During the past twelve months, Rick Engineering Company has performed work, valued at approximately eighty-nine thousand dollars (\$89,000) for the Chula Vista Investment Company.

During the past twelve months, Rick Engineering Company received over sixteen thousand dollars (\$16,000) in income from Dillingham Corporation.

Mr. Rick has asked us to assume that Rick Engineering Co. will not perform any services for any successful bidder during his term of office or for two years thereafter.

QUESTIONS

Mr. Rick wishes to know:

1. Whether he may participate in the decision to award the Phase II construction contract; and
2. Whether he may participate in other decisions regarding the actual construction of the Convention Center?

CONCLUSION

1. Mr. Rick must disqualify himself from participating in the decision to award the Phase II construction contract.
2. Mr. Rick must disqualify himself from participating in any decision regarding the actual construction of the Convention Center if it appears that the decision could have a reasonably foreseeable material financial effect on a source of income, or other financial interest to Mr. Rick.

ANALYSIS

The Act prohibits public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they have 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 within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

For purposes of Section 87103(c), income also includes:

... a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater.

Section 82030.

As Mr. Rick owns approximately 30 percent of Rick Engineering Company, 30 percent of the income received by Rick Engineering Company from Santa Fe^{2/} or Dillingham Corporation during the past 12 months will be inputed to Mr. Rick for the purpose of determining whether these corporations are a source of income to Mr. Rick.

^{2/} Although Santa Fe is not bidding on the construction contract, its subsidiary, McKee Construction Company, is. Under 2 Cal. Adm. Code Section 18706, a material financial effect on McKee Construction Company is also a material financial effect on its parent corporation, Santa Fe.

As it is clear that Mr. Rick has received in excess of \$250 from both Santa Fe and Dillingham during the past twelve months, these business entities are deemed to be sources of income to Mr. Rick for the purposes of Section 87103. Accordingly, Mr. Rick must disqualify himself from participating in any governmental decision where it is reasonably foreseeable that the decisions will have a material financial effect, distinguishable from its effect on the public generally, on either Santa Fe or Dillingham.

1. Phase II Construction Contract

The award of the Phase II construction contract to the successful bidder will directly result in an increase in that business entity's gross revenues. In determining whether the financial effect of that decision will be material, we must look to the guidelines for materiality set forth in 2 Cal. Adm. Code Section 18702.2 (copy enclosed). Under these guidelines, as the size of the corporation increases so does the threshold for materiality. For example, in the case of a "Fortune 500" corporation, the test for materiality would be whether the effect of the decision would cause an increase or decrease in the corporation's gross revenues of one million dollars (\$1,000,000) or more during a fiscal year. In the case of a small closely held corporation the test would be whether the decision would result in an increase or decrease in the corporation's gross revenues of ten thousand dollars (\$10,000) or more during a fiscal year.

Because the amount of the Phase II contract is estimated at one hundred million dollars (\$100,000,000) or more, it is clear that the guideline for materiality would be more than satisfied for even a "Fortune 500" corporation. Therefore, it is reasonably foreseeable that the decision to award the contract will have a financial effect on either Santa Fe's subsidiary, McKee Construction Company, or Dillingham Corporation should they be the successful bidder.

Once it is determined that a decision would have a reasonably foreseeable material financial effect on a source of income to a public official, the public official must disqualify himself from participating in the decision unless it can be shown that the effect of the decision will be substantially the same on a significant segment of the public (the "public generally" exception). However, as this decision will confer a direct financial benefit on the successful bidder, it is clear that the public generally exception is not applicable.

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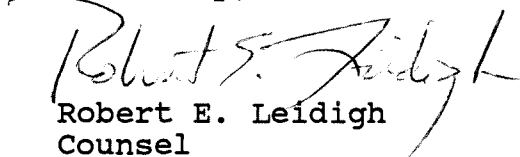
In addition, because the awarding of the contract involves the bidders "appearing" before the agency, disqualification would be required as well by 2 Cal. Adm. Code Section 18702.1.

Lastly, because a contract situation is involved, we would again reiterate that there is the possibility of Section 1090 applying to your circumstances. Because that section is outside the Act, we cannot provide you with advice as to its applicability, but suggest instead you consult with the County Counsel or the Attorney General.

2. Other Decisions Regarding the Actual Construction of the Convention Center

With respect to other decisions regarding the actual construction of the convention center, the same analysis applied to the contract award decision would be applicable. If it appears that it is reasonably foreseeable that the decision would have a material financial effect on an economic interest of Mr. Rick, then Mr. Rick would be required to disqualify himself from participating in the decision. Without specific facts regarding these potential decisions we are unable to provide more specific advice. If, however, Mr. Rick desires additional advice when these facts become known, we will be happy to provide further assistance.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh
Enclosure



Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3900 • P.O. Box 488, San Diego, California 92112

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27 February 1986

Fair Political Practices Commission
State of California
Post Office Box 807
Sacramento, California 95804

Attention: Legal Division

Gentlemen:

This is a request for formal written advice concerning the operation of the San Diego Unified Port District (Port District), a public agency and tideland trustee organized and existing pursuant to the San Diego Unified Port District Act, which has been codified in the California Harbors and Navigation Code, Appendix 1.

The Port District is governed by a Board of Port Commissioners (Board) and has jurisdiction over certain San Diego Bay tide and submerged lands which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation. For the past several years the Board has been pursuing the construction of a major Convention Center facility, which is an appropriate use under the trust, and which will be located on filled tidelands of San Diego Bay presently owned and controlled by the Port District. At the present time the Phase II construction contract for the Convention Center has been advertised for competitive bids and is expected to be awarded about the 15th of April 1986. The estimated cost of construction is in excess of \$100 Million Dollars and the award by law must be made to the lowest monetary responsible and reliable bidder.

Besides the award of the construction contract, the Board will be making decisions regarding other matters, such as the actual construction and changes thereto and the operating agreement with the City of San Diego, which is now effective and is for operation of the Center after its completion. There are other pending decisions also which have to do with hotels, one of which is presently constructed and in operation under a lease from the Port District; another which is under construction, and a vacant site which will ultimately be leased as a hotel site.

With the above background and outline of the pending decisions of the Board, Commissioner William B. Rick, who is a member of the Board, upon my recommendation, has asked that I request formal written advice concerning these matters and whether or not he must disqualify himself from participating in any of the above-noted pending decisions because of any interest involved.

The financial interest for consideration and the factual background are contained in the enclosed letter from Commissioner Rick to me dated February 24, 1986. In addition thereto, the following facts are submitted regarding Rick Engineering Company:

1. It has offices at 5620 Friars Road, San Diego, California, and at 3088 Pio Pico Drive, Carlsbad, California. Commissioner Rick owns more than Ten Per Cent of Rick Engineering Company and that ownership has a value in excess of Ten Thousand Dollars.
2. It conducts business throughout San Diego County and provides civil engineering and consultant services, land planning and surveying services.
3. It owns Eighty Per Cent of Ricon Corporation which provides environmental consultant services. Ricon is located at 1276 Morena Boulevard, San Diego. There is no other subsidiary or business related entity. Neither Rick Engineering Company nor Ricon have any interest in real property on lands owned, used or controlled by the Port District or within two miles thereof.

As explained above, the Port District's jurisdiction is limited to the tide and submerged lands of San Diego Bay, which have been conveyed to the Port District and surveyed and mapped by the State Lands Commission. The jurisdiction of the Port District extends landward only to the mean high tide line (except for reporting real property interests within two miles thereof) and includes some filled tidelands such as San Diego International Airport and areas where industrial and commercial buildings and maritime facilities are located. The enclosed map, which depicts the Port District ownership of tidelands, may be of assistance

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in analyzing this matter. Furthermore, if additional information is deemed necessary as you proceed, such as Commissioner Rick's Annual Statement of Economic Interest, please let me know, and I will provide it for you.

Thank you for your consideration of this matter.

Sincerely,



JOSEPH D. PATELLO
Port Attorney

JDP:sw

enclosures



COMMISSIONER
BOARD OF PORT COMMISSIONERS

RECEIVED
FEB 25 1986

SAN DIEGO UNIFIED
PORT DISTRICT
Port Attorney

February 24, 1986

Mr. Joseph Patello
Attorney
Port of San Diego
Post Office Box 488
San Diego, California 92112

Re: Conflict of Interest - Convention Center

Dear Mr. Patello:

I am requesting an anticipatory opinion in light of the prospective opening of bids for the San Diego Convention Center.

This opinion should cover both my position as a member of the Port Commission and as chairman of the Ad Hoc Committee for the Convention Center.

The question is:

May I vote upon the award of the Convention Center contract and, subsequently, participate in the administration of the job as a member of the Committee, if the contractor is any one of those listed below?

The facts applicable are:

1. Neither I nor any entity in which I am an owner has any direct or indirect ownership interest in any bidder.
2. I am a partial owner and Chairman of the Board of Rick Engineering Company, a corporation. My salary from this employer is my principal source of income.

3. Rick Engineering Company has provided surveying or engineering services to the following Convention Center prospective bidders as described:

A. McKee Construction Company

McKee is a subsidiary of Santa Fe Land Improvement Company. Santa Fe Land Improvement Co. is a joint venture partner in Chula Vista Investment Co. Chula Vista Investment Co. is a client of Rick Engineering Company.

- (1) Current work to date in 1986:
 - a. For Chula Vista Investment:
\$20,000 ±.
- (2) Work 1980-1985
 - a. Chula Vista Investment Co.:
\$81,902
 - b. Santa Fe Improvement Land Co.
= \$38,726
- (3) Percentage of Rick Engineering gross, 1986:
 - a. Chula Vista Investment Co.: 1%
(projected)
- (4) Percentage of Rick Engineering gross, 1980-1985:
 - a. Chula Vista Investment Co.:
.0014%
 - b. Santa Fe Improvement Land Co.
= .006%

B. Dillingham Corporation

- (1) Current work = -0-
- (2) Work 1980-1985: \$38,726
- (3) Percentage of Rick Engineering Gross, 1986 = Nil

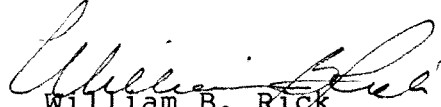
Mr. Joseph Patello

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4. Assuming I may retain my participation, Rick Engineering will perform no services for any successful bidder during my term of office or for two years thereafter.

Sincerely,



William B. Rick

WBR:lms