



California Fair Political Practices Commission

July 6, 1987

Stanley E. Remelmeyer
City Attorney
City of Torrance
3031 Torrance Blvd.
Torrance, CA 90503

Re: Your Request for Advice
Our File No. A-87-146

Dear Mr. Remelmeyer:

You have written requesting advice on behalf of Torrance City Councilmember Dee Hardison.

QUESTION

Is Councilmember Hardison disqualified from participating in a decision regarding issuance of a use permit for repressurization of a depleted oil field which encompasses real property in which she has an interest?

CONCLUSION

Councilmember Hardison is disqualified from participating in the decision on the use permit if the oil company becomes a source of \$250 in royalty income received by or promised to Ms. Hardison. She may also be disqualified if the decision on the use permit will have a reasonably foreseeable material financial effect on the value of her real property which is distinguishable from the decision's effect upon the public generally.

FACTS

Ms. Hardison and her spouse are one-fourth owners through a partnership of a 6-unit apartment building on a parcel of land of approximately 7,500 square feet. The land and improvements are valued at approximately \$435,000. The partnership owns the mineral rights to the land.

The City of Torrance is situated on top of an extensive oil field, which has been producing since the early 1920's. Much of the reserves have been depleted. In order to continue to produce oil from the field, the oil companies now utilize a process known as secondary oil recovery. This process requires the injection of water into the underground oil reserve in order to repressurize the depleted oil field so that additional oil may be recovered.

An oil company now wishes to develop a portion of the oil field into a secondary recovery unit. Certain aspects of this operation will be under control of the city and a conditional use permit will be required for such operations. Conditional use permits are heard and decided by the planning commission but are appealable to the city council. Since this matter will be of some controversy and importance, it is very likely that the decision on the conditional use permit will be appealed to the city council.

The oil company is seeking the concurrence of Ms. Hardison's partnership in the formation of the secondary recovery unit. However, because 100% agreement is not required for the formation of such a unit, the formation of the unit may go forward and become effective even if this partnership refuses to agree to its formation.

In either event, if the secondary recovery unit is formed and comes into operation, royalties would be paid to the partnership on account of its ownership of the mineral rights for the parcel. The size of the parcel is a little larger than a single family dwelling lot in the city. Based upon that size, the maximum royalty which might be earned in any year is estimated to not exceed \$1,000.

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that a public official disqualify herself from making, participating in making, or using her official position to influence a

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

governmental decision in which she has a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect upon the public generally, on the official, a member of the official's immediate family, or on:

(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.

Section 87103(b) and (c).

Ms. Hardison has an investment interest in the apartment building partnership. (Section 82034.) As a result of this investment interest, she also has an interest in real property. (See Sections 82033 and 82034.) As an owner of more than 10 percent of the apartment building, Ms. Hardison has a pro-rata interest in the income received from any source of income to the apartment building partnership. (Section 82030(a).) Her pro rata share is 25 percent. Consequently, if the oil company agrees to pay the royalties, the oil company will become a source of income "promised to" Ms. Hardison of up to \$250. Thus, if the obligation to pay that sum becomes a reality prior to the decision, the oil company will be a "source of income" to Ms. Hardison within the meaning of Section 87103(c).

The oil company is coming before the city seeking a use permit to allow it to operate the repressurized oil field. As such, it is "appearing" before Ms. Hardison in the proceeding within the meaning of Regulation 18702.1(a) and (b) (copy enclosed). Consequently, if the oil company is considered a source of income of \$250 or more to Ms. Hardison, she would be required to disqualify herself from participation in the decision on the use permit.

If the oil company does not reach an agreement with the partnership which includes an arrangement to pay royalties or

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does not otherwise become obligated to pay the royalties, disqualification would not be required pursuant to Section 87103(c) and Regulation 18702.1. We must then examine the reasonably foreseeable financial effects upon Ms. Hardison's interest in real property to determine if disqualification is required by Section 87103(b).

You have stated that the real property is valued at approximately \$435,000. Applying the guidelines set forth in Regulation 18702(b)(2) (copy enclosed), a financial effect upon the value of the real property (either up or down) of \$2,175 (one-half of 1 percent) would be considered to be material.

Consequently, if it is reasonably foreseeable that the operation of the repressurized oil field will increase or decrease the value of the apartment building property by at least \$2,175, the decision to grant or deny the use permit will have a material financial effect upon Ms. Hardison's interest in real property.

For instance, if the operation of the oil field would depress property values because the residential use of properties in the area would be adversely affected, such an effect upon her property might be reasonably foreseeable. On the other hand, it may be that because her property retains the mineral rights that the value of the property would increase by at least \$2,175 because of anticipated royalties. You are in a better position to judge whether such factors are present than are we.

Lastly, even if Ms. Hardison's property value will be affected by at least \$2,175, she will not be required to disqualify herself if the affect upon her real property value is not distinguishable from the effect upon the public generally, or a significant segment of the general public. (See Section 87103 and Regulation 18703, copy enclosed.) You have stated that the parcel of property on which the apartment building is situated is approximately the same size as most residential lots in the area. You have also indicated that the amount of royalties to be paid to property owners is related in some way to lot size. Consequently, if many other owners of property in the area will receive approximately the same amount of royalties and have their property values affected in "substantially the same manner," disqualification may not be required. This would be the case if those owners constitute a significant segment of the city's residential property owners. (See Owen Opinion, 2 FPPC Ops. 77 (No. 76-005, June 2, 1976);

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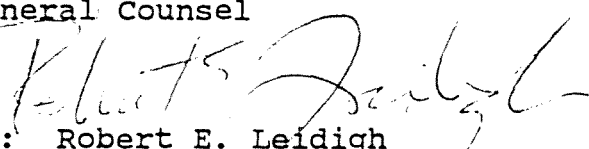
and Legan Opinion, 9 FPFC Ops. 1 (No. 85-001, Aug. 20, 1985),
copies enclosed.)

Again, you are in a much better position to determine if the "public generally" exception applies in this circumstance. It could be that most property owners' values will decrease because of the incompatibility of the oil field use and their residential uses. However, it may also be that for those owners who retain their mineral rights, the royalties more than compensate for this loss. If such were the case, the public generally exception would not apply for Ms. Hardison unless the group of owners who retain mineral rights is sufficiently large in number and otherwise diverse so as to constitute a significant segment of the general public. (See Owen Opinion, supra; Ferraro Opinion, 4 FPFC Ops. 62 (No. 78-009, Nov. 7, 1978), copy enclosed; and Legan Opinion, supra.)

I trust that this letter adequately responds to your inquiry. If you or Ms. Hardison desire more guidance as more facts become known, please do not hesitate to contact this office. For questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

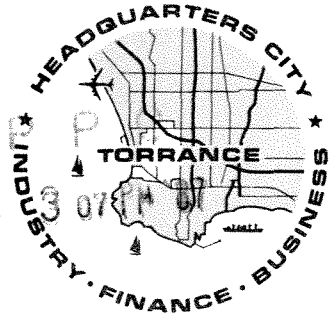
Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosures

STANLEY E. REMELMEYER
CITY ATTORNEY

MAY 26



CITY OF TORRANCE

3031 TORRANCE BOULEVARD, TORRANCE, CALIFORNIA
TELEPHONE (213) 328-5310 90503

May 15, 1987

Fair Political Practices Commission
1128 J Street
Sacramento, California 95814

Re: Request for Opinion

Gentlemen:

We hereby request from your Honorable Commission an opinion whether a certain member of the City Council can vote and participate in the decision making process under the following set of circumstances.

There is in the City of Torrance an extensive oil field, dating from the early 1920's. Some of that oil field in the city is under a pressurization regime, known as secondary oil recovery. This process, as you may know, requires the injection of water into the underground oil reserve in order to re-pressure the depleted oil field so that additional oil may be recovered. Now, a certain oil company wishes to "unitize," another portion of the oil field into another secondary recovery unit. The actual unit boundaries, and the operation of the water injection and oil recovery are under the control of the Division of Oil and Gas (DOG). The surface conditions, and the physical location of the drilling and pumping equipment, however, will be within the control of the City, and a Conditional Use Permit is required for such operations. Conditional Use Permits are heard and decided by the Planning Commission, but are appealable to the City Council. Since this matter will be of some controversy and importance in the City, the matter will, without doubt, be appealable to the Council. Hence this request for opinion.

The Councilmember in question and spouse own, as community property, a one-fourth interest (with partners) in a 6-unit apartment building, on a parcel of land of about 7500 square feet, valued at approximately \$435,000. The partnership owns the mineral rights to the land.

The oil company in question is seeking the concurrence of the partnership to the formation of the secondary oil recovery unit, and if such concurrence is given, the partnership property will earn an annual oil royalty from the recovered oil. The

royalty is based on the percentage of land owned within the secondary oil recovery unit. The size of this parcel is hardly bigger than a single family dwelling lot, or parcel. Based on that size, the maximum royalty which might be earned in any year is estimated to not exceed \$1000. It should be noted that the secondary oil recovery unit formation may go forward, and become effective even if this partnership refuses to agree to its formation, and in that event, the royalty would still be tendered each year. In other words, full, 100% agreement is not required for the formation of such a secondary oil recovery unit.

The Councilmember is looking forward to the probability that the land use question arising from the Conditional Use Permit will come before the City Council on appeal eventually, at which time, a question of conflict of interest may arise.

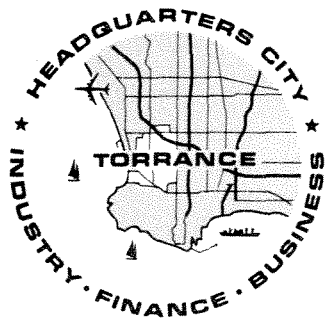
In the event the matter comes before the City Council on appeal, may the Councilmember participate in the consideration and vote on the issues?

Very truly yours,


Stanley E. Remelmeyer
City Attorney

SER/WGQ/av/42

STANLEY E. REMELMEYER
CITY ATTORNEY



87-146

CITY OF TORRANCE

3031 TORRANCE BOULEVARD, TORRANCE, CALIFORNIA
TELEPHONE (213) 328-5310 JUN 5 8 19 AM '87 90503

June 2, 1987

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804-0807

RE: 87-146

Ladies and Gentlemen:

We are in receipt of your letter of May 29, 1987 regarding the above referenced request for opinion.

I have spoken to the Councilmember in question, and have received her authority and permission to proceed with the request for opinion under the guidelines you set forth in your letter.

The Councilmember who has requested opinion is Mrs. Dee Hardison, and she may be reached at 3031 Torrance Boulevard, Torrance, California 90503, telephone (213) 618 - 2801. The Councilmembers are not full time, and so may not be available all the time by telephone.

Very truly yours,


Stanley E. Remelmeyer
City Attorney

SER/WGQ/av