



California Fair Political Practices Commission

December 8, 1987

Paula Kimbrell
Attorney at Law
724 Leona Drive
Arcata, CA 95521

Re: Your Request for Advice
Our File No. A-87-279

Dear Ms. Kimbrell:

You have requested advice on behalf of Mr. Aldo Bongio, a member of the Board of Directors of the Humboldt Community Services District, concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} This letter confirms the telephone advice I provided to you on November 30, 1987.

QUESTION

May Mr. Bongio participate in a decision concerning reimbursement of water and sewer connection costs to a developer who is a source of income to the real estate business for which Mr. Bongio works? You have informed us that Mr. Bongio has not made any sales within the developer's subdivision and is not now negotiating or otherwise involved in any sales on behalf of the developer.

CONCLUSION

Under the facts presented, the developer has not paid or promised Mr. Bongio income of \$250 or more in the preceding 12 months. Therefore, Mr. Bongio may participate in the decision concerning reimbursement of the water and sewer connection costs.

^{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.

FACTS

Mr. Bongio is a real estate agent for Cutten Realty. He is an independent contractor and receives a commission for each sale that he makes for Cutten Realty. During the preceding 12 months he has received more than \$250 in commissions from Cutten Realty.

Cutten Realty is the exclusive agent for real estate sales in an area known as the Flekkefjord subdivision. Ralph Matsen is the owner and developer of that subdivision. You have informed us that Mr. Bongio has not made any sales in that subdivision and he is not currently negotiating any such sales.

Mr. Bongio also is a director of the Humboldt Community Services District. The Humboldt Community Services District provides water and sewer service through a system of water and sewer pipelines. As not all property within the district has been developed, the pipelines do not extend throughout the district.

The district is authorized to enter into sewer and/or water pipeline extension agreements with persons who wish to develop property not previously served by the district. The developer must extend the district's existing water and/or sewer pipelines to his own property line and also through his property to a point where it adjoins other property not yet served by the district. In this manner, the other property may be connected to the pipeline without further construction.

The pipeline extension agreements may provide for reimbursement to the developer for the construction costs associated with providing sewer and water service to adjacent parcels. When the reimbursement provisions are included in an agreement, the agreement states that if an adjacent parcel is developed within five years, the district will impose a surcharge fee on the developer of the adjacent parcel. The district then uses the surcharge fees collected to reimburse the developer of the first parcel.

In June 1987, the district entered into an agreement for pipeline extension with Mr. Matsen. Mr. Matsen had extended pipelines through his property, the Flekkefjord subdivision, to an adjoining property line. At that time, Mr. Matsen's agreement with the district did not provide for reimbursement from developers of the adjacent property. However, Mr. Matsen now has requested that the district amend the pipeline extension agreement to provide for reimbursement of approximately \$8,000 of his costs through surcharge fees to be

levied on the developer of five adjacent parcels, Gerald Pavlich. Mr. Pavlich disputes Mr. Matsen's cost information and contends that the reimbursement should be approximately \$4,300.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using 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 governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

(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(c).

As a director of the Humboldt Community Services District, Mr. Bongio is a public official. (Section 82048.) He has received more than \$250 in commission income during the preceding 12 months. Thus, he must disqualify himself from participating in any decision which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally,^{2/} on the source or sources of that commission income. (Section 87103(c).)

Regulation 18704.3 (copy enclosed) provides that real estate agents have multiple sources of commission income. These sources of income include the broker and brokerage business entity under whose auspices the agent works and the person the agent represents in the transaction. (Regulation 18704.3((c)(3).) For purposes of the Act, "commission income"

^{2/} The facts presented in your letter indicate that the "public generally" exception does not apply to the decision in question. Therefore, we shall omit discussion of that exception for the remainder of this analysis.

means gross commission income. (Regulation 18704.3(b).) The full gross value of any commission income for a specific transaction is attributed to each source of commission income in that transaction. (Regulation 18704.3(d).)

Accordingly, Cutten Realty is a source of \$250 or more in commission income to Mr. Bongio. In addition, any person who Mr. Bongio represents in a real estate transaction is a source of \$250 or more in commission income to Mr. Bongio if the transaction produces a commission of at least \$250 for Mr. Bongio. Thus, Mr. Bongio must disqualify himself from any decision before the Humboldt Community Services District which would foreseeably and materially affect Cutten Realty or any client from whom he has received or has been promised \$250 or more in commission income. (Section 87103(c).) For purposes of this analysis, we must determine whether Mr. Matsen is a source of commission income to Mr. Bongio.

Cutten Realty is the exclusive agent for Mr. Matsen's Flekkefjord subdivision. However, you have informed us that Mr. Bongio has not made any sales in that subdivision and that he is not currently negotiating any such sales. Accordingly, he has not received any commission income from Mr. Matsen during the preceding 12 months. Furthermore, based on the facts you have provided and our previous advice in similar situations, no commission income has been "promised to" Mr. Bongio by Mr. Matsen.

We have previously advised that where a real estate transaction has been consummated, but the commission has not yet actually been received, the commission income is considered "promised to" the broker or agent. (Robbins Advice Letter, No. A-87-074; Remelmeyer Advice Letter, No. A-81-510, copies enclosed.) Cutten Realty's exclusive listing with Mr. Matsen for the Flekkefjord subdivision could make Mr. Matsen a source of promised income to Cutten Realty and its owner, Mr. Lee Hobbs,^{3/} even prior to the consummation of any sales. (Felts Advice Letter, No. A-85-130, copy enclosed.) However,

^{3/} Mr. Hobbs also is a director of the Humboldt Community Services District. You have informed us that Mr. Hobbs has disqualified himself from the decision in question because Mr. Matsen is a source of more than \$250 in commission income during the preceding 12 months. We agree with Mr. Hobbs' determination that he is disqualified from participating in the decision. (See Sections 87100 and 87103(c); Regulation 18702.1(a)(1), copy enclosed.)

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Mr. Bongio is not an owner of Cutten Realty, nor is he a party to the exclusive listing agreement. Thus, the fact that he could ultimately benefit from that agreement does not give rise to a sufficiently strong expectation of eventual commission income to make Mr. Matsen a source of promised income to Mr. Bongio prior to Mr. Bongio's consummation of a sale on Mr. Matsen's behalf.

Accordingly, Cutten Realty is Mr. Bongio's only relevant source of income for purposes of this analysis. Therefore, we next consider whether it is reasonably foreseeable that the decision to amend the water and sewer pipeline extension agreement to provide for reimbursement to Mr. Matsen would have a material financial effect on Cutten Realty.

An effect on Cutten Realty is considered "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is but a mere possibility, it is not "reasonably foreseeable." (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The decision to reimburse Mr. Matsen for his costs will not directly increase or decrease the commission income Cutten Realty receives from sales of Mr. Matsen's property in the Flekkefjord subdivision. Mr. Pavlich, the developer of the parcels adjacent to Mr. Matsen's property, has argued that Cutten Realty could lose its status as the exclusive sales agent for the Flekkefjord subdivision if Mr. Bongio's vote were to upset Mr. Matsen. However, your letter states that there are no facts which indicate that Cutten Realty's continued representation of the Flekkefjord subdivision depends in any way on the district's decision concerning amendment of the pipeline extension agreement to provide for reimbursement of Mr. Matsen's costs. Based on this information, we conclude that it is not reasonably foreseeable that the district's decision will materially affect Cutten Realty. Accordingly, Mr. Bongio may participate in the decision.

In our telephone conversation, I advised you that our advice would be different if Mr. Bongio had received or was promised commission income from Mr. Matsen prior to the decision in question. However, if Mr. Bongio consummates a sale for Mr. Matsen after the district's decision concerning reimbursement of Mr. Matsen's costs, Mr. Bongio's vote is not invalidated retroactively. I also advised you that the Commission has ruled that in the event the district could not achieve a quorum because of disqualification under the Act, a method of random selection should be used to determine which of the otherwise disqualified officials may participate in the

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decision pursuant to Section 87101. (In re Hudson (1978) 4
FPPC Ops. 13, copy enclosed.)

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures

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October 26, 1987

Fair Political Practices Commission
Legal Division
P. O. Box 807
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Sacramento, Ca. 95804

Dear FPPC:

I represent the Humboldt Community Services District (hereinafter "HCS D"), a community services district of the State of California, located in Cutten, California and organized under and acting pursuant to the Community Services District Law (Government Code section 61000 et seq.). HCS D's primary functions are providing water and sewer service to District residents. HCS D has a five-member Board of Directors through which the District acts, currently consisting of Robert Bollman, Aldo Bongio, Eugene Brochard, Lee Hobbs and Kevin McKenny. The Directors, in particular Aldo Bongio, have authorized me to request that the FPPC issue an opinion pursuant to Government Code section 83114, subdivision (a), or in the alternative, if an opinion will not be issued, to provide written advice pursuant to subdivision (b). In my telephone conversation with your office, it was suggested that I set out the facts, ask the questions which the FPPC is to answer, and provide a legal analysis of the situation.

FACTS

HCS D provides water and sewer service through a system of water and sewer pipelines. As not all property within the District has been developed, the pipelines do not extend throughout the District. HCS D is authorized to enter into sewer and/or water pipeline extension agreements with persons who wish to develop property not previously served by HCS D and who extend existing HCS D water and/or sewer pipelines in order that HCS D may provide service. It is HCS D's practice to require that such persons extend pipelines not just to their property line, but through their property to a point where it adjoins other property not yet served by HCS D. In this manner the other property may be connected to the pipeline without further

construction. In order to reimburse the person who so extended the pipeline for the portion of the extension that was not necessary to serve his own property, the agreement for pipeline extension between HCSD and the developer may provide that if the other property to which the pipeline was extended connects to the pipeline within five years, HCSD will charge a fee in addition to its usual connection fee in an amount sufficient to reimburse the developer for such construction costs and "refund" such fee to the developer. The total amount of such construction costs is prorated among parcels which could connect to the pipeline extension, and each is charged its prorated amount when it connects to the pipeline. Thus, if all parcels which could be served by the extended pipeline connect to the pipeline within five years, the developer recovers his costs of extending the pipeline through his property to the adjacent property line. HCSD Ordinance No. 76-1, authorizing such agreements, is enclosed.

In June 1987 HCSD entered into an Agreement for Pipeline Extension, a copy of which is enclosed, with Ralph Matsen, who had extended pipelines through his property (known as "the Flekkefjord Subdivision") to an adjoining property line. At the time the agreement was entered into, Mr. Matsen did not request that any "refunds" from adjoining parcels be provided for, so there was no Exhibit A to the agreement. However, shortly thereafter Mr. Matsen requested that the agreement be amended to provide for "refunds" in the amount of \$7962. The present owner of the five parcels which could connect to the extended pipeline is Gerald Pavlich, who is developing all of such parcels as "the Lacey Subdivision." The amendment as proposed by Mr. Matsen was first placed on the HCSD Board of Directors' agenda for its meeting of August 27, 1987. Mr. Pavlich appeared before the Board to dispute that the amount of construction costs actually incurred by Mr. Matsen for the pipeline extension was \$7962, contending that the amount of such costs and the "refunds" to be provided by amendment to the agreement should be set at about \$4362. Since that time the matter has been continued and heard at several Board meetings, with evidence as to the construction costs incurred being presented on behalf of both Mr. Matsen and Mr. Pavlich.

At the meeting of August 27, 1987 two HCSD Directors (Lee Hobbs and Kevin McKenny) stated that they had a conflict of interest with regard to this matter. They have not participated in the discussions and will not vote on the amendment. The remaining three Directors (Messrs. Bollman, Bongio and Brochard) have so participated. At the meeting held on September 24, Mr. Brochard made a motion to amend the agreement to provide for "refunds" of \$7962. Before the motion was acted on, Mr. Pavlich stated that Mr. Bongio had a conflict of interest and should not vote on the motion. No vote was taken and the matter has been continued since that time.

Mr. McKenny is a builder who within the past year has done work for and been paid by both Mr. Matsen and Mr. Pavlich. Mr. Hobbs owns a real estate office called Cutten Realty, a

branch of Coldwell Banker, which is the exclusive sales agent for homes within the Flekkefjord Subdivision. Mr. Bongio is not an employee of Cutten Realty, but is an independent contractor making sales for Cutten Realty on a commission basis. (see enclosed "Broker-Salesperson Contract" between Mr. Bongio and Cutten Realty). The ground of Mr. Pavlich's challenge to Mr. Bongio was stated in a letter to HCS D by Mr. Pavlich's attorney as follows:

"Lee Hobbs own Cutten Realty. Aldo Bongio, another Board member, also works for Cutten Realty. Cutten Realty is the exclusive agent for Flekkerfjord [sic] Subdivision and Aldo Bongio is actively selling that subdivision. If a decision of Mr. Bongio's or Mr. Hobbs' were to upset Mr. Matsen, it is very foreseeable that Cutten Realty will no longer be the exclusive agent of the Flekkerfjord [sic] Subdivision. This appears to be an obvious conflict situation."

Mr. Bongio states that he has not made any sales within the Flekkfjord Subdivision and is not now negotiating or otherwise involved in any such sales; that he is not an officer of Cutten Realty or Coldwell Banker and has no onwership interest therein, including that of stockholder; that he does not share in the profits or losses of or receive income from Cutten Realty in any way except that he is paid a commission on each sale he makes for Cutten Realty; that within the past year he has received more than \$250 in commissions from Cutten Realty; and that within the past year neither Mr. Matsen nor Mr. Pavlich has been a source of income to him. Mr. Bongio specifically disputes the statement in the above-quoted letter that he "is actively selling that subdivision."

Lee Hobbs states that Ralph Matsen has said nothing to him to indicate that Cutten Realty's continued representation of the Flekkefjord Subdivision depends in any way on HCS D's decision concerning amendment of the agreement for pipeline extension.

A few other facts should be mentioned concerning Ralph Matsen and an engineer who works for HCS D pursuant to contract. First, Ralph Matsen is a principal in the Freeman-Matsen Insurance Agency, from which HCS D has obtained several policies of insurance, some of which are now in effect. Competitive bids for such insurance were not solicited. HCS D may continue to obtain insurance through the Freeman-Matsen Insurance Agency. Second, Robert Kelly is an enginner and a principal in the engineering firm of Winzler & Kelly, with which HCS D contracts for many engineering services. Mr. Kelly usually attends meetings of the HCS D Board of Directors and was present during the hearings concerning amending the agreement for pipeline extension with Mr. Matsen, at which he made some remarks concerning his knowledge of construction performed in the Flekkefjord Subdivision, which was derived from an engineering study of that subdivision which Winzler & Kelly had performed pursuant to a contract with Ralph Matsen. Finally, neither Mr. Matsen, Freeman-Matsen, Mr. Kelly nor Winzler & Kelly is a

source of income to Mr. Bongio, Mr. Bongio does not have an investment in such firms, Mr. Bongio is not an employee of and holds no position in such firms, and Mr. Bongio has received no gifts from such firms or individuals.

HCS D's Conflict of Interest Code names the Board of Directors, General Manager, Secretary/Finance Officer and Superintendent as designated employees and essentially repeats the language of Government Code section 87103 with regard to disqualification. A copy of the Code is enclosed.

QUESTIONS

1. Is Mr. Bongio disqualified from voting on the amendment to the agreement for pipeline extension between HCS D and Ralph Matsen pursuant to Government Code section 87100 or any other portion of the Political Reform Act? If so, would he not be so disqualified if he agreed to make no sales within the Flekkefjord Subdivision in the future?

2. If Mr. Bongio is disqualified pursuant to the Political Reform Act, may Mr. Bongio, Mr. Hobbs, Mr. McKenny or the entire Board of Directors vote on the amendment to the agreement for pipeline extension pursuant to Government Code section 87101?

3. If only one of such three Directors may vote pursuant to section 87101, how should that Director be chosen?

LEGAL ANALYSIS

1. Reasonable foreseeability: (a) As to Cutten Realty. Given the foregoing facts, it does not appear to me that it is reasonably foreseeable that HCS D's decision regarding the amount of "refunds" to specify in amending its agreement for pipeline extension with Mr. Matsen will have a material financial effect on Mr. Bongio or on Cutten Realty. Certainly, that decision in itself will have no such effect. The argument that such effect is reasonably foreseeable depends on matters that may occur after HCS D's decision is made, namely, Mr. Matsen's being displeased by HCS D's decision; Mr. Matsen's cancelling his agreement with Cutten Realty as exclusive agent for the Flekkefjord Subdivision because he is displeased with HCS D; and Cutten Realty losing \$10,000 or more in profits that it might have made as a result. Even if it were appropriate to consider matters that might occur as a result of HCS D's decision which are not within the control of HCS D, it must be noted that this series of events is not foreordained. In fact, it appears unlikely to me that the owner of a subdivision who has made a business decision that a certain real estate agency is best suited to represent him would change his mind and terminate such representation because an independent contractor who works for the agency votes to provide for \$3600 less than the owner requested as "refunds" in an agreement with a public entity that has nothing to do with the real estate agency or even with sales within the subdivision. There is no reason to believe that Mr.

Matsen would hold Cutten Realty responsible for Mr. Bongio's vote or, if Mr. Matsen were displeased with HCSD's decision, that he would cancel his agreement with Cutten Realty, which had nothing to do with the agreement for pipeline extension or the vote thereon. Indeed, it is inconsistent to think that Mr. Matsen would believe that Cutten Realty was able to control Mr. Bongio's vote if Mr. Bongio in fact voted contrary to Mr. Matsen's interests, and if Cutten Realty could not control Mr. Bongio's vote, Mr. Matsen would not hold it responsible therefor.

(b) As to Mr. Bongio. It is even less reasonably foreseeable that the decision concerning amending Mr. Matsen's agreement with HCSD will have any financial effect on Mr. Bongio personally. Cutten Realty is a source of income to Mr. Bongio only as to commissions on sales Mr. Bongio makes; Mr. Bongio does not share in the profits or losses of Cutten Realty. Mr. Bongio is not now negotiating or otherwise involved with any sale within the Flekkefjord Subdivision, so he will gain or gain nothing whether Cutten Realty retains or loses the right to be exclusive agent for the subdivision. The most that can be said in support of the position that the decision will have a material financial effect on Mr. Bongio is that perhaps if Cutten Realty retains its exclusive agency, Mr. Bongio will make a sale within the subdivision in the future that he would not have made if Mr. Matsen discontinues that arrangement with Cutten Realty, or that all sales commissions received by Cutten Realty benefit Mr. Bongio because they contribute to the overall financial well-being of Cutten Realty, thus allowing it to continue to be a source of income to Mr. Bongio. Such arguments appear to me to go well beyond the scope of the "reasonably foreseeability" intended by section 87103.

(c) Future sales. As stated, Mr. Bongio has made no sales within the Flekkefjord Subdivision and is not now negotiating for any such sale. However, as an independent contractor with Cutten Realty, he may be able to make such a sale in the future. Cutten Realty is a source in income to Mr. Bongio (he has received more than \$250 from Cutten Realty within the past year), regardless of the fact that none of such income has come from sales within the Flekkefjord Subdivision. I do not see that whether Mr. Bongio does or doesn't make any sales within the Flekkefjord Subdivision in the future (or, indeed, whether he has made any such sales in the past) makes any difference to the conclusion as to whether Mr. Bongio is disqualified from voting on the amendment to the agreement for pipeline extension between HCSD and Ralph Matsen. In either event, it is Cutten Realty, not Ralph Matsen, who is a source of income to Mr. Bongio, and Cutten Realty is not a party to the agreement for pipeline extension nor, for the reasons previously discussed, is it reasonably foreseeable that the decision as to that agreement will have a material financial effect on Cutten Realty.

2. Mr. Bongio as an "employee." Section 87103 provides that section 87100 encompasses financial interests in any "business entity in which the public official is

a[n]...employee...." I do not know whether the word "employee" as used in section 87103 should be construed to include independent contractors such as Mr. Bongio. However, I assume that the question is not very important, since even if Mr. Bongio were considered an "employee," the test as to business entities in which the official is an employee is presumably the same as the test as to a source of income to the official.

3. Regulations. Several FPPC regulations interpreting sections 87100 and 87103 bear on this matter.

(a) Material financial effect. 2 Cal.Ad.Code section 18702 provides in part in subdivision (b) (3) that in determining "whether it is reasonably foreseeable that the effects of a governmental decision will be significant, consideration should be given...in the case of a source of income...[whether]:

"(A) The effect of the decision will be to directly increase or decrease the amount of income...to be received by the official...in an amount of...\$100 or more; or

"(B) There is a nexus between the governmental decision and the purpose for which the official receives income...."

Based on the foregoing facts, it is clear to me that the effect of the decision amending Mr. Matsen's agreement to provide for "refunds" of pipeline extension costs will not have any direct effect on Mr. Bongio's income, and I do not see any "nexus" between that decision and the purpose for which Mr. Bongio receives income (making real estate sales).

(b) Disqualification. 2 Cal.Ad.Code section 18702.1 provides in subdivision (a) for situations in which a public official must disqualify himself when persons or business entities which are sources of income to the official "appear before the official in connection with the decision," and subdivision (b) defines when an appearance is made. As Cutten Realty did not initiate and is not in any way a party to the proceeding to amend the agreement for pipeline extension between Ralph Matsen and HCSD, such regulations presumably do not apply to this situation. Also, as it is not reasonably foreseeable that such decision will affect Mr. Bongio in the amount of at least \$250, presumably subdivision (a) (4) is also inapplicable.

(c) Material financial effect on business entity. 2 Cal.Ad.Code section 18702.2 provides in part in subdivision (g) that the effect of a governmental decision will be material to certain business entities not described in other subdivisions (and into which category Cutten Realty presumably falls) if the "decision will result in an increase or decrease in the gross revenues of a fiscal year of \$10,000 or more." Although the amount of sales commissions Cutten Realty might lose if its exclusive representation were discontinued is unknown, that amount might be \$10,000 or more. However, such presumption does not answer the question of whether it is reasonably foreseeable that HCSD's decision amending the agreement for pipeline extension with Ralph Matsen will have such an effect on Cutten Realty.

4. Involvement of Robert Kelly and Ralph Matsen.

(a) Robert Kelly. With regard to Robert Kelly's comments in the hearings regarding amending the agreement for pipeline extension between HCSD and Ralph Matsen, it is established that the reference in section 87100 to "making" a decision refers to participation in proceedings prior to the actual vote as well as to the vote itself, and that the term "public official" may include some persons who are consultants of the public agency (2 Cal.Ad.Code section 18700). I do not think that Robert Kelly should be considered to be a public official in the context of this matter, inasmuch as his information and conclusions regarding the Flekkefjord Subdivision were arrived at independent of the control or direction of HCSD and he possesses no authority with respect to an HCSD decision beyond the rendition of information, advice, recommendation or counsel, and thus is exempt from the definition of "public official" as provided by subdivision (a)(2)(A) and (B) of 2 Cal.Ad.Code section 18700. Even if Ralph Matsen had been a source of income to Mr. Kelly within the past year and Mr. Kelly were to be considered a public official who participated in making a decision as to amending HCSD's agreement for pipeline extension with Ralph Matsen, the questions presented to the FPPC have to do with whether Mr. Bongio and/or other members of the HCSD Board of Directors may vote concerning amendment of Mr. Matsen's agreement with HCSD, which questions do not seem to depend on whether Mr. Kelly violated section 87100. If such a violation occurred, it occurred in the presence of all members of the Board of Directors and presumably affects all members equally. Therefore, if Mr. Kelly's involvement is material to the questions asked herein, it is material only with regard to the application of section 87101. If the FPPC finds that Mr. Kelly's involvement may be material to answering the questions asked herein and requires more information, please let me know.

(b) Ralph Matsen. As Ralph Matsen is not an officer, employee or consultant of HCSD, section 87100 does not apply to him. However, it may be argued that all of HCSD's Directors have a financial interest in a decision affecting Ralph Matsen because Ralph Matsen is a principal in the insurance agency from which HCSD obtains some of its insurance policies, and thus the decision may have a material financial effect on HCSD, a business entity in which all the Directors are officers. It may be argued that if Ralph Matsen is displeased with HCSD's decision as to amending the agreement for pipeline extension, he may refuse to sell insurance to HCSD or charge higher rates or premiums or take some other action harmful to HCSD; conversely, if Ralph Matsen is pleased with HCSD's decision, he may lower his rates or premiums or take some other action favorable to HCSD. Even leaving aside the fact that it is highly unlikely that any such action taken by Ralph Matsen would affect HCSD's revenues by \$10,000 per year, such an argument appears to me to be misconceived for much the same reasons as apply to the argument that if Ralph Matsen is displeased by HCSD's decision, he will cancel his agreement with Cutten Realty. HCSD's insurance policies are not the subject of the decision in

question, and such action on Mr. Matsen's part is far-fetched speculation that cannot be considered reasonably foreseeable. Moreover, as with Robert Kelly's involvement, any financial interest of the Board of Directors arising because Ralph Matsen also sells insurance to HCSD affects all Directors equally and thus is material to the questions raised herein only with reference to application of section 87101.

5. Application of Section 87101. If the FPPC decides that Mr. Bongio is not disqualified from voting on the amendment to HCSD's main extension agreement with Ralph Matsen, there will be three directors who are not disqualified (Mr. Bongio, Mr. Bollman and Mr. Brochard), assuming the FPPC does not decide that all directors are disqualified because of the involvement of Robert Kelly or Ralph Matsen or for some other reason. If three directors are able to vote, a decision may be made. The Community Services District Law (Government Code section 61000 et seq.), pursuant to which HCSD was organized and operates, provides in section 61223 that the board of directors "shall act only by ordinance, resolution, or motion," and section 61225 provides: "No ordinance, resolution, or motion shall be passed or become effective without the affirmative votes of at least a majority of the members of the board." Thus, if three or more members of HCSD's five-person board of directors are disqualified from voting, no action can be taken.

Government Code section 61300 provides that the board of directors "is the governing body of the district," and section 61301 provides: "The powers of districts enumerated in this division shall, except as therein otherwise provided, be exercised by the board." Section 61616 provides that a community services "district may make contracts for any and all purposes necessary or convenient for the full exercise of its powers." There is no provision of statute or HCSD ordinance or resolution authorizing anyone other than the HCSD Board of Directors to enter into amendments to main extension agreements. Thus, under 2 Cal.Ad.Code section 18701, "there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." Among the many statutes that may be said to authorize the execution and amendment of the agreement for pipeline extension in question are Government Code sections 61616, quoted above; 61620 ("A district may perform any work of construction...or may contract for the performance of such work by others"); and 61621 ("A district may prescribe, revise and collect rates or other charges for the services and facilities furnished by it").

Perhaps it should be noted that Mr. Pavlich's attorney has suggested that arbitration might be used to decide the amount of "refunds" to include in the amendment to the agreement for pipeline extension. As arbitration is not an alternative to decision by the HCSD Board of Directors that is provided for by the above-quoted statutes and ordinance, and as arbitration could be resorted to only if both Mr. Pavlich and Mr. Matsen consented thereto, which Mr. Matsen has not done, it does not appear to me that arbitration is "an alternative source of

decision" within the meaning of section 18701. It might equally be argued that obtaining a court decision is "an alternative source of decision" to a decision by the governing body of a public entity. However, to so construe section 18701 would prevent the governing body from making a decision whenever less than a quorum has not been disqualified to decide. Section 18701 was presumably intended to refer only to such alternative sources of decision within the public agency as are provided for in the enabling legislation.

6. How many directors may vote? If the FPPC decides that Mr. Bongio and/or Mr. Bollman and Mr. Brochard are disqualified to vote and that section 87101 applies, the question arises as to which and how many of the five HCSO directors should vote pursuant to section 87101. It is my understanding that the FPPC has decided that as a rule only the fewest number of disqualified members may vote as are necessary to create a quorum, rather than the whole board voting, and has further decided that the preferred means of selecting an otherwise disqualified member to vote is by lot or by some other impartial and equitable means of selection (4 FPPC Opinions 13, 17-18).

In HCSO's case, three directors are required to constitute a quorum. Even if the FPPC decides that Mr. Bongio is disqualified, the grounds for his disqualification are far more attenuated than the grounds for the disqualification of Mr. Hobbs and Mr. McKenny. Therefore, it seems more reasonable to me that Mr. Bongio be selected as the otherwise disqualified director who is to make up the quorum, rather than that Mr. Bongio, Mr. Hobbs and Mr. McKenny draw lots to decide which of them is to vote. I realize that random selection will probably be appropriate in most cases, where the grounds for disqualification of the various members are roughly equal. However, where the grounds are disproportionate, it appears more appropriate to select the member who has the least conflict of interest to make up a quorum with the non-disqualified members.

Finally, if the FPPC decides that all five directors are disqualified, I suggest the same method of selection of the three members who are to vote--that is, that Mr. Bongio, Mr. Bollman and Mr. Brochard be selected because they have less conflict of interest than do Mr. Hobbs and Mr. McKenny.

* * * * *

CONCLUSION

It is my opinion that the Political Reform Act does not disqualify Aldo Bongio from voting on the amendment of the agreement for pipeline extension between HCSO and Ralph Matsen; that if Mr. Bongio is so disqualified, and/or if Mr. Bollman and Mr. Brochard are so disqualified, three members of the HCSO Board of Directors may vote on the amendment anyway; and that such members should be Mr. Bongio, Mr. Bollman and Mr. Brochard.

Despite the rather complicated and lengthy facts involved in this matter and the variety of statutes and regulations whose application to the facts must be analyzed, I expect that the FPPC will find the answers to the questions asked fairly clear.

Please let me know if the FPPC needs any further information. Although there is no specific deadline for HCSD to act on this matter, HCSD hopes to do so as soon as possible. The HCSD Board of Directors meets on the second and fourth Thursdays of every month (unless that day is a holiday) and would most appreciate receiving the FPPC's response by November 12 or November 25, 1987.

Very truly yours,



Paula Kimbrell
HCSD Legal Counsel

cc: James L. Peoples, HCSD General Manager
All Members of the HCSD Board of Directors

87-279

Paula Kimbrell

Attorney at Law OCT 28 3 02 AM '87

724 Lona Drive

Arcata, California 95521

Phone 707/839-3666
October 26, 1987

Fair Political Practices Commission
Legal Division
P. O. Box 807
1100 K Street Building
Sacramento, Ca. 95804

Dear FPPC:

I represent the Humboldt Community Services District (hereinafter "HCSD"), a community services district of the State of California, located in Cutten, California and organized under and acting pursuant to the Community Services District Law (Government Code section 61000 et seq.). HCSD's primary functions are providing water and sewer service to District residents. HCSD has a five-member Board of Directors through which the District acts, currently consisting of Robert Bollman, Aldo Bongio, Eugene Brochard, Lee Hobbs and Kevin McKenny. The Directors, in particular Aldo Bongio, have authorized me to request that the FPPC issue an opinion pursuant to Government Code section 83114, subdivision (a), or in the alternative, if an opinion will not be issued, to provide written advice pursuant to subdivision (b). In my telephone conversation with your office, it was suggested that I set out the facts, ask the questions which the FPPC is to answer, and provide a legal analysis of the situation.

FACTS

HCSD provides water and sewer service through a system of water and sewer pipelines. As not all property within the District has been developed, the pipelines do not extend throughout the District. HCSD is authorized to enter into sewer and/or water pipeline extension agreements with persons who wish to develop property not previously served by HCSD and who extend existing HCSD water and/or sewer pipelines in order that HCSD may provide service. It is HCSD's practice to require that such persons extend pipelines not just to their property line, but through their property to a point where it adjoins other property not yet served by HCSD. In this manner the other property may be connected to the pipeline without further

construction. In order to reimburse the person who so extended the pipeline for the portion of the extension that was not necessary to serve his own property, the agreement for pipeline extension between HCSD and the developer may provide that if the other property to which the pipeline was extended connects to the pipeline within five years, HCSD will charge a fee in addition to its usual connection fee in an amount sufficient to reimburse the developer for such construction costs and "refund" such fee to the developer. The total amount of such construction costs is prorated among parcels which could connect to the pipeline extension, and each is charged its prorated amount when it connects to the pipeline. Thus, if all parcels which could be served by the extended pipeline connect to the pipeline within five years, the developer recovers his costs of extending the pipeline through his property to the adjacent property line. HCSD Ordinance No. 76-1, authorizing such agreements, is enclosed.

In June 1987 HCSD entered into an Agreement for Pipeline Extension, a copy of which is enclosed, with Ralph Matsen, who had extended pipelines through his property (known as "the Flekkefjord Subdivision") to an adjoining property line. At the time the agreement was entered into, Mr. Matsen did not request that any "refunds" from adjoining parcels be provided for, so there was no Exhibit A to the agreement. However, shortly thereafter Mr. Matsen requested that the agreement be amended to provide for "refunds" in the amount of \$7962. The present owner of the five parcels which could connect to the extended pipeline is Gerald Pavlich, who is developing all of such parcels as "the Lacey Subdivision." The amendment as proposed by Mr. Matsen was first placed on the HCSD Board of Directors' agenda for its meeting of August 27, 1987. Mr. Pavlich appeared before the Board to dispute that the amount of construction costs actually incurred by Mr. Matsen for the pipeline extension was \$7962, contending that the amount of such costs and the "refunds" to be provided by amendment to the agreement should be set at about \$4362. Since that time the matter has been continued and heard at several Board meetings, with evidence as to the construction costs incurred being presented on behalf of both Mr. Matsen and Mr. Pavlich.

At the meeting of August 27, 1987 two HCSD Directors (Lee Hobbs and Kevin McKenny) stated that they had a conflict of interest with regard to this matter. They have not participated in the discussions and will not vote on the amendment. The remaining three Directors (Messrs. Bollman, Bongio and Brochard) have so participated. At the meeting held on September 24, Mr. Brochard made a motion to amend the agreement to provide for "refunds" of \$7962. Before the motion was acted on, Mr. Pavlich stated that Mr. Bongio had a conflict of interest and should not vote on the motion. No vote was taken and the matter has been continued since that time.

Mr. McKenny is a builder who within the past year has done work for and been paid by both Mr. Matsen and Mr. Pavlich. Mr. Hobbs owns a real estate office called Cutten Realty, a

branch of Coldwell Banker, which is the exclusive sales agent for homes within the Flekkefjord Subdivision. Mr. Bongio is not an employee of Cutten Realty, but is an independent contractor making sales for Cutten Realty on a commission basis (see enclosed "Broker-Salesperson Contract" between Mr. Bongio and Cutten Realty). The ground of Mr. Pavlich's challenge to Mr. Bongio was stated in a letter to HCSO by Mr. Pavlich's attorney as follows:

"Lee Hobbs own Cutten Realty. Aldo Bongio, another Board member, also works for Cutten Realty. Cutten Realty is the exclusive agent for Flekkerfjord [sic] Subdivision and Aldo Bongio is actively selling that subdivision. If a decision of Mr. Bongio's or Mr. Hobbs' were to upset Mr. Matsen, it is very foreseeable that Cutten Realty will no longer be the exclusive agent of the Flekkerfjord [sic] Subdivision. This appears to be an obvious conflict situation."

Mr. Bongio states that he has not made any sales within the Flekkfjord Subdivision and is not now negotiating or otherwise involved in any such sales; that he is not an officer of Cutten Realty or Coldwell Banker and has no ownership interest therein, including that of stockholder; that he does not share in the profits or losses of or receive income from Cutten Realty in any way except that he is paid a commission on each sale he makes for Cutten Realty; that within the past year he has received more than \$250 in commissions from Cutten Realty; and that within the past year neither Mr. Matsen nor Mr. Pavlich has been a source of income to him. Mr. Bongio specifically disputes the statement in the above-quoted letter that he "is actively selling that subdivision."

Lee Hobbs states that Ralph Matsen has said nothing to him to indicate that Cutten Realty's continued representation of the Flekkefjord Subdivision depends in any way on HCSO's decision concerning amendment of the agreement for pipeline extension.

A few other facts should be mentioned concerning Ralph Matsen and an engineer who works for HCSO pursuant to contract. First, Ralph Matsen is a principal in the Freeman-Matsen Insurance Agency, from which HCSO has obtained several policies of insurance, some of which are now in effect. Competitive bids for such insurance were not solicited. HCSO may continue to obtain insurance through the Freeman-Matsen Insurance Agency. Second, Robert Kelly is an engineer and a principal in the engineering firm of Winzler & Kelly, with which HCSO contracts for many engineering services. Mr. Kelly usually attends meetings of the HCSO Board of Directors and was present during the hearings concerning amending the agreement for pipeline extension with Mr. Matsen, at which he made some remarks concerning his knowledge of construction performed in the Flekkefjord Subdivision, which was derived from an engineering study of that subdivision which Winzler & Kelly had performed pursuant to a contract with Ralph Matsen. Finally, neither Mr. Matsen, Freeman-Matsen, Mr. Kelly nor Winzler & Kelly is a

source of income to Mr. Bongio, Mr. Bongio does not have an investment in such firms, Mr. Bongio is not an employee of and holds no position in such firms, and Mr. Bongio has received no gifts from such firms or individuals.

HCSO's Conflict of Interest Code names the Board of Directors, General Manager, Secretary/Finance Officer and Superintendent as designated employees and essentially repeats the language of Government Code section 87103 with regard to disqualification. A copy of the Code is enclosed.

QUESTIONS

1. Is Mr. Bongio disqualified from voting on the amendment to the agreement for pipeline extension between HCSO and Ralph Matsen pursuant to Government Code section 87100 or any other portion of the Political Reform Act? If so, would he not be so disqualified if he agreed to make no sales within the Flekkefjord Subdivision in the future?

2. If Mr. Bongio is disqualified pursuant to the Political Reform Act, may Mr. Bongio, Mr. Hobbs, Mr. McKenny or the entire Board of Directors vote on the amendment to the agreement for pipeline extension pursuant to Government Code section 87101?

3. If only one of such three Directors may vote pursuant to section 87101, how should that Director be chosen?

LEGAL ANALYSIS

1. Reasonable foreseeability: (a) As to Cutten Realty. Given the foregoing facts, it does not appear to me that it is reasonably foreseeable that HCSO's decision regarding the amount of "refunds" to specify in amending its agreement for pipeline extension with Mr. Matsen will have a material financial effect on Mr. Bongio or on Cutten Realty. Certainly, that decision in itself will have no such effect. The argument that such effect is reasonably foreseeable depends on matters that may occur after HCSO's decision is made, namely, Mr. Matsen's being displeased by HCSO's decision; Mr. Matsen's cancelling his agreement with Cutten Realty as exclusive agent for the Flekkefjord Subdivision because he is displeased with HCSO; and Cutten Realty losing \$10,000 or more in profits that it might have made as a result. Even if it were appropriate to consider matters that might occur as a result of HCSO's decision which are not within the control of HCSO, it must be noted that this series of events is not foreordained. In fact, it appears unlikely to me that the owner of a subdivision who has made a business decision that a certain real estate agency is best suited to represent him would change his mind and terminate such representation because an independent contractor who works for the agency votes to provide for \$3600 less than the owner requested as "refunds" in an agreement with a public entity that has nothing to do with the real estate agency or even with sales within the subdivision. There is no reason to believe that Mr.

Matsen would hold Cutten Realty responsible for Mr. Bongio's vote or, if Mr. Matsen were displeased with HCSD's decision, that he would cancel his agreement with Cutten Realty, which had nothing to do with the agreement for pipeline extension or the vote thereon. Indeed, it is inconsistent to think that Mr. Matsen would believe that Cutten Realty was able to control Mr. Bongio's vote if Mr. Bongio in fact voted contrary to Mr. Matsen's interests, and if Cutten Realty could not control Mr. Bongio's vote, Mr. Matsen would not hold it responsible therefor.

(b) As to Mr. Bongio. It is even less reasonably foreseeable that the decision concerning amending Mr. Matsen's agreement with HCSD will have any financial effect on Mr. Bongio personally. Cutten Realty is a source of income to Mr. Bongio only as to commissions on sales Mr. Bongio makes; Mr. Bongio does not share in the profits or losses of Cutten Realty. Mr. Bongio is not now negotiating or otherwise involved with any sale within the Flekkefjord Subdivision, so he will gain or gain nothing whether Cutten Realty retains or loses the right to be exclusive agent for the subdivision. The most that can be said in support of the position that the decision will have a material financial effect on Mr. Bongio is that perhaps if Cutten Realty retains its exclusive agency, Mr. Bongio will make a sale within the subdivision in the future that he would not have made if Mr. Matsen discontinues that arrangement with Cutten Realty, or that all sales commissions received by Cutten Realty benefit Mr. Bongio because they contribute to the overall financial well-being of Cutten Realty, thus allowing it to continue to be a source of income to Mr. Bongio. Such arguments appear to me to go well beyond the scope of the "reasonably foreseeability" intended by section 87103.

(c) Future sales. As stated, Mr. Bongio has made no sales within the Flekkefjord Subdivision and is not now negotiating for any such sale. However, as an independent contractor with Cutten Realty, he may be able to make such a sale in the future. Cutten Realty is a source in income to Mr. Bongio (he has received more than \$250 from Cutten Realty within the past year), regardless of the fact that none of such income has come from sales within the Flekkefjord Subdivision. I do not see that whether Mr. Bongio does or doesn't make any sales within the Flekkefjord Subdivision in the future (or, indeed, whether he has made any such sales in the past) makes any difference to the conclusion as to whether Mr. Bongio is disqualified from voting on the amendment to the agreement for pipeline extension between HCSD and Ralph Matsen. In either event, it is Cutten Realty, not Ralph Matsen, who is a source of income to Mr. Bongio, and Cutten Realty is not a party to the agreement for pipeline extension nor, for the reasons previously discussed, is it reasonably foreseeable that the decision as to that agreement will have a material financial effect on Cutten Realty.

2. Mr. Bongio as an "employee." Section 87103 provides that section 87100 encompasses financial interests in any "business entity in which the public official is

a[n]...employee...." I do not know whether the word "employee" as used in section 87103 should be construed to include independent contractors such as Mr. Bongio. However, I assume that the question is not very important, since even if Mr. Bongio were considered an "employee," the test as to business entities in which the official is an employee is presumably the same as the test as to a source of income to the official.

3. Regulations. Several FPPC regulations interpreting sections 87100 and 87103 bear on this matter.

(a) Material financial effect. 2 Cal.Ad.Code section 18702 provides in part in subdivision (b) (3) that in determining "whether it is reasonably foreseeable that the effects of a governmental decision will be significant, consideration should be given...in the case of a source of income...[whether]:

"(A) The effect of the decision will be to directly increase or decrease the amount of income...to be received by the official...in an amount of...\$100 or more; or

"(B) There is a nexus between the governmental decision and the purpose for which the official receives income...."

Based on the foregoing facts, it is clear to me that the effect of the decision amending Mr. Matsen's agreement to provide for "refunds" of pipeline extension costs will not have any direct effect on Mr. Bongio's income, and I do not see any "nexus" between that decision and the purpose for which Mr. Bongio receives income (making real estate sales).

(b) Disqualification. 2 Cal.Ad.Code section 18702.1 provides in subdivision (a) for situations in which a public official must disqualify himself when persons or business entities which are sources of income to the official "appear before the official in connection with the decision," and subdivision (b) defines when an appearance is made. As Cutten Realty did not initiate and is not in any way a party to the proceeding to amend the agreement for pipeline extension between Ralph Matsen and HCSD, such regulations presumably do not apply to this situation. Also, as it is not reasonably foreseeable that such decision will affect Mr. Bongio in the amount of at least \$250, presumably subdivision (a) (4) is also inapplicable.

(c) Material financial effect on business entity. 2 Cal.Ad.Code section 18702.2 provides in part in subdivision (g) that the effect of a governmental decision will be material to certain business entities not described in other subdivisions (and into which category Cutten Realty presumably falls) if the "decision will result in an increase or decrease in the gross revenues of a fiscal year of \$10,000 or more." Although the amount of sales commissions Cutten Realty might lose if its exclusive representation were discontinued is unknown, that amount might be \$10,000 or more. However, such presumption does not answer the question of whether it is reasonably foreseeable that HCSD's decision amending the agreement for pipeline extension with Ralph Matsen will have such an effect on Cutten Realty.

4. Involvement of Robert Kelly and Ralph Matsen.

(a) Robert Kelly. With regard to Robert Kelly's comments in the hearings regarding amending the agreement for pipeline extension between HCSD and Ralph Matsen, it is established that the reference in section 87100 to "making" a decision refers to participation in proceedings prior to the actual vote as well as to the vote itself, and that the term "public official" may include some persons who are consultants of the public agency (2 Cal.Ad.Code section 18700). I do not think that Robert Kelly should be considered to be a public official in the context of this matter, inasmuch as his information and conclusions regarding the Flekkefjord Subdivision were arrived at independent of the control or direction of HCSD and he possesses no authority with respect to an HCSD decision beyond the rendition of information, advice, recommendation or counsel, and thus is exempt from the definition of "public official" as provided by subdivision (a)(2)(A) and (B) of 2 Cal.Ad.Code section 18700. Even if Ralph Matsen had been a source of income to Mr. Kelly within the past year and Mr. Kelly were to be considered a public official who participated in making a decision as to amending HCSD's agreement for pipeline extension with Ralph Matsen, the questions presented to the FPPC have to do with whether Mr. Bongio and/or other members of the HCSD Board of Directors may vote concerning amendment of Mr. Matsen's agreement with HCSD, which questions do not seem to depend on whether Mr. Kelly violated section 87100. If such a violation occurred, it occurred in the presence of all members of the Board of Directors and presumably affects all members equally. Therefore, if Mr. Kelly's involvement is material to the questions asked herein, it is material only with regard to the application of section 87101. If the FPPC finds that Mr. Kelly's involvement may be material to answering the questions asked herein and requires more information, please let me know.

(b) Ralph Matsen. As Ralph Matsen is not an officer, employee or consultant of HCSD, section 87100 does not apply to him. However, it may be argued that all of HCSD's Directors have a financial interest in a decision affecting Ralph Matsen because Ralph Matsen is a principal in the insurance agency from which HCSD obtains some of its insurance policies, and thus the decision may have a material financial effect on HCSD, a business entity in which all the Directors are officers. It may be argued that if Ralph Matsen is displeased with HCSD's decision as to amending the agreement for pipeline extension, he may refuse to sell insurance to HCSD or charge higher rates or premiums or take some other action harmful to HCSD; conversely, if Ralph Matsen is pleased with HCSD's decision, he may lower his rates or premiums or take some other action favorable to HCSD. Even leaving aside the fact that it is highly unlikely that any such action taken by Ralph Matsen would affect HCSD's revenues by \$10,000 per year, such an argument appears to me to be misconceived for much the same reasons as apply to the argument that if Ralph Matsen is displeased by HCSD's decision, he will cancel his agreement with Cutten Realty. HCSD's insurance policies are not the subject of the decision in

question, and such action on Mr. Matsen's part is far-fetched speculation that cannot be considered reasonably foreseeable. Moreover, as with Robert Kelly's involvement, any financial interest of the Board of Directors arising because Ralph Matsen also sells insurance to HCSD affects all Directors equally and thus is material to the questions raised herein only with reference to application of section 87101.

5. Application of Section 87101. If the FPPC decides that Mr. Bongio is not disqualified from voting on the amendment to HCSD's main extension agreement with Ralph Matsen, there will be three directors who are not disqualified (Mr. Bongio, Mr. Bollman and Mr. Brochard), assuming the FPPC does not decide that all directors are disqualified because of the involvement of Robert Kelly or Ralph Matsen or for some other reason. If three directors are able to vote, a decision may be made. The Community Services District Law (Government Code section 61000 et seq.), pursuant to which HCSD was organized and operates, provides in section 61223 that the board of directors "shall act only by ordinance, resolution, or motion," and section 61225 provides: "No ordinance, resolution, or motion shall be passed or become effective without the affirmative votes of at least a majority of the members of the board." Thus, if three or more members of HCSD's five-person board of directors are disqualified from voting, no action can be taken.

Government Code section 61300 provides that the board of directors "is the governing body of the district," and section 61301 provides: "The powers of districts enumerated in this division shall, except as therein otherwise provided, be exercised by the board." Section 61616 provides that a community services "district may make contracts for any and all purposes necessary or convenient for the full exercise of its powers." There is no provision of statute or HCSD ordinance or resolution authorizing anyone other than the HCSD Board of Directors to enter into amendments to main extension agreements. Thus, under 2 Cal.Ad.Code section 18701, "there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." Among the many statutes that may be said to authorize the execution and amendment of the agreement for pipeline extension in question are Government Code sections 61616, quoted above; 61620 ("A district may perform any work of construction...or may contract for the performance of such work by others"); and 61621 ("A district may prescribe, revise and collect rates or other charges for the services and facilities furnished by it").

Perhaps it should be noted that Mr. Pavlich's attorney has suggested that arbitration might be used to decide the amount of "refunds" to include in the amendment to the agreement for pipeline extension. As arbitration is not an alternative to decision by the HCSD Board of Directors that is provided for by the above-quoted statutes and ordinance, and as arbitration could be resorted to only if both Mr. Pavlich and Mr. Matsen consented thereto, which Mr. Matsen has not done, it does not appear to me that arbitration is "an alternative source of

decision" within the meaning of section 18701. It might equally be argued that obtaining a court decision is "an alternative source of decision" to a decision by the governing body of a public entity. However, to so construe section 18701 would prevent the governing body from making a decision whenever less than a quorum has not been disqualified to decide. Section 18701 was presumably intended to refer only to such alternative sources of decision within the public agency as are provided for in the enabling legislation.

6. How many directors may vote? If the FPPC decides that Mr. Bongio and/or Mr. Bollman and Mr. Brochard are disqualified to vote and that section 87101 applies, the question arises as to which and how many of the five HCSD directors should vote pursuant to section 87101. It is my understanding that the FPPC has decided that as a rule only the fewest number of disqualified members may vote as are necessary to create a quorum, rather than the whole board voting, and has further decided that the preferred means of selecting an otherwise disqualified member to vote is by lot or by some other impartial and equitable means of selection (4 FPPC Opinions 13, 17-18).

In HCSD's case, three directors are required to constitute a quorum. Even if the FPPC decides that Mr. Bongio is disqualified, the grounds for his disqualification are far more attenuated than the grounds for the disqualification of Mr. Hobbs and Mr. McKenny. Therefore, it seems more reasonable to me that Mr. Bongio be selected as the otherwise disqualified director who is to make up the quorum, rather than that Mr. Bongio, Mr. Hobbs and Mr. McKenny draw lots to decide which of them is to vote. I realize that random selection will probably be appropriate in most cases, where the grounds for disqualification of the various members are roughly equal. However, where the grounds are disproportionate, it appears more appropriate to select the member who has the least conflict of interest to make up a quorum with the non-disqualified members.

Finally, if the FPPC decides that all five directors are disqualified, I suggest the same method of selection of the three members who are to vote--that is, that Mr. Bongio, Mr. Bollman and Mr. Brochard be selected because they have less conflict of interest than do Mr. Hobbs and Mr. McKenny.

* * * * *

CONCLUSION

It is my opinion that the Political Reform Act does not disqualify Aldo Bongio from voting on the amendment of the agreement for pipeline extension between HCSD and Ralph Matsen; that if Mr. Bongio is so disqualified, and/or if Mr. Bollman and Mr. Brochard are so disqualified, three members of the HCSD Board of Directors may vote on the amendment anyway; and that such members should be Mr. Bongio, Mr. Bollman and Mr. Brochard.

Despite the rather complicated and lengthy facts involved in this matter and the variety of statutes and regulations whose application to the facts must be analyzed, I expect that the FPPC will find the answers to the questions asked fairly clear.

Please let me know if the FPPC needs any further information. Although there is no specific deadline for HCSD to act on this matter, HCSD hopes to do so as soon as possible. The HCSD Board of Directors meets on the second and fourth Thursdays of every month (unless that day is a holiday) and would most appreciate receiving the FPPC's response by November 12 or November 25, 1987.

Very truly yours,



Paula Kimbrell
HCSD Legal Counsel

cc: James L. Peoples, HCSD General Manager
All Members of the HCSD Board of Directors

Paula Kimbrell

Attorney at Law

Oct 26 10 02 AM '87

724 Leona Drive

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October 26, 1987

Fair Political Practices Commission
Legal Division
P. O. Box 807
1100 K Street Building
Sacramento, Ca. 95804

Dear FPPC:

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construction. In order to reimburse the person who so extended the pipeline for the portion of the extension that was not necessary to serve his own property, the agreement for pipeline extension between HCSD and the developer may provide that if the other property to which the pipeline was extended connects to the pipeline within five years, HCSD will charge a fee in addition to its usual connection fee in an amount sufficient to reimburse the developer for such construction costs and "refund" such fee to the developer. The total amount of such construction costs is prorated among parcels which could connect to the pipeline extension, and each is charged its prorated amount when it connects to the pipeline. Thus, if all parcels which could be served by the extended pipeline connect to the pipeline within five years, the developer recovers his costs of extending the pipeline through his property to the adjacent property line. HCSD Ordinance No. 76-1, authorizing such agreements, is enclosed.

In June 1987 HCSD entered into an Agreement for Pipeline Extension, a copy of which is enclosed, with Ralph Matsen, who had extended pipelines through his property (known as "the Flekkefjord Subdivision") to an adjoining property line. At the time the agreement was entered into, Mr. Matsen did not request that any "refunds" from adjoining parcels be provided for, so there was no Exhibit A to the agreement. However, shortly thereafter Mr. Matsen requested that the agreement be amended to provide for "refunds" in the amount of \$7962. The present owner of the five parcels which could connect to the extended pipeline is Gerald Pavlich, who is developing all of such parcels as "the Lacey Subdivision." The amendment as proposed by Mr. Matsen was first placed on the HCSD Board of Directors' agenda for its meeting of August 27, 1987. Mr. Pavlich appeared before the Board to dispute that the amount of construction costs actually incurred by Mr. Matsen for the pipeline extension was \$7962, contending that the amount of such costs and the "refunds" to be provided by amendment to the agreement should be set at about \$4362. Since that time the matter has been continued and heard at several Board meetings, with evidence as to the construction costs incurred being presented on behalf of both Mr. Matsen and Mr. Pavlich.

At the meeting of August 27, 1987 two HCSD Directors (Lee Hobbs and Kevin McKenny) stated that they had a conflict of interest with regard to this matter. They have not participated in the discussions and will not vote on the amendment. The remaining three Directors (Messrs. Bollman, Bongio and Brochard) have so participated. At the meeting held on September 24, Mr. Brochard made a motion to amend the agreement to provide for "refunds" of \$7962. Before the motion was acted on, Mr. Pavlich stated that Mr. Bongio had a conflict of interest and should not vote on the motion. No vote was taken and the matter has been continued since that time.

Mr. McKenny is a builder who within the past year has done work for and been paid by both Mr. Matsen and Mr. Pavlich. Mr. Hobbs owns a real estate office called Cutten Realty, a

branch of Coldwell Banker, which is the exclusive sales agent for homes within the Flekkefjord Subdivision. Mr. Bongio is not an employee of Cutten Realty, but is an independent contractor making sales for Cutten Realty on a commission basis (see enclosed "Broker-Salesperson Contract" between Mr. Bongio and Cutten Realty). The ground of Mr. Pavlich's challenge to Mr. Bongio was stated in a letter to HCSD by Mr. Pavlich's attorney as follows:

"Lee Hobbs own Cutten Realty. Aldo Bongio, another Board member, also works for Cutten Realty. Cutten Realty is the exclusive agent for Flekkerfjord [sic] Subdivision and Aldo Bongio is actively selling that subdivision. If a decision of Mr. Bongio's or Mr. Hobbs' were to upset Mr. Matsen, it is very foreseeable that Cutten Realty will no longer be the exclusive agent of the Flekkerfjord [sic] Subdivision. This appears to be an obvious conflict situation."

Mr. Bongio states that he has not made any sales within the Flekkfjord Subdivision and is not now negotiating or otherwise involved in any such sales; that he is not an officer of Cutten Realty or Coldwell Banker and has no ownership interest therein, including that of stockholder; that he does not share in the profits or losses of or receive income from Cutten Realty in any way except that he is paid a commission on each sale he makes for Cutten Realty; that within the past year he has received more than \$250 in commissions from Cutten Realty; and that within the past year neither Mr. Matsen nor Mr. Pavlich has been a source of income to him. Mr. Bongio specifically disputes the statement in the above-quoted letter that he "is actively selling that subdivision."

Lee Hobbs states that Ralph Matsen has said nothing to him to indicate that Cutten Realty's continued representation of the Flekkefjord Subdivision depends in any way on HCSD's decision concerning amendment of the agreement for pipeline extension.

A few other facts should be mentioned concerning Ralph Matsen and an engineer who works for HCSD pursuant to contract. First, Ralph Matsen is a principal in the Freeman-Matsen Insurance Agency, from which HCSD has obtained several policies of insurance, some of which are now in effect. Competitive bids for such insurance were not solicited. HCSD may continue to obtain insurance through the Freeman-Matsen Insurance Agency. Second, Robert Kelly is an enginner and a principal in the engineering firm of Winzler & Kelly, with which HCSD contracts for many engineering services. Mr. Kelly usually attends meetings of the HCSD Board of Directors and was present during the hearings concerning amending the agreement for pipeline extension with Mr. Matsen, at which he made some remarks concerning his knowledge of construction performed in the Flekkefjord Subdivision, which was derived from an engineering study of that subdivision which Winzler & Kelly had performed pursuant to a contract with Ralph Matsen. Finally, neither Mr. Matsen, Freeman-Matsen, Mr. Kelly nor Winzler & Kelly is a

source of income to Mr. Bongio, Mr. Bongio does not have an investment in such firms, Mr. Bongio is not an employee of and holds no position in such firms, and Mr. Bongio has received no gifts from such firms or individuals.

HCS D's Conflict of Interest Code names the Board of Directors, General Manager, Secretary/Finance Officer and Superintendent as designated employees and essentially repeats the language of Government Code section 87103 with regard to disqualification. A copy of the Code is enclosed.

QUESTIONS

1. Is Mr. Bongio disqualified from voting on the amendment to the agreement for pipeline extension between HCS D and Ralph Matsen pursuant to Government Code section 87100 or any other portion of the Political Reform Act? If so, would he not be so disqualified if he agreed to make no sales within the Flekkefjord Subdivision in the future?

2. If Mr. Bongio is disqualified pursuant to the Political Reform Act, may Mr. Bongio, Mr. Hobbs, Mr. McKenny or the entire Board of Directors vote on the amendment to the agreement for pipeline extension pursuant to Government Code section 87101?

3. If only one of such three Directors may vote pursuant to section 87101, how should that Director be chosen?

LEGAL ANALYSIS

1. Reasonable foreseeability: (a) As to Cutten Realty. Given the foregoing facts, it does not appear to me that it is reasonably foreseeable that HCS D's decision regarding the amount of "refunds" to specify in amending its agreement for pipeline extension with Mr. Matsen will have a material financial effect on Mr. Bongio or on Cutten Realty. Certainly, that decision in itself will have no such effect. The argument that such effect is reasonably foreseeable depends on matters that may occur after HCS D's decision is made, namely, Mr. Matsen's being displeased by HCS D's decision; Mr. Matsen's cancelling his agreement with Cutten Realty as exclusive agent for the Flekkefjord Subdivision because he is displeased with HCS D; and Cutten Realty losing \$10,000 or more in profits that it might have made as a result. Even if it were appropriate to consider matters that might occur as a result of HCS D's decision which are not within the control of HCS D, it must be noted that this series of events is not foreordained. In fact, it appears unlikely to me that the owner of a subdivision who has made a business decision that a certain real estate agency is best suited to represent him would change his mind and terminate such representation because an independent contractor who works for the agency votes to provide for \$3600 less than the owner requested as "refunds" in an agreement with a public entity that has nothing to do with the real estate agency or even with sales within the subdivision. There is no reason to believe that Mr.

Matsen would hold Cutten Realty responsible for Mr. Bongio's vote or, if Mr. Matsen were displeased with HCSD's decision, that he would cancel his agreement with Cutten Realty, which had nothing to do with the agreement for pipeline extension or the vote thereon. Indeed, it is inconsistent to think that Mr. Matsen would believe that Cutten Realty was able to control Mr. Bongio's vote if Mr. Bongio in fact voted contrary to Mr. Matsen's interests, and if Cutten Realty could not control Mr. Bongio's vote, Mr. Matsen would not hold it responsible therefor.

(b) As to Mr. Bongio. It is even less reasonably foreseeable that the decision concerning amending Mr. Matsen's agreement with HCSD will have any financial effect on Mr. Bongio personally. Cutten Realty is a source of income to Mr. Bongio only as to commissions on sales Mr. Bongio makes; Mr. Bongio does not share in the profits or losses of Cutten Realty. Mr. Bongio is not now negotiating or otherwise involved with any sale within the Flekkefjord Subdivision, so he will gain or gain nothing whether Cutten Realty retains or loses the right to be exclusive agent for the subdivision. The most that can be said in support of the position that the decision will have a material financial effect on Mr. Bongio is that perhaps if Cutten Realty retains its exclusive agency, Mr. Bongio will make a sale within the subdivision in the future that he would not have made if Mr. Matsen discontinues that arrangement with Cutten Realty, or that all sales commissions received by Cutten Realty benefit Mr. Bongio because they contribute to the overall financial well-being of Cutten Realty, thus allowing it to continue to be a source of income to Mr. Bongio. Such arguments appear to me to go well beyond the scope of the "reasonably foreseeability" intended by section 87103.

(c) Future sales. As stated, Mr. Bongio has made no sales within the Flekkefjord Subdivision and is not now negotiating for any such sale. However, as an independent contractor with Cutten Realty, he may be able to make such a sale in the future. Cutten Realty is a source in income to Mr. Bongio (he has received more than \$250 from Cutten Realty within the past year), regardless of the fact that none of such income has come from sales within the Flekkefjord Subdivision. I do not see that whether Mr. Bongio does or doesn't make any sales within the Flekkefjord Subdivision in the future (or, indeed, whether he has made any such sales in the past) makes any difference to the conclusion as to whether Mr. Bongio is disqualified from voting on the amendment to the agreement for pipeline extension between HCSD and Ralph Matsen. In either event, it is Cutten Realty, not Ralph Matsen, who is a source of income to Mr. Bongio, and Cutten Realty is not a party to the agreement for pipeline extension nor, for the reasons previously discussed, is it reasonably foreseeable that the decision as to that agreement will have a material financial effect on Cutten Realty.

2. Mr. Bongio as an "employee." Section 87103 provides that section 87100 encompasses financial interests in any "business entity in which the public official is

a[n]...employee...." I do not know whether the word "employee" as used in section 87103 should be construed to include independent contractors such as Mr. Bongio. However, I assume that the question is not very important, since even if Mr. Bongio were considered an "employee," the test as to business entities in which the official is an employee is presumably the same as the test as to a source of income to the official.

3. Regulations. Several FPPC regulations interpreting sections 87100 and 87103 bear on this matter.

(a) Material financial effect. 2 Cal.Ad.Code section 18702 provides in part in subdivision (b) (3) that in determining "whether it is reasonably foreseeable that the effects of a governmental decision will be significant, consideration should be given...in the case of a source of income...[whether]:

"(A) The effect of the decision will be to directly increase or decrease the amount of income...to be received by the official...in an amount of...\$100 or more; or

"(B) There is a nexus between the governmental decision and the purpose for which the official receives income...."

Based on the foregoing facts, it is clear to me that the effect of the decision amending Mr. Matsen's agreement to provide for "refunds" of pipeline extension costs will not have any direct effect on Mr. Bongio's income, and I do not see any "nexus" between that decision and the purpose for which Mr. Bongio receives income (making real estate sales).

(b) Disqualification. 2 Cal.Ad.Code section 18702.1 provides in subdivision (a) for situations in which a public official must disqualify himself when persons or business entities which are sources of income to the official "appear before the official in connection with the decision," and subdivision (b) defines when an appearance is made. As Cutten Realty did not initiate and is not in any way a party to the proceeding to amend the agreement for pipeline extension between Ralph Matsen and HCSD, such regulations presumably do not apply to this situation. Also, as it is not reasonably foreseeable that such decision will affect Mr. Bongio in the amount of at least \$250, presumably subdivision (a) (4) is also inapplicable.

(c) Material financial effect on business entity. 2 Cal.Ad.Code section 18702.2 provides in part in subdivision (g) that the effect of a governmental decision will be material to certain business entities not described in other subdivisions (and into which category Cutten Realty presumably falls) if the "decision will result in an increase or decrease in the gross revenues of a fiscal year of \$10,000 or more." Although the amount of sales commissions Cutten Realty might lose if its exclusive representation were discontinued is unknown, that amount might be \$10,000 or more. However, such presumption does not answer the question of whether it is reasonably foreseeable that HCSD's decision amending the agreement for pipeline extension with Ralph Matsen will have such an effect on Cutten Realty.

4. Involvement of Robert Kelly and Ralph Matsen.

(a) Robert Kelly. With regard to Robert Kelly's comments in the hearings regarding amending the agreement for pipeline extension between HCSD and Ralph Matsen, it is established that the reference in section 87100 to "making" a decision refers to participation in proceedings prior to the actual vote as well as to the vote itself, and that the term "public official" may include some persons who are consultants of the public agency (2 Cal.Ad.Code section 18700). I do not think that Robert Kelly should be considered to be a public official in the context of this matter, inasmuch as his information and conclusions regarding the Flekkefjord Subdivision were arrived at independent of the control or direction of HCSD and he possesses no authority with respect to an HCSD decision beyond the rendition of information, advice, recommendation or counsel, and thus is exempt from the definition of "public official" as provided by subdivision (a)(2)(A) and (B) of 2 Cal.Ad.Code section 18700. Even if Ralph Matsen had been a source of income to Mr. Kelly within the past year and Mr. Kelly were to be considered a public official who participated in making a decision as to amending HCSD's agreement for pipeline extension with Ralph Matsen, the questions presented to the FPPC have to do with whether Mr. Bongio and/or other members of the HCSD Board of Directors may vote concerning amendment of Mr. Matsen's agreement with HCSD, which questions do not seem to depend on whether Mr. Kelly violated section 87100. If such a violation occurred, it occurred in the presence of all members of the Board of Directors and presumably affects all members equally. Therefore, if Mr. Kelly's involvement is material to the questions asked herein, it is material only with regard to the application of section 87101. If the FPPC finds that Mr. Kelly's involvement may be material to answering the questions asked herein and requires more information, please let me know.

(b) Ralph Matsen. As Ralph Matsen is not an officer, employee or consultant of HCSD, section 87100 does not apply to him. However, it may be argued that all of HCSD's Directors have a financial interest in a decision affecting Ralph Matsen because Ralph Matsen is a principal in the insurance agency from which HCSD obtains some of its insurance policies, and thus the decision may have a material financial effect on HCSD, a business entity in which all the Directors are officers. It may be argued that if Ralph Matsen is displeased with HCSD's decision as to amending the agreement for pipeline extension, he may refuse to sell insurance to HCSD or charge higher rates or premiums or take some other action harmful to HCSD; conversely, if Ralph Matsen is pleased with HCSD's decision, he may lower his rates or premiums or take some other action favorable to HCSD. Even leaving aside the fact that it is highly unlikely that any such action taken by Ralph Matsen would affect HCSD's revenues by \$10,000 per year, such an argument appears to me to be misconceived for much the same reasons as apply to the argument that if Ralph Matsen is displeased by HCSD's decision, he will cancel his agreement with Cutten Realty. HCSD's insurance policies are not the subject of the decision in

question, and such action on Mr. Matsen's part is far-fetched speculation that cannot be considered reasonably foreseeable. Moreover, as with Robert Kelly's involvement, any financial interest of the Board of Directors arising because Ralph Matsen also sells insurance to HCSD affects all Directors equally and thus is material to the questions raised herein only with reference to application of section 87101.

5. Application of Section 87101. If the FPPC decides that Mr. Bongio is not disqualified from voting on the amendment to HCSD's main extension agreement with Ralph Matsen, there will be three directors who are not disqualified (Mr. Bongio, Mr. Bollman and Mr. Brochard), assuming the FPPC does not decide that all directors are disqualified because of the involvement of Robert Kelly or Ralph Matsen or for some other reason. If three directors are able to vote, a decision may be made. The Community Services District Law (Government Code section 61000 et seq.), pursuant to which HCSD was organized and operates, provides in section 61223 that the board of directors "shall act only by ordinance, resolution, or motion," and section 61225 provides: "No ordinance, resolution, or motion shall be passed or become effective without the affirmative votes of at least a majority of the members of the board." Thus, if three or more members of HCSD's five-person board of directors are disqualified from voting, no action can be taken.

Government Code section 61300 provides that the board of directors "is the governing body of the district," and section 61301 provides: "The powers of districts enumerated in this division shall, except as therein otherwise provided, be exercised by the board." Section 61616 provides that a community services "district may make contracts for any and all purposes necessary or convenient for the full exercise of its powers." There is no provision of statute or HCSD ordinance or resolution authorizing anyone other than the HCSD Board of Directors to enter into amendments to main extension agreements. Thus, under 2 Cal.Ad.Code section 18701, "there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision." Among the many statutes that may be said to authorize the execution and amendment of the agreement for pipeline extension in question are Government Code sections 61616, quoted above; 61620 ("A district may perform any work of construction...or may contract for the performance of such work by others"); and 61621 ("A district may prescribe, revise and collect rates or other charges for the services and facilities furnished by it").

Perhaps it should be noted that Mr. Pavlich's attorney has suggested that arbitration might be used to decide the amount of "refunds" to include in the amendment to the agreement for pipeline extension. As arbitration is not an alternative to decision by the HCSD Board of Directors that is provided for by the above-quoted statutes and ordinance, and as arbitration could be resorted to only if both Mr. Pavlich and Mr. Matsen consented thereto, which Mr. Matsen has not done, it does not appear to me that arbitration is "an alternative source of

decision" within the meaning of section 18701. It might equally be argued that obtaining a court decision is "an alternative source of decision" to a decision by the governing body of a public entity. However, to so construe section 18701 would prevent the governing body from making a decision whenever less than a quorum has not been disqualified to decide. Section 18701 was presumably intended to refer only to such alternative sources of decision within the public agency as are provided for in the enabling legislation.

6. How many directors may vote? If the FPPC decides that Mr. Bongio and/or Mr. Bollman and Mr. Brochard are disqualified to vote and that section 87101 applies, the question arises as to which and how many of the five HCSO directors should vote pursuant to section 87101. It is my understanding that the FPPC has decided that as a rule only the fewest number of disqualified members may vote as are necessary to create a quorum, rather than the whole board voting, and has further decided that the preferred means of selecting an otherwise disqualified member to vote is by lot or by some other impartial and equitable means of selection (4 FPPC Opinions 13, 17-18).

In HCSO's case, three directors are required to constitute a quorum. Even if the FPPC decides that Mr. Bongio is disqualified, the grounds for his disqualification are far more attenuated than the grounds for the disqualification of Mr. Hobbs and Mr. McKenny. Therefore, it seems more reasonable to me that Mr. Bongio be selected as the otherwise disqualified director who is to make up the quorum, rather than that Mr. Bongio, Mr. Hobbs and Mr. McKenny draw lots to decide which of them is to vote. I realize that random selection will probably be appropriate in most cases, where the grounds for disqualification of the various members are roughly equal. However, where the grounds are disproportionate, it appears more appropriate to select the member who has the least conflict of interest to make up a quorum with the non-disqualified members.

Finally, if the FPPC decides that all five directors are disqualified, I suggest the same method of selection of the three members who are to vote--that is, that Mr. Bongio, Mr. Bollman and Mr. Brochard be selected because they have less conflict of interest than do Mr. Hobbs and Mr. McKenny.

* * * * *

CONCLUSION

It is my opinion that the Political Reform Act does not disqualify Aldo Bongio from voting on the amendment of the agreement for pipeline extension between HCSO and Ralph Matsen; that if Mr. Bongio is so disqualified, and/or if Mr. Bollman and Mr. Brochard are so disqualified, three members of the HCSO Board of Directors may vote on the amendment anyway; and that such members should be Mr. Bongio, Mr. Bollman and Mr. Brochard.

Despite the rather complicated and lengthy facts involved in this matter and the variety of statutes and regulations whose application to the facts must be analyzed, I expect that the FPPC will find the answers to the questions asked fairly clear.

Please let me know if the FPPC needs any further information. Although there is no specific deadline for HCSD to act on this matter, HCSD hopes to do so as soon as possible. The HCSD Board of Directors meets on the second and fourth Thursdays of every month (unless that day is a holiday) and would most appreciate receiving the FPPC's response by November 12 or November 25, 1987.

Very truly yours,



Paula Kimbrell
HCSD Legal Counsel

cc: James L. Peoples, HCSD General Manager
All Members of the HCSD Board of Directors



California Fair Political Practices Commission

November 4, 1987

Paula Kimbrell
Attorney at Law
724 Leona Drive
Arcata, CA 95521

Re: Your Opinion Request
Our File No. 87-006

Dear Ms. Kimbrell:

This is to notify you that your request for a formal opinion, dated October 26, 1987, has been denied. The Commission opinion procedure requires a minimum of three months for a final decision. Your letter indicates that matters pending before the Humboldt Community Services District cannot be resolved until the conflict of interest questions are answered. Accordingly, I have determined that your questions concerning Mr. Aldo Bongio's responsibilities under the conflict of interest provisions of the Political Reform Act are more appropriately handled by the Commission's staff. (See Regulation 18320(f)(2), copy enclosed.) Thus, we have granted your alternative request for formal written advice pursuant to Section 83114(b).

Your letter requesting advice was received on October 28, 1987. If you have any questions about your advice request, you may contact Kathryn Donovan of the Legal Division at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. If more information is needed, the person assigned to prepare a response will contact you shortly to advise you as to the information needed.

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory W. Baugher".

Gregory W. Baugher
Executive Director

GWB:KED:plh



California Fair Political Practices Commission

November 4, 1987

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Attorney at Law
724 Leona Drive
Arcata, CA 95521

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Gregory W. Baugher
Executive Director

GWB:KED:plh

G. M. PAVLICH
4619 Florence Place, Eureka, CA 95501
General Contractor

November 11, 1987

NOV 21 8 51 AM '87

Kathy Donovan
Fair Political Practices Commission
Legal Division
P. O. Box 807
1100 K St. Bldg.
Sacramento, CA 95804

Dear Ms. Donovan:

Between May 4, 1987 and May 14, 1987, I negotiated a land deal with Mr. Dude Little on a parcel of ground to be known as:

A.P. No. 303-041-14.

Both parties were represented by Coldwell Banker, Cutten Realty. At no time was I presented with any type of refund agreement. At about the same time I was getting ready to start construction of two homes in Flekkefjord Estates Subdivision, which is adjacent to the property I was buying. As Flekkefjord had C.C.R.s (covenants, conditions and restrictions), on June 30, 1987, I went to see a local attorney to have them look at the C.C.R.s and about my road, which passed through Mr. Matsen's property. When Mr. Matsen heard I had gone to an attorney about the C.C.R.s, he became very upset and started to tell people he was going to get me. When this word got back to my real estate agent and myself, we became concerned because it could upset the land deal.

On August 20, 1987, I entered the offices of Humboldt Community Services District (H.C.S.D.) and asked them about any refund agreements that they might have with Mr. Matsen. It was at this time I was given three pieces of paper from Mr. Jim Peoples - which were calculation of \$8,485.00, of refunds due Mr. Matsen, and a letter from Mr. Maples, who was the underground contractor on the job. As this was Thursday, and the H.C.S.D. meeting was the following Thursday, I did a little investigating and found that the numbers they wanted to charge me were highly inflated. I got my information from Humboldt County Public Works. It was at the meeting of August 27, 1987, that I presented my first of many rejected offers of \$4,362.00.

It was at this meeting that Mr. Hobbs and Mr. McKenney said they could not participate in the discussions. Mr. Peoples presented item #6 on the agenda as such - "Mr. Matsen called me a couple of weeks ago and said we have to get going on a refund agreement now as Mr. Nelson is no longer the developer of that piece of property." So he presented the amount of \$8,485.00. I presented my case with the numbers I received from Humboldt County Public Works, and got nowhere.

G. M. PAVLICH
4619 Florence Place, Eureka, CA 95501
General Contractor

Letter to K. Donovan
November 11, 1987: Page 2

Mr. Bongio said, "Mr. Maples is the most honest subcontractor in Humboldt County, and I would believe any number he wrote down. You do not have the right to bring us any numbers from Public Works as that is private information." It was at this time I realized I was in trouble. The three remaining Board Members all agreed that I did not have the right to be in Public Works' records to gather information. In no way could I get the Board Members to understand that the numbers I had were bid costs and what I should be charged for. On the agenda, I noticed that Mr. Matsen had an extension agreement. The following week I got a copy of it and it is totally blank, signed by Mr. Bongio, Mr. Matsen and the Clerk of the Board, dated June 25, 1987. This is what the Board was trying to revise.

It was at this time that I really tried to document the costs of the work done. Nowhere did the numbers equal, except for the pump station. Why was this going on. At subsequent meetings of H.C.S.D., Bob Kelly, Jim Peoples, and Board Members would manipulate the numbers so they would always work for them. There was a total disregard for any government codes or county ordinances. It was as if those codes were for other people, not them. It has always been around 300' between sewer manholes, and Mr. Kelly said they could go around 450', so I dealt with the number of 450'. Two weeks later, they could go 600'. It seemed that when they gave me a number, and I dealt with it to my advantage at the board meeting, they would change the number on the recommendation of Mr. Kelly or another member of H.C.S.D. At no time would they accept numbers that were verified by Winzler & Kelly to Humboldt County Public Works.

One thing I found ironic was Mr. Kelly was the engineer for Mr. Matsen's project and he also advised the Board about my so-called refund agreement as engineer for the Board. It was at this time that I saw a real conflict of interest. I could see Mr. Matsen in the background as insurance agent for H.C.S.D., Mr. Kelly as Mr. Matsen's engineer, and Mr. Kelly as District engineer, etc. I thought, "I don't have a chance here."

I have tried a number of times to reach agreements on this issue by talking to various Board Members. They all say forget it; you do not have a chance.

Mr. Bongio has tried to sell lots in Flekkefjord Subdivision countless times. He attempted to sell one to Mr. Greg Bish, who is a local building contractor, and Mr. Bongio has been seen driving through the subdivision one or two times a week.

G. M. PAVLICH
4619 Florence Place, Eureka, CA 95501
General Contractor

Letter to K. Donovan
November 11, 1987: Page 3

Last week, I received from Cutten Realty another set of papers that had a new set of numbers for a refund and an additional amount of money for extra costs. These parcels were given to my agent by Mr. Hobbs. I asked about the numbers and was told by my agent that "they" wanted the \$8,500.00 and "they" would drop the additional numbers. I found it quite ironic that now they were using H.C.S.D. operations to blackmail me because all I did in the beginning is question the amount of refund due.

At the meeting when I asked Mr. Bongio to refrain from voting, Mr. Peoples told the Board of Directors that "Mr. Matsen was willing to capitulate on a few hundred dollars, but was not willing to negotiate a few thousand." After seeing the connection between Mr. Matsen as insurance agent, Mr. Kelly as engineer for the Board and Mr. Matsen, and the Board being prejudiced by opinions stated in public and private, I don't have a chance to have my ideas discussed in a rational matter.

A few days after receiving the information from Cutten Realty on the new refund, I received a letter from Mr. Peoples of H.C.S.D. which explains the new refund, a copy of which is enclosed.

I have included some documents that I have gathered to substantiate my case. I have tried to put them in an order so they can be understood. If you have any questions, please feel free to call me.

Thank you,



G. M. Pavlich

Enclosures.

Humboldt Community Services District . . .

P. O. Box 158

CUTTEN, CALIF. 95534

PHONE 443-4559

November 6, 1987

Mr. Gerald M. Pavlich
4619 Florence Place
Eureka, CA 95501

RE: Potential Refunds to Ralph Matsen from Proposed Lacey
Subdivision

Dear Mr. Pavlich:

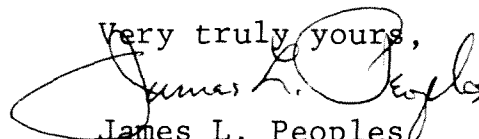
Enclosed, please find copies of letters that the District received this week from Ralph Matsen. All original copies of these statements were notarized.

You will note that Mr. Matsen is claiming a refund of \$8,375.80 is due to him from the proposed Lacey Subdivision for direct costs associated with providing water and sewer service to the Lacey Subdivision. The only difference between that figure and what had previously been discussed at District board meetings, was the inclusion of one gate valve at \$500 which was installed and verified by the District, and was also the unit bid price bid by Early Bird Construction. It will therefore be my recommendation to the Board when they are in a position to act on the matter, that the refund specified to Mr. Matsen be \$8,375.80.

Mr. Matsen is also claiming additional costs associated with development of his subdivision, as well as the proposed Lacey Subdivision. The Humboldt Community Services District does not consider these additional costs to be directly related to the provision of water and sewer service, and therefore does not intend to include any portion of those costs in a required refund.

We have not as yet received any response from the California Fair Political Practices Commission. At this point in time, our attorney feels that it is doubtful a response will be received prior to our Board Meeting of November 12, 1987. The Humboldt Community Services District does not plan on taking any action on the proposed refunds to the Flekkefjord Subdivision until such time as a determination has been received from the California Fair Political Practices Commission.

Very truly yours,


James L. Peoples
General Manager

Enclosures

EARLY BIRD CONSTRUCTION

P. O. BOX 1423 - EUREKA, CALIFORNIA 95501 - (707) 443-5853
LICENSE #363613

November 3, 1987

Board of Directors
Humboldt Community Services District
505 Walnut Drive
Eureka, California 95501

Attention: Jim Peoples

RE: FLEKKEFJORD ESTATES/RALPH'S COURT

The results of a dilligent research of our worksheets, job estimates, and amount expended have brought us to determine that the amounts listed below represent the costs incurred to provide gravity sewer and water to the cul-de-sac lots situated at the west end of Ralph's Court:

1. Manhole at Ralph's Court Intersection with Christine Drive	\$3,500.00
2. Cost to lower main sewer line on Christine Drive to accommodate Ralph's Court	1,200.00
3. 30' 6" Sewer Main into Ralph's Court from Christine Drive @ \$9.36 per lineal feet	280.80
4. 40' Water Main into Ralph's Court from Christine Drive @ \$8.00 per lineal feet	320.00
5. 1 - 4" Gate Valve	<u>500.00</u>
TOTAL AMOUNT OF EXPENDITURES FOR SOLE PURPOSE OF RALPH'S COURT.....	<u><u>\$5,800.80</u></u>

Please advise if we can be of further assistance.

Sincerely,



Sunter J. Walsh, President

ORIGINAL COPY NOTARIZED

FLEKKEFJORD ESTATES, INC.
P. O. BOX 1029
EUREKA, CALIFORNIA 95501

November 3, 1987

Board of Directors
Humboldt Community Services District
5055 Walnut Drive
Eureka, California 95501

Dear Members of the Board of Directors:

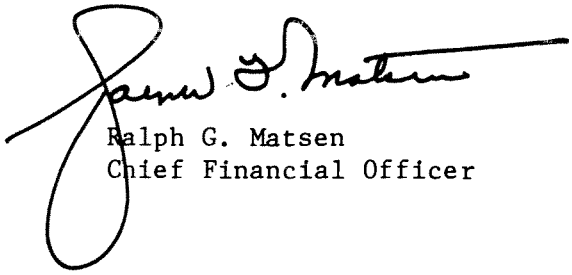
Mr. Jim Peoples, General Manager of Humboldt Community Services District, has requested a breakdown of Flekkefjord Estates' actual cost for providing future services for that parcel on the west end of Ralph's Court (AP303-041-14).

It should be of interest to know that when the facilities were being engineered and installed on Christine Drive, the depth limit was reached by a voluntary decision by Flekkefjord Estates to serve parcel AP-303-041-14. We had the option to not be as deep, which would have necessitated AP-303-041-14, as we understand it, a sewer lift station instead of the gravity flow, which is now available.

The attached breakdown is provided as requested. I do hereby certify as the Chief Financial Officer of Flekkefjord Estates, Inc., that these are true and actual costs associated with providing water and sewer service capability to AP-303-041-14. We do further request that Humboldt Community Services District not provide water and sewer service until such time as these costs are recovered from the owners or developers of AP-303-041-14 by the Humboldt Community Services District and refunded to Flekkefjord Estates, Inc.

Sincerely,

FLEKKEFJORD ESTATES, INC.


Ralph G. Matsen
Chief Financial Officer

RGM/nrf

Enclosure

ORIGINAL COPY NOTARIZED

FLEKKEFJORD ESTATES, INC.
P. O. BOX 1029
EUREKA, CALIFORNIA 95501

CALCULATION OF REFUNDS DUE FLEKKEFJORD ESTATES, INC.
FROM ADJACENT PARCEL #303-041-14 END OF RALPH'S COURT

Flekkefjord Estates Subdivision has 39 Lots
AP-303-041-14 (West end of Ralph's Court) 5 Lots
Total lots to be served by Pump Station 44 Lots

Cost of Installation of Pump Station \$22,647.50
Average Cost Per Lot \$515.00

Total Share of Sewage Pump Station Cost for AP-303-041-14 \$ 2,575.00

Other Cost Associated with Providing Service to AP-303-041-14

Manhole at Ralph's Court Intersection \$ 3,500.00
Extra Cost to Lower Sewer Main to Accommodate AP-303-041-14 \$ 1,200.00
30'6" Sewer Main @ \$9,36/ft into Ralph's Court \$ 280.80
(This is unit bid price by Early Bird Construction)
40'4" Water Main @ \$8.00/ft into Ralph's Court \$ 320.00
(This is unit bid price by Early Bird Construction)
1-4" Gate Valve \$ 500.00
Sub Total \$ 8,375.80

Additional Costs

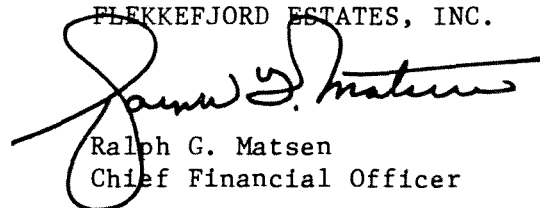
County of Humboldt Fees

Planning Fee \$ 2,118.00
Construction Fee 2,405.00
Inspection Fee 15,097.00
Engineering, Survey, and Recording 82,955.00
(44 Lots - Cost per Lot \$2,331.25 \$102,575.00

5 Lots @ \$2,331.25 \$11,656.25
Total \$20,032.05

Sincerely,

FLEKKEFJORD ESTATES, INC.



Ralph G. Matsen
Chief Financial Officer

November 3, 1987

ORIGINAL Copy NOTARIZED

ORIGINAL
COPY

ORDINANCE NO. 76-1

AN ORDINANCE AUTHORIZING SPECIAL AGREEMENTS FOR THE
CONSTRUCTION OF WATER AND SANITARY SEWAGE FACILITIES
AND THE REIMBURSEMENT OF THE COSTS THEREOF

BE IT ORDAINED by the Board of Directors of the Humboldt Community Services District, Humboldt County, California, as follows:

Section 1: Special Agreement Authorized.

The Board of Directors may enter into special agreements with persons applying for permission to construct water or sanitary sewerage mainlines and facilities, and may agree therein to collect monies from other persons who later apply for connection to such mainlines and facilities and to reimburse such monies later collected to the persons who originally constructed such mainlines and facilities.

Section 2: Term of Agreement.

Any special reimbursement agreement shall provide that reimbursement will be limited to monies collected for connections made within five years of the date of the special agreement.

Section 3: Amount subject to reimbursement.

The amount subject to reimbursement shall be specified in the special agreement.

Section 4: Special Connection Charges.

In addition to any other charges established by the ordinances, rules, and regulations of the District, there shall be collected, prior to connection of any property to mainlines and facilities which have been constructed pursuant to special agreements, an amount equal to that specified for such property in the special agreement.

Section 5: Procedure.

The District Manager shall prepare and submit to the Board of Directors his recommendations and proposed special agreement, which shall be substantially in the form of Exhibit A attached hereto. The Manager's recommendation shall include his computation of each property's share of the cost of the installation to be made pursuant to the special agreement, which would have been paid by such property for the mainlines and facilities if such property were to contribute its equitable share to the original cost of construction.



All special agreements shall be entered into on behalf of the District by the Board of Directors.



President, Board of Directors of
Humboldt Community Services District

ATTEST:



Secretary

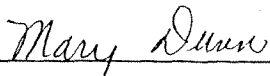
SECRETARY'S CERTIFICATE

I hereby certify that the foregoing is a full, true and correct copy of an Ordinance passed and adopted at a meeting of the Board of Directors of the Humboldt Community Services District, Humboldt County, California, duly held on the 11th day of March, 1976, by the following vote:

AYES: Brown, Bongio, Selvage, Hobbs and Marshall

NOES: None

ABSENT: None



Secretary, Humboldt Community Services
District

EXHIBIT A

AGREEMENT FOR PIPELINE EXTENSION

THIS AGREEMENT is made by and between the HUMBOLDT COMMUNITY SERVICES DISTRICT, hereinafter referred to as "Humboldt", and _____, hereinafter referred to as "Developer", this ____ day of _____, 19____.

A. Developer, at his own expense, desires to construct a (sewer) (water) line extension within the Humboldt Community Services District, said extension being set forth and located upon a map duly filed with the Manager of Humboldt, entitled _____ Line Extension.

B. The construction cost estimate by Humboldt to install the mainline facilities and appurtenances with District equipment and personnel is _____ for sewer and _____ for water. Developer understands he has the option to have the required facilities constructed himself by properly qualified personnel, to the specifications and under the inspection of Humboldt.

C. In consideration for conveying said line with proper easement of right of way to the Humboldt Community Services District, Humboldt is agreeable to collecting from future users the sums hereinafter stated for reimbursement to Developer.

NOW, THEREFORE, the parties do agree as follows:

1. AREA OF SERVICE. The parties have agreed that the parcels of real property described in Exhibit "A" attached hereto can be connected to said pipeline extension, and therefore, will derive a benefit from the construction of said line.

2. EASEMENTS. Developer shall grant all necessary pipeline easements to Humboldt prior to the commencement of construction of the extension, on Humboldt's Standard Easement Form which Developer acknowledges they are familiar with.

3. POTENTIAL REIMBURSEMENT. Humboldt agrees to charge and collect from all owners of real property described in Exhibit "A", a reimbursement fee in the amount shown thereon for each connection for a period of five (5) years from date, or until the Developer recovers full cost incurred by the construction of said pipeline, whichever first occurs. No interest will be paid on funds collected or held by Humboldt.

4. PAYMENT TO DEVELOPER. Humboldt will pay to Developer its proportionate share of all collections as established by Exhibit "A" from the benefitted landowners. This payment shall be made to Developer within

thirty (30) days after the collection from benefitted landowner.

5. ASSIGNMENT OF RIGHTS BY DEVELOPER. The rights to receive payments pursuant to this agreement are personal to the Developer and do not run with the land. Assignments of such rights will be accepted by Humboldt only if they are made by Developer in writing and received at least ten (10) days prior to the due date for payments.

6. COMMINGLING WITH GENERAL FUNDS. Humboldt shall have the right to commingle said reimbursement fees with its general funds, and may deposit or invest the same as if said monies were, in fact, the general fund of Humboldt.

7. ADDITIONAL FEES AND REIMBURSEMENT FEES. The reimbursement fees provided for herein are in addition to the usual customary charges and fees collected by Humboldt for similar services, and nothing contained herein shall be construed as limiting Humboldt's rights to, from time to time, change, increase, or delete such additional charges and fees.

8. If Developer desires to have the extensions constructed under his direction, the following conditions shall apply:

A. CONSTRUCTION OF EXTENSION. Developer shall cause to be constructed, at his sole expense, a (sewer) (water) pipeline extension at the above location in accordance with the plans and specifications heretofore approved by Humboldt and in conformity with Humboldt's Standard Specifications for Construction of Pipelines. The extension shall be constructed and installed under Humboldt's inspection.

B. EXPENSES OF HUMBOLDT. Developer agrees to reimburse Humboldt for its expenses in connection with checking the detailed construction plans and specifications, legal expenses incurred in drawing necessary contracts and easements, inspecting the extension during construction, and for any other expenses of Humboldt in connection with the construction of the extension and its acceptance.

C. GUARANTEE. Developer does hereby guarantee for a period of one year after acceptance of the extension by Humboldt that the extension will remain free from leaks, breaks, settlement of backfill, or other failures resulting from defective material and/or labor. Developer may be required to deposit a Surety Bond or other security with Humboldt equal to not less than twenty-five percent (25%) of the cost of construction of the extension, as



estimated by Humboldt, in a form approved by Humboldt, guaranteeing said work, as a condition of approval of said pipeline extensions.

9. If Developer desires to have the extensions constructed by Humboldt, the following conditions shall apply:

A. In consideration for payment by Developer to Humboldt of the sums specified in Paragraph B, all work will be performed by Humboldt and Section 8 shall not apply.

The parties hereby agree that the applicable section that applies to this Agreement shall be (8) (9).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the date first above written.

HUMBOLDT COMMUNITY SERVICES DISTRICT

By _____
President

By _____
Secretary

DEVELOPER

By _____

BROKER - SALESPERSON CONTRACT

(INDEPENDENT CONTRACTOR)

CALIFORNIA ASSOCIATION OF REALTORS® STANDARD FORM

THIS AGREEMENT, made this 8 day of September, 1986, by and between
Lee R. Hobbs and John M. Wahlund hereinafter referred to as Broker and Aldo Bongio
hereinafter referred to as Salesperson,

WITNESSETH:

WHEREAS, Broker is duly licensed as a real estate broker by the State of California, and

WHEREAS, Broker maintains an office, properly equipped with furnishings and other equipment necessary and incidental to the proper operation of business, and staffed suitably to serving the public as a real estate broker, and

WHEREAS, Salesperson is now engaged in business as a real estate licensee, duly licensed by the State of California.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, it is understood and agreed as follows:

1. Broker agrees, at Salesperson's request, to make available to Salesperson all current listings in the office, except such as Broker may choose to place in the exclusive possession of some other Salesperson. In addition, at Salesperson's discretion and at Salesperson's request Broker may, from time to time, supply Salesperson with prospective listings; Salesperson shall have absolute discretion in deciding upon whether to handle and the method of handling any such leads suggested by Broker. Nothing herein shall be construed to require that Salesperson accept or service any particular listing or prospective listing offered by Broker; nor shall Broker have any right or authority to direct that Salesperson see or service particular parties, or restrict Salesperson's activities to particular areas. Broker shall have no right, except to the extent required by law, to direct or limit Salesperson's activities as to hours, leads, open houses, opportunity or floor time, production, prospects, reports, sales, sales meeting, schedule, services, inventory, time off, training, vacation, or other similar activities.

At Salesperson's request and at Salesperson's sole discretion Broker agrees to furnish such advice, information and full cooperation as Salesperson shall desire. Broker agrees that thereby Broker obtains no authority or right to direct or control Salesperson's actions except as specifically required by law (including Business and Professions Code Section 10177 (h)) and that Salesperson assumes and retains discretion for methods, techniques and procedures in soliciting and obtaining listings and sales, rentals, or leases of listed property.

2. Broker agrees to provide Salesperson with use, equally with other Salespersons, of all of the facilities of the office now operated by Broker in connection with the subject matter of this contract, which office is now maintained at 3988 Walnut Dr, Eureka, Ca.

3. Until termination hereof, Salesperson agrees to work diligently and with Salesperson's best efforts to sell, lease or rent any and all real estate listed with Broker, to solicit additional listings and customers, and otherwise promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest profit possible, provided that nothing herein shall be construed to require that Salesperson handle or solicit particular listings, or to authorize Broker to direct or require that Salesperson to do so. Salesperson assumes and agrees to perform no other activities in association with Broker, except to solicit and obtain listings and sales, rentals, or leases of property for the parties' mutual benefit, and to do so in accordance with law and with the ethical and professional standards as required in paragraph 4 below.

4. Salesperson agrees to commit no act of a type for which the Real Estate Commissioner of the State of California is authorized by Section 10176 of the California Business & Professions Code to suspend or to revoke license.

5. Broker's usual and customary commissions from time to time in effect, shall be charged to the parties for whom services are performed except that Broker may agree in writing to other rates with such parties.

Broker will advise all Salespersons associated with Broker of any special commission rates made with respect to listings as provided in this paragraph.

When Salesperson shall have performed any work hereunder whereby any commission shall be earned and when such commission shall have been collected, Salesperson shall be entitled to a share of such commission as determined by the current commission schedule set forth in Broker's written policy, except as may otherwise be agreed in writing by Broker and Salesperson before completion of any particular transaction.

6. In the event that two or more Salespeople participate in such work, Salesperson's share of the commission shall be divided between the participating Salespersons according to agreement between them or by arbitration.

7. In compliance with Section 10138 of the California Business and Professions Code, all commissions will be received by Broker; Salesperson's share of such commissions, however, shall be payable to Salesperson immediately upon collection or as soon thereafter as practicable.

Salesperson agrees to provide and pay for all necessary professional licenses and dues. Broker shall not be liable to reimburse Salesperson therefor.

In the event Broker elects to advance sums with which to pay for the account of Salesperson professional fees or other items, Salesperson will repay the same to Broker on demand and Broker may deduct such advances from commissions otherwise payable to Salesperson.

10. This agreement does not constitute a hiring by either party. It is the parties' intention that so far as shall be in conformity with law the Salesperson be an independent contractor and not Broker's employee, and in conformity therewith that Salesperson retain sole and absolute discretion and judgment in the manner and means of carrying out Salesperson's selling and soliciting activities. Therefore, the parties hereto are and shall remain independent contractors bound by the provisions hereof. Salesperson is under the control of Broker as to the result of Salesperson's work only and not as to the means by which such result is accomplished. This agreement shall not be construed as a partnership and Broker shall not be liable for any obligation incurred by Salesperson.

11. In accordance with law, Salesperson agrees that any and all listings of property, and all employment in connection with the real estate business shall be taken in the name of Broker. Such listings shall be filed with Broker within twenty-four hours after receipt of same by Salesperson.

Salesperson shall receive a commission in accordance with the current commission schedule set forth in the Broker's written policy based upon commissions actually collected from each firm listing solicited and obtained by Salesperson. In consideration therefor Salesperson agrees to and does hereby contribute all right and title to such listings to the Broker for the benefit and use of Broker, Salesperson and all other Salespeople associated with Broker to whom Broker may give the listing. Salesperson shall have the rights provided in paragraph 13 hereof with respect to listings procured by Salesperson prior to termination.

12. On completion of work in process, this agreement may be terminated by Salesperson at any time. Except for cause, this agreement may not be terminated by Broker except on 30 days' prior written notice to Salesperson. On the occurrence of any of the following causes, Broker may terminate this agreement:

- (a) Election of Broker to sell its entire business, or to cease doing business at the office specified in paragraph 2;
- (b) Any breach of this agreement by Salesperson;
- (c) Cessation of Salesperson to be licensed;
- (d) Failure of Salesperson to comply with any applicable law, or regulation of the Real Estate Commissioner;
- (e) The filing by or against Salesperson of any petition under any law for the relief of debtors; and
- (f) Conviction of Salesperson of any crime, other than minor traffic offenses.

13. When this agreement has been terminated, Salesperson's regular proportionate share of commission on any sales Salesperson has made that are not closed, shall, upon the closing of such sales, be paid to Salesperson, if collected by Broker, and except in cases of termination for cause Salesperson shall also be entitled to receive the portion of the commissions, received by Broker after termination, allocable to the listing (but not the sale) as set forth in Broker's current commissions schedule, on any listings procured by Salesperson during Salesperson's association with Broker, subject however, to deductions as provided in paragraph 14.

14. In the event Salesperson leaves and has transactions pending that require further work normally rendered by Salesperson, Broker shall make arrangements with another Salesperson in the organization to perform the required work, and the Salesperson assigned shall be compensated for completing the details of pending transactions and such compensation shall be deducted from the terminated Salesperson's share of the commission.

15. Arbitration—In the event of disagreement or dispute between Salesperson in the office or between Broker and Salesperson arising out of or connected with this agreement which cannot be adjusted by and between the parties involved, the disputed disagreement shall be submitted to the Real Estate Board of which Broker is a member for arbitration pursuant to the provisions of its Bylaws, said provisions being hereby incorporated by reference, and if the Bylaws of such Board include no provision for arbitration, then arbitration shall be pursuant to the rules of the American Arbitration Association, which rules are by this reference incorporated herein.

16. Salesperson shall not after the termination of this contract use to Salesperson's own advantage, or the advantage of any other person or corporation, any information gained for or from the files or business of Broker.

17. Salesperson agrees to indemnify Broker and hold Broker harmless from all claims, demands and liabilities, including costs and attorney's fees, to which Broker is subjected by reason of any action by Salesperson taken or omitted pursuant to this agreement.

WITNESS the signatures of the parties hereto the day and year first above written. In duplicate.

WITNESS

WITNESS

BROKER

SALESPERSON as INDEPENDENT CONTRACTOR

CONFLICT OF INTEREST CODE FOR
THE HUMBOLDT COMMUNITY SERVICES DISTRICT

Section 1. Introduction.

In compliance with the Political Reform Act of 1974, California Government Code Section 81000, et seq., and specifically with Section 87300 et seq., the Humboldt Community Services District hereby adopts this Conflict of Interest Code which shall be applicable to all designated employees of the agency. The requirements of this code are in addition to other requirements of the Act such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and to any other state or local laws pertaining to conflicts of interest.

Section 2. Definition of Terms.

The definitions contained in the Political Reform Act of 1974, the regulations of the Fair Political Practices Commission (2 Cal. Adm. Code Sections 18100 et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

Section 3. Designated Employees.

The persons holding positions listed in Appendix A are designated employees. It has been determined that these officers and employees make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

Section 4. Disclosure Statements.

A designated employee shall be assigned one or more of the disclosure categories set forth in Appendix B. It has been determined that the financial interests set forth in a designated employee's disclosure category are the types of financial interests which he or she foreseeably can affect materially through the conduct of his or her office. Each designated employee shall file statements of economic interests disclosing his or her financial interests as required by the applicable disclosure category.

Section 5. Place of Filing.

All designated employees required to submit a statement of economic interests shall file the original with the Board President who shall be the filing officer for all designated employees other than the Board of Directors.

Upon receipt of the statement of economic interests of the Board of Directors, the agency shall make and retain a copy and forward the originals of these statements to the Humboldt County Board of Supervisors who shall be the filing officer, within five days of the filing deadline or five days of receipt in the case of statements filed late.

Section 6. Time of Filing.

(a) Initial Statements. All designated persons holding office and employees employed by the agency on the effective date of this Code shall file statements within thirty days after the effective date of this Code.

(b) Candidate Statements. All candidates for election to office shall file statements within 5 days after the final date for filing nomination petitions. This subsection shall not apply to candidates who have filed disclosure statement with the agency within the previous 12 months.

(c) Annual Statements. All designated employees shall file statements no later than March 31.

(d) Leaving Office Statements. All persons who leave designated positions shall file statements within thirty days after leaving office.

Section 7. Contents of Statements.

(a) Contents of Initial Statements. Initial statements shall disclose any reportable investments and interests in real property and management positions held on the effective date of the Code.

(b) Candidate Statements. Candidate statements shall disclose any reportable investments and interests in real property held on the date of filing the nomination petitions.

(c) Assuming Office Statements. Assuming office statements shall disclose any reportable investments and interests in real property and management positions held on the date of assuming office.

(d) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, and income and management positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later.

(e) Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, and income and management positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

Section 8. Manner of Reporting.

Disclosure statements shall be made on forms supplied by Humboldt Community Services District, and shall contain the following information:

(a) Contents of Investment and Real Property Reports. When an investment or interest in real property is required to be reported, the statement shall contain the following:

(1) A statement of the nature of the investment or interest:

(2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

(3) The address or other precise location of the real property;

(4) A statement whether the fair market value of the investment or interest in real property exceeds one thousand dollars (\$1,000), exceeds ten thousand dollars (\$10,000), or exceeds one hundred thousand dollars (\$100,000).

(b) Contents of Personal Income Reports. When personal income is required to be reported, the statement shall contain:

(1) The name and address of each source of income aggregating two hundred and fifty dollars (\$250) or more in value,

or twenty-five dollars (\$25) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000);

(3) A description of the consideration, if any, for which the income was received;

(4) In the case of a gift, the name and address of the donor, a description of the gift, the amount or value of the gift, and the date on which the gift was received.

(c) Contents of Business Entity Income Reports. When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity;

(2) In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the filer's pro rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000);

(3) In the case of a business entity not covered by paragraph (2), the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(d) Contents of Management Position Reports. When management positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(e) Acquisition of Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

Section 9. Disqualification.

Designated employees must disqualify themselves from making, participating in the making or using their official positions to influence the making of any governmental decision which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the designated employee has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the designated employee has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or

promised to the designated employee within twelve months prior to the time when the decision is made; or

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

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. (The fact that a designated employee's vote is needed to break a tie does not make his or her participation legally required for purposes of this section.)

Section 10. Manner of Disqualification.

A designated employee required to disqualify himself or herself shall notify his or her supervisor in writing. This notice shall be forwarded to the Board President, who shall record the employee's disqualification. Upon receipt of such statement, the supervisor shall reassign the matter to another employee.

In the case of a designated employee who is a board member or commissioner, notice of disqualification shall be given at the meeting during which consideration of the decision takes place and shall be made part of the official record of the board or commission.

APPENDIX A

General Provisions

1. Employees listed in Column I must disclose investments in business entities and sources of income which manufacture, distribute, sell or supply the goods or services listed in Column II.

2. Investments in any business entity or sources of income which are entities or persons engaged in farming or real estate development or which are private water companies, and interests in real property are disclosable if held, regardless of any contractual relationship with the district at any time.

I.
Designated Employees

II.
Categories Disclosed

Board of Directors

All

General Manager

All

Secretary/Finance Officer

All

Superintendent

All

APPENDIX B

1. Motor vehicles and specialty vehicles and parts therefor
2. Construction and building materials
3. Office equipment and supplies
4. Petroleum products
5. Electrical or electrical generating equipment and supplies
6. Irrigation equipment and supplies -- pipes, valves, fittings, tanks, pumps, meters, etc.
7. Agricultural equipment and supplies
8. Well drilling equipment and supplies
9. Safety equipment, facilities, and instructional material
10. Real property
11. Farming
12. Real estate firms and appraisals
13. Engineering services
14. Printing or reproduction services, publications, and distribution.
15. Educational and medical services and materials
16. Preparation of actions leading to taking in eminent domain
17. Soil test, compaction and other agreements on grading requirements
18. Banks and savings and Loans
19. EPA agreements and research
20. Insurance companies
21. Public utilities
22. Audit agreements and contracts