



California Fair Political Practices Commission

March 11, 1988

Phillip H. Romney
City Attorney
City of Santa Paula
970 Ventura Street
Santa Paula, CA 93060

Re: Your Request for Advice
Our File No. A-88-063

Dear Mr. Romney:

This is in response to your letter requesting advice on behalf of City Councilmember Carl Barringer about his responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Is Councilmember Barringer prohibited from participating in decisions regarding a proposed subdivision which is owned by the buyer of other property for which Mr. Barringer represented the seller?

CONCLUSION

Mr. Barringer may participate in decisions affecting the buyer of the property. Since the buyer of the property is not a source of income to Mr. Barringer, and has no other financial relationship to him, there is no conflict of interest for Mr. Barringer.

FACTS

Carl Barringer is a City Councilmember in the City of Santa Paula, and is also a real estate broker. He represents the seller of a piece of real property located in another city. That sale is now in escrow and Mr. Barringer expects to receive a commission in excess of \$1,000. There is no special

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

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commission arrangement between Councilmember Barringer and the buyer of the property. The buyer has never been a client of Mr. Barringer.

The buyer of the above mentioned property owns another parcel which is located in the City of Santa Paula. This parcel is the subject of a proposed subdivision. The buyer will have to obtain approvals from the city council before the subdivision is completed.

ANALYSIS

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

(c) Any source of income ... 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 public official, Councilmember Barringer must refrain from participating in any governmental decision where he has a financial interest. (Section 82048.) He would have a financial interest if it is reasonably foreseeable that the decision would have a material financial effect on a source of income, and the effect is different from that on the public generally.

Regulation 18704.3 defines the sources of income to real estate brokers who operate on a commission basis as:

(A) The person the broker represents in the transaction;

(B) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;

(C) Any brokerage business entity through which the broker conducts business; and

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(D) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

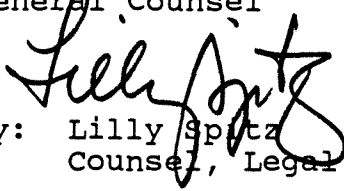
In the instant situation, Councilmember Barringer represented the seller in the transaction. No special fee arrangements were made with the buyer, and no fee was, in fact, received by Mr. Barringer from the buyer. Moreover, the buyer has not been a client of Mr. Barringer's on any other sale or purchase of property. Therefore, the buyer of the property is not a source of income to Councilmember Barringer.

Since the buyer of the property is not a source of income to Councilmember Barringer, he does not have a conflict of interest with regard to decisions affecting the buyer's property. Consequently, he is not required to disqualify himself from participating in such decisions.

I hope this clarifies for you the Councilmember's responsibilities under the Act. If I can be of further assistance, please don't hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh



City of Santa Paula

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970 VENTURA STREET
SANTA PAULA, CALIFORNIA 93060
Mailing Address: P.O. BOX 569
Phone: 805 525-4478

February 3, 1988

CERTIFIED MAIL
RETURN RECEIPT

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

Re: Carl Barringer;
City Councilmember

Gentlemen:

I am writing to ask for a written opinion regarding a potential conflict of interest.

Carl Barringer, a City Councilmember of this City, is also a real estate broker. He has a listing in which he represents the Seller of a piece of property located in another City. That property is now in escrow, and Mr. Barringer expects to receive a commission in excess of \$1,000.00. The Buyer of that property owns another parcel located in the City of Santa Paula, which is the subject of a proposed subdivision. The Buyer will have to obtain approvals before the subdivision is completed, which means that the project will have to come before the Santa Paula City Council on which Mr. Barringer sits.

Does Mr. Barringer have a conflict of interest such that he is prohibited from voting on matters regarding the Santa Paula subdivision?

If you have questions or require additional information, please do not hesitate to contact me.

Very truly yours,

PHILLIP H. ROMNEY
City Attorney

PHR/vp
cc: Carl Barringer
Bob Livingston



California Fair Political Practices Commission

February 5, 1988

Phillip H. Romney
City Attorney
P.O. Box 569
Santa Paula, CA 93060

Re: 88-063

Dear Mr. Romney:

Your letter requesting advice under the Political Reform Act was received on February 4, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly 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 your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

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.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths
General Counsel

DMG:plh
cc: Councilmember Carl Barringer