



California Fair Political Practices Commission

July 11, 1988

Laury L. Dowd
Deputy City Attorney
City of Modesto
801 11th Street
P.O. Box 642
Modesto, CA 95353

Re: Your Request for Advice
Our File No. A-88-214

Dear Ms. Dowd:

This is in response to your request for advice regarding the responsibilities of City Attorney Stan Yamamoto under the conflict of interest provisions of the Political Reform Act ("the Act").^{1/}

QUESTION

Is Mr. Yamamoto prohibited from participating in litigation affecting the annexation of property approximately 200 yards from his residence?

^{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.

CONCLUSION

If it is foreseeable that annexation of a large area 200 yards away will have a material financial effect on his home, Mr. Yamamoto is prohibited from representing the city in litigation regarding the annexation. We have insufficient information to provide specific advice at this time.

FACTS

Presently pending before your local agency formation commission (LAFCO) is an annexation application which seeks annexation of 152 acres of land to the City of Modesto. The land in question is currently designated "urban reserve" on the city's general plan. The application for annexation indicates the property would be developed for residential and/or commercial use.

The applicant for the annexation states that sewer service will be available to the annexed area. A 1987 analysis by your office indicates that a local initiative forbids sewer service to that area without a vote of the people. Annexation cannot be permitted unless public services, such as sewer, can be provided to the property.

Since the applicant and the city take opposing positions on this question, it is anticipated that LAFCO will seek a determination of this conflict in the courts. The city attorney would be in the position of representing the city in litigation which would affect whether the property is annexed.

City Attorney Stan Yamamoto owns his residence, which is located approximately 200 yards from the nearest point of the proposed annexation. There are over 250 homes closer to the annexation than Mr. Yamamoto's home, and many more in the immediate area. The total population of the City of Modesto is 144,000.

ANALYSIS

As city attorney, Mr. Yamamoto is a public official. (Section 82048.) The Act requires, therefore, that he not participate in any governmental decision in which he has a financial interest. (Section 87100.) If Mr. Yamamoto, in his capacity as city attorney, were to represent the city in any litigation, he would be participating in governmental decisions. (Regulation 18700(b) and (c), copy enclosed.)

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 family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

Mr. Yamamoto owns his home, which we will assume has a value of at least \$1,000. Thus, he may not participate in decisions which will have a reasonably foreseeable material financial effect on his home. (Section 87103(b).)

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is a mere possibility it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The 152 acres in question is undeveloped and currently designated urban reserve in the city's general plan. It is the intention of the applicant for annexation to develop the area for residential and/or commercial use. Thus, the likely effect of annexing the 152 acres in question is increased development in the area, which may well affect the value of nearby real property. Therefore, it is reasonably foreseeable that Mr. Yamamoto's real property interest will be affected by decisions regarding the annexation.

Regulation 18702(b)(2) provides guidelines for determining whether a decision's effect on real property will be material. A decision is material if it will increase or decrease:

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(b)(2)(B).

We have no information as to the value of Mr. Yamamoto's home and cannot, therefore, offer specific figures for determining whether the proposed annexation will increase the value of nearby property to such a degree that the effect will be material. We can offer a few examples, however. If Mr. Yamamoto's home has a current fair market value of \$150,000, an impact of \$1,000 or more would be material. If Mr. Yamamoto's home has a fair market value of \$250,000 and if the proposed annexation would foreseeably increase or decrease the value of his home by \$1,250 or more (i.e., one half of one percent), he would be required to disqualify himself from participating in the annexation litigation. Mr. Yamamoto is in the best position, using these examples, to calculate whether the effect on his real property would be material based on the current value of his home.

Regulation 18703 (copy enclosed) provides that a material financial effect of a governmental decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. The "public," for purposes of this exception, includes the residents and businesses located within the city limits. (See In re Owen (1976) 2 FPPC Ops 77 (copy enclosed).) In order to be considered a significant segment of the public, the Commission has held that a group must be "large in numbers and heterogeneous in quality." (See In re Ferraro (1978) 4 FPPC Ops. 62, and In re Legan, (1985) 9 FPPC Ops. 1, copies enclosed.)

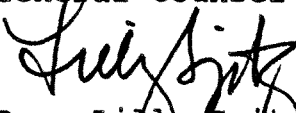
In your factual statement you noted that the population of Modesto is 144,000. For a city so large, it appears unlikely that there are sufficient properties in the same general proximity to the proposed annexation as Mr. Yamamoto's to constitute a significant segment of the population of Modesto. Unless you can provide additional facts which would demonstrate that a significant segment of the population of the city would be similarly affected by the annexation of the land, we conclude that the public generally exception does not apply.

Laury L. Dowd
July 11, 1988
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If you have any questions regarding this analysis please
contact me at (916) 322-5901.

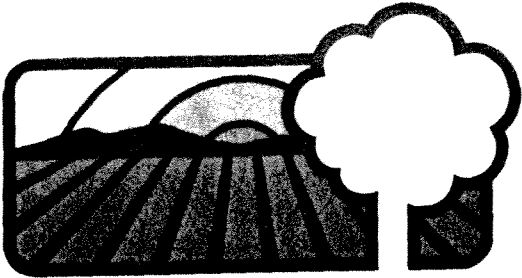
Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosures



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CITY of MODESTO

Office of City Attorney:

(209) 577-5284

801 11th Street, P. O. Box 642, Modesto, CA 95353

[TDD (209) 526-9211 Hearing and Speech Impaired only]

June 6, 1988

Diane M. Griffiths
Counsel, Legal Division
California Fair Political
Practices Commission
P. O. Box 807
Sacramento, CA 95804

Dear Ms. Griffiths:

We respectfully request advice as to whether the City Attorney may participate in litigation which would affect the annexation of 152 acres of land to the City, whose nearest point is approximately 200 yards from the City Attorney's principal place of residence.

Enclosed is a diagram showing the area proposed to be annexed to the City of Modesto in cross-hatch. I have marked the existing uses. The entire cross-hatched area is north of the city's current boundaries and is designed "Urban Reserve" on the City's General Plan. The annexation application is presently pending before LAFCO. A copy of the application for annexation is attached. The applicant indicates that the project site could be developed into residential subdivisions and/or commercial uses.

The applicant maintains that sewer service will be available to the annexed area, while a 1987 analysis by the City Attorney holds that a local initiative forbids sewer service to that area without a vote of the people. It might be noted that the currently existing development is served by septic tanks, which would not be permitted if the land were annexed to the City. LAFCO cannot permit annexation unless public services such as sewer can be provided to the property. Since the applicant and the City take opposite positions on this issue, it is anticipated that LAFCO will seek a determination of this conflict in the courts. The City Attorney would be in the position of representing the City of Modesto in litigation which would affect whether the property is annexed.

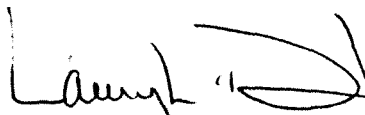
Diane M. Griffiths
Counsel, Legal Division
California Fair Political
Practices Commission
June 6, 1988
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The City Attorney, Stan Yamamoto, owns his principal place of residence. It is approximately 200 yards from the nearest point of the proposed annexation and is marked by a cross on the attached diagram.

There are over 250 homes closer to the annexation than Mr. Yamamoto's home, and many more in the immediate area. The total population of the City is 144,000. The City Attorney has no financial relationship with the applicant for annexation. It is unknown whether the City Attorney's economic interest would be affected in a different way than the public generally.

Is Stan Yamamoto precluded from representing the City of Modesto in this matter by the conflict of interest laws? Please advise as quickly as possible since LAFCO will soon be acting on this application. Thank you for your assistance.

Very truly yours,



LAURY L. DOWD
Deputy City Attorney

LLD/sw
Enclosure

BOARD OF SUPERVISORS FPPC

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93101 • 805-549-5150 **OCT 23 2 15 PM '89**



JAMES JOHNSON
DISTRICT FOUR

October 17, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

To The Commission and Staff:

On the Public Comment Period at today's Board meeting, a letter was read and presented requesting my resignation from the Board of Supervisors. The letter indicates that a copy was being sent to the FPPC.

The letter insinuates an impropriety on my part on March 15, 1988.

Enclosed is a transcript of the tape recording of the Board meeting of that date relative to the Pier Avenue item.

I own a small commercial building on Pier Avenue.

It is quite clear from the transcript that I stepped down because of possible conflict.

During the hearing there was a discussion of a possible alternative to Pier Avenue for access to the Nipomo Dunes. I asked County Counsel if it would be proper for me to provide some information relative to a totally different entrance, in the Oso Flaco area. This area is several miles south of Pier Avenue. I was advised by County Counsel to speak as a member of the public. I do not own any land in the location of the proposed alternative.

It is quite obvious to me that the letter from Mr. Hogan is political in nature. I am up for re-election in June of 1990, and the political maneuvering has started.

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FPPC

Letter to FPPC

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If I can provide any further information on this subject, please contact me. The transcript was taken directly from the recording of the March 15, 1988 meeting.

Sincerely,


Jim Johnson

Enclosure (1)
fppcpier

CITIZENS FOR HONEST REPRESENTATION
Drawer 1126
Nipomo Ca. 93444

October 16, 1989

Board of Supervisors
San Luis Obispo County

Subject: FOURTH DISTRICT SUPERVISOR
CONFLICT OF INTEREST

My name is Karl Hogan. I represent CITIZENS FOR HONEST REPRESENTATION, a large group of citizens with divergent interests. We have in common, however, Mr. Johnson's conflict of interest and the lack of representation it causes citizens of the fourth district.

The notoriety of Mr. Johnson's conflict has centered around his Los Oso Valley property. But Mr. Johnson owns other property throughout the county. He is a real estate investor, a developer and a general contactor.

In 1988 he enhanced his economic interest in commercial property he owns on Pier Ave. in Oceano by seeing to it that state grant money for the improvement of Pier Ave. was accepted by the county. On a least one occassion, March 15, 1988, he spoke as a private citizen before the Board of Supervisors in an attempt to influence the vote on this item in which he had a conflict.

Mr. Johnson's innumerable conflicts and potential conflicts are so serious that CITIZENS FOR HONEST REPRESENTATION are requesting his resignation immediately. Accordingly, we will pursue appropriate actions to protect the public interest from the continuing self-serving interest enjoyed by Mr. Johnson as a member of the Board of Supervisors.

Mr. Johnson, we may like you but we cannot afford your conflicts. We would feel the same of any other elected official who who put the citizens of this county at such a disadvantage.

Karl Hogan
Spokesperson
CITIZENS FOR HONEST REPRESENTATION

cc: FAIR POLITICAL PRACTICES COMMISSION

(805) 489-8433
Fax (805) 489-6702

Stephen N. Cool
Attorney at Law
1577 El Camino Real
Arroyo Grande, California 93420

Member of
Real Property Law Section
State Bar of California

October 16, 1989

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA

Attention: Katherine Donovan, Chief Counsel

Re: SUPERVISOR JAMES E. JOHNSON
SAN LUIS OBISPO COUNTY

Dear Ms. Donovan:

By this letter we are urgently and desparately seeking immediate reconsideration of your prior decision finding that Supervisor James E. Johnson is precluded from voting on San Luis Obispo County's Interim Growth Control Ordinance, which expired by operation of law on October 6 due to your ruling. Your commission's ruling, which we feel is legally erroneous, has caused what could become the greatest environmental and political disaster in the history of San Luis Obispo County, and could create statewide precedent which would effectively prevent virtually every city and county from protecting their constituents from the types of staggering growth pressures for unbridled development presently being exherted on this county, by adoption of reasonable community development restrictions which have been endorsed by the California Legislature and by courts nationwide.

I am enclosing for your review some copies of local news articles concerning this situation, which should give you some perception of its magnitude and severity.

My earlier letter to Blanca Breeze of your office pointed out our position that Supervisor Johnson's 1/22 ownership interest in a parcel of property, of which a portion is capable of being subdivided under current zoning, does not constitute a prohibited "financial interest" under Government Code Section 87100, since the ordinance in question does not have a material effect on this property which is "distinguishable from its effect on the public generally" (Government Code 87103). We pointed out to you that this property is only one of approximately 34,000 vacant parcels of land in the unincorporated area of San Luis Obispo County, that of these approximately 25,000 are outside of urban reserve lines (and therefore affected by this ordinance), and that those 25,000 parcels could theoretically be divided into approximately 80,000 parcels under current zoning. If that in itself is not enough to place Supervisor Johnson's one parcel into a "public generally" catagory, it is difficult to envision what that catagory could apply to. Also, does your ruling mean that other members of our Board of Supervisors, along with every other city councilman and Supervisor statewide, who own property which is capable of being

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Fair Political Practices Commission
Attn: Katherine Donovan
October 16, 1989
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subdivided or built on is precluded from voting on area-wide growth control measures? If so, we would suggest that your position casts a doubt on the legality of virtually every city or county growth control measure which ever has been or ever will be passed in California!

Your decision not only is unsupported by statutory language and common sense, but is also contrary to established precedents under these statutes. As early as 1978 the California Court of Appeal held in *Consumers Union v. Calif. Milk Producers Advisory Board* (82 CA 3d 433) that regulatory board members whose financial interests were directly affected by their decisions were not precluded from voting on matters before the Board. Your own Commission the same year made a similar ruling as to the Funeral Board (4 FPPC 33). While other decisions rendered by your Commission have established that public officials owning property in areas affected by site-specific proposals cannot participate therein (i.e. 1 FPPC 71, 3 FPPC 38), you have also held that ownership of property which will be affected by decisions of area-wide effect does not create a conflict (4 FPPC 62).

Four of the five members of the San Luis Obispo County Board of Supervisors wish to immediately re-enact its Interim Growth Control Ordinance pending adoption of a permanent measure (which would only require three votes), in order to minimize the damage which is already occurring because of your previous ruling and to protect the citizens of this County from being inundated by sudden, unrestricted building projects. We again implore you to reconsider your ruling on Supervisor Johnson's right to help the Board do this.

Respectfully submitted,

STEPHEN N. COOL

SNC:am

Enclosures

cc: Supervisor Jim Johnson
San Luis Obispo Board of Supervisors
Telegram Tribune
Times-Press-Recorder
Senator Ken Maddy
Assemblyman Eric Seastrand
John K. Van de Kamp, Office of the Attorney General

Dictated but not read

(805) 489-8433
Fax (805) 489-6702

Stephen N. Cool
Attorney at Law
1577 El Camino Real
Arroyo Grande, California 93420

Member of
Real Property Law Section
State Bar of California

September 20, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Attention: Blanca Breeze

Re: Your Reference No. 89-500
Supervisor James E. Johnson, San Luis Obispo County

Dear Ms. Breeze:

This letter is to follow up our recent telephone conversation concerning whether Supervisor James E. Johnson, my client, is precluded by the Fair Political Practices Act from voting on an interim Growth Control Ordinance ("the Ordinance") presently before the San Luis Obispo County Board of Supervisors, by virtue of his ownership interest in two properties in the unincorporated area of San Luis Obispo County. I also acknowledge receipt of the regulations regarding "material financial effect" of decisions of public officials which you kindly sent me.

During our conversation you advised me that it would be helpful to you if I submitted further information to you regarding the exact character of the properties in which Supervisor Johnson has an interest, and how they could be affected by the Ordinance. Accordingly, I am submitting herewith a copy of the Ordinance, and also a copy of an opinion letter which I previously rendered to Supervisor Johnson, and am also furnishing the information and comments set forth below:

THE ORDINANCE

Approximately one year ago a serious movement toward adoption of some type of growth management ordinance for the unincorporated area began to materialize in the private sector. In response to this the County Board of Supervisors appointed a committee of private citizens and groups to propose the framework of a growth management ordinance. The committee submitted a report to the Board of Supervisors in which they recommended certain general policies relative to issuance of building permits and subdivision of land in the unincorporated area through an interim ordinance, pending adoption of some type of permanent ordinance.

Following up this report, the Board had its staff prepare the Ordinance, which in essence embodies the following policies:

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Attn.: Ms. Blanca Breeze
September 20, 1989
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1. Building permits for new residences will be limited to a 2.5% annual growth rate, to be spread over the 22 planning areas within the county.

2. Pending adoption of a permanent ordinance, no subdivision of existing parcels in the unincorporated area would be permitted except within "urban and village reserve lines" while the Ordinance is in effect, subject to certain exceptions not applicable here.

The Ordinance was to be in effect for 45 days after its enactment, as an urgency interim ordinance.

The interim Ordinance was passed by the Board of Supervisors on August 23, 1989, on a 4-1 vote, Supervisor Johnson voting "yes." The Ordinance is scheduled for further action by the Board on October 3, and it is anticipated that the Board at that time will vote to extend the Ordinance in effect for up to one year, and at the same time will vote to place the measure on the ballot as an initiative ordinance at the June, 1990, election in substantially its present form as a permanent growth management ordinance.

One additional factor should be noted: If Supervisor Johnson is compelled to disqualify himself from voting on the Ordinance on October 3, it cannot possibly be passed at that time, since under the Government Code a 4-1 vote is required for urgency ordinances without the usual 30 day waiting period, and one Supervisor is definitely going to vote against the Ordinance. The Ordinance would therefore expire by operation of law, and the county will immediately be flooded with building permit applications by persons wanting to be "grandfathered in" before the Board can pass a new, non-urgency ordinance. In light of current development pressures in the county this would result in a chaotic situation.

SUPERVISOR JOHNSON'S PROPERTIES

Bearing in mind that the Ordinance pertains only to property within the unincorporated area of this county, I would point out that there are approximately 34,000 vacant parcels of land in the unincorporated area, ranging from residential lots to very large agricultural parcels. The County Planning Department estimates that under current zoning these could be split into a total of approximately 100,000 parcels.

Supervisor Johnson has an interest in two properties in the unincorporated area:

Fair Political Practices Comm.

Attn.: Ms. Blanca Breeze

September 20, 1989

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1. He owns 10 acres in the south part of the county on which his home, and another residence occupied by his son in law and daughter, are located. The property is used as a working and very successful avocado orchard. Current zoning could allow this property to be divided into two 5 acre parcels, but Supervisor Johnson has no desire to divide the property and a lot division would in all likelihood be denied by the county if applied for because of the agricultural use of the property.

2. He owns a 50% interest in a limited partnership, of which he is the general partner, called Johnson Investments, Ltd., which was formed for the exclusive purpose of developing and selling a large tract of land adjoining the City of San Luis Obispo generally called the "Laguna Hills Project," in concert with several other persons and entities. The partnership owns a 1/11th interest in the current holdings of the project, which presently consist of approximately 500 acres of land. Approximately 450 acres of this are zoned agriculture and cannot be subdivided. Approximately 50 acres are zoned suburban-residential and could be subdivided into one acre parcels. However, the current planning for all of this property, as has been the case with other portions of the Laguna Hills Project, is to annex it to the City of San Luis Obispo (in which case it would not be subject to the ordinance) and to rezone and develop it as a residential-golf course development. If for any reason annexation were denied, the property theoretically could be rezoned and subdivided as a residential development in the unincorporated area, in which event it is clear that Supervisor Johnson would have to disqualify himself from voting on the rezoning and subdivision proposals.

Neither of Supervisor Johnson's properties is located within an urban or village reserve line, and neither qualifies for any other exemption from the Ordinance; therefore, if the Ordinance is continued in effect by the Board on October 3, neither property can be subdivided. If the Ordinance is made permanent by the voters at the June, 1990, election, presumably the subdivision prohibition will be eliminated, although some controls on future subdivisions may be included in a permanent ordinance.

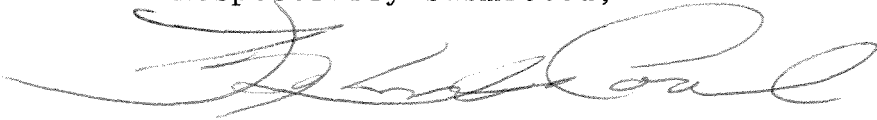
My position, as reflected in my August 16 letter, is that Supervisor Johnson does not have a "financial interest" in the Ordinance, as that term is defined by Government Code Sec. 87103. The Ordinance is a county-wide interim growth management measure affecting thousands of parcels of land throughout all of San Luis Obispo County. Supervisor Johnson's properties are no more

Fair Political Practices Comm.
Attn.: Ms. Blanca Breeze
September 20, 1989
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affected by the Ordinance than are the other 34,000 parcels. As to his residence and avocado orchard, he has no intention of trying to divide this property and probably could not do so in any event. As to his property adjacent to San Luis Obispo, it is contemplated for development only if annexed into the city, and therefore would not be governed by the Ordinance; if it were developed outside the city it would have to be rezoned and subdivided, and Supervisor Johnson would clearly have to disqualify himself from voting on those specific measures at that time. Therefore, when analyzed in light of these facts, the adoption of the Interim Growth Control Ordinance does not in reality have any material effect on the value or development capability of his properties.

We look forward to your department's opinion on whether you concur with our position that Supervisor Johnson may vote on extension of the interim Ordinance when it comes before the Board of Supervisors on October 3, and we trust that you will be in a position to render your opinion before that date. Please contact the undersigned if we can furnish you with any further information.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stephen N. Cool", written in dark ink. The signature is fluid and somewhat stylized, with a long horizontal flourish extending to the left.

STEPHEN N. COOL

SNC:pce
Encls.

BOARD OF SUPERVISORS

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • 805-549-5450



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RECEIVED

August 16, 1989

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

JAMES JOHNSON
DISTRICT FOUR

Commission and Staff:

I am writing to request your opinion on a matter which will come before me as a member of the San Luis Obispo County Board of Supervisors, of which I am presently chairman.

The Board has been under pressure to enact a county-wide growth control ordinance. In June of 1988, a Blue Ribbon Committee was appointed to study and advise as to how best to accomplish this. In July of this year, the Committee brought forward their proposal. During recent weeks the Board has held public hearings regarding implementation of the recommendations. On August 23rd we will consider enacting portions of the recommendations as an emergency ordinance, which would be in effect for 45 days, but in all likelihood will be extended to one year.

Up to this point I have not seen any reason to consider a conflict of interest. However, as we continue to address a permanent ordinance, I see such possibilities.

Prior to being elected to this position, I was active in construction and land development. Some of those projects continue at this time. All holdings were made public through my disclosure statement.

Some of the recommendations of the committee are detrimental to my holdings. In spite of this, I am supportive of the recommendations on an interim, short-term basis as we are proposing with the emergency ordinance. On a long term basis, I may not be able to support the concepts. My opinion would be the same whether or not I owned property. Many people may be hurt by some of the proposals.

One of my holdings that may be affected is my 1/22 interest in a company that owns approximately 400 acres adjacent to the city limits of San Luis Obispo, which has been proposed for annexation to the City; if the annexation is not approved, the company would be applying to the County for development, which could conflict with the ordinance.

Also, my own residence is on ten acres in the unincorporated area which is eligible to be split into two five acre parcels.

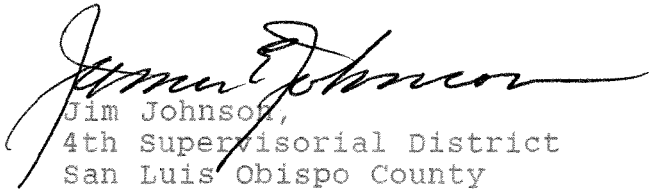
It would appear to me that a large segment of the county population would be eliminated from holding office if all owners of developable property were considered to have a conflict of interest in developing a county-wide ordinance such as this.

My questions are:

1. Under such circumstances, must I disqualify myself on any further Board action dealing with the ordinance; and,
2. If so, what steps should I take to accomplish this?

Please advise if you need further information.

Sincerely,


Jim Johnson,
4th Supervisorial District
San Luis Obispo County

(805) 489-8433
Fax (805) 489-6702

Stephen N. Cool
Attorney at Law
1577 El Camino Real
Arroyo Grande, California 93420

Member of
Real Property Law Section
State Bar of California

August 16, 1989

Honorable James E. Johnson
Supervisor, Fourth District
County Government Center
San Luis Obispo, California 93408

Dear Supervisor Johnson:

This letter confirms oral advice previously given to you as to whether the provisions of the Political Reform Act of 1974 preclude you from legally being permitted to participate in deliberations and decisions of the Board of Supervisors relative to the Interim Growth Control Ordinance presently being considered by your board. I understand your concern to arise from your ownership interest in two parcels of real property in the unincorporated area which are capable of being divided under present zoning in light of the fact that the Growth Control Ordinance may impose restraints on subdivision of property while the ordinance is in effect.

The controlling statute on this subject is Government Code § 87100, which reads:

"No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

The term "financial interest" is further defined in Section 87103 which provides in part:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

"(b) Any real property in which the public official has a direct or indirect interest worth \$1,000 or more."

Honorable James E. Johnson
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The critical factor here is whether your ownership of properties which are capable of being divided means that the board's decision on the ordinance will have a material financial effect on you which is distinguishable from its effect on the general classification of persons owning property in the unincorporated area.

A parallel situation was raised in a 1978 case called Consumer's Union v. California Milk Producers Advisory Board, dealing with the question of whether the personal financial effect of decisions of the board on individual members who were part of the milk industry was different from the "public generally." It was clearly conceded that decisions of the board greatly affected the milk industry and its participants financially. Nonetheless, the Court concluded that the fact of the board members simply being part of the overall affected class (the milk industry) did not distinguish them from "the public generally" so as to prohibit their participation. Significantly, the Court pointed out that the Act provides other safeguards to the public, by virtue of the requirement of disclosure of potential conflicts, filing of periodic financial statements as to income and assets, and other requirements.

It is my opinion that, based on the holding of this case and several rulings of the Fair Political Practices Commission, your financial interest as a landowner in decisions of the board relating to the proposed Interim Growth Control Ordinance is not distinguishable from its effect on the general classification of persons owning property in the unincorporated area which is otherwise divisible, and that therefore you are not precluded from participating in deliberations and decisions on the ordinance.

There is one sub-issue which I feel should be addressed on this. I understand that the recommendation of the Blue Ribbon Committee which proposed the ordinance included a proposal that during the interim ordinance period properties within village reserve areas designated in the County General Plan could continue to subdivide, but properties outside such areas be restricted from subdividing. I also understand that your properties are outside of village reserve areas. Again, I do not feel that this precludes you from voting on the ordinance itself. However, if the specific question should arise before the board in its deliberations as to whether this separate category should be maintained or

Honorable James E. Johnson
August 16, 1989
Page Three

deleted, so as either to prohibit subdivisions all together or to allow subdivisions irrespective of location, it would be advisable for you to abstain from participating as to that decision because of its special and direct effect on your properties.

Very truly yours,

STEPHEN N. COOL

SNC:pce

(805) 489-8433
Fax (805) 489-6702

Stephen N.
Attorney at Law
1577 El Camino
Arroyo Grande, Calif

October 16, 1989

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA

Attention: Katherine Donovan, Chief

Re: SUPERVISOR JAMES E. JOHNSON
SAN LUIS OBISPO COUNTY

Dear Ms. Donovan:

By this letter we are urgently and desparately seeking immedia reconsideration of your prior decision finding that Supervisor James E. Johnson is precluded from voting on San Luis Obispo County's Interim Growth Control Ordinance, which expired by operation of law on October 6 due to your ruling. Your commission's ruling, which we feel is legally erroneus, has caused what could become the greatest environmental and political disaster in the history of San Luis Obispo County, and could create statewide precedent which would effectively prevent virtually every city and county from protecting their constituents from the types of staggering growth pressures for unbridled development presently being exherted on this county, by adoption of reasonable community development restrictions which have been endorsed by the California Legislature and by courts nationwide.

I am enclosing for your review some copies of local news articles concerning this situation, which should give you some perception of its magnitude and severity.

My earlier letter to Blanca Breeze of your office pointed out our position that Supervisor Johnson's 1/22 ownership interest in a parcel of property, of which a portion is capable of being subdivided under current zoning, does not constitute a prohibited "financial interest" under Government Code Section 87100, since the ordinance in question does not have a material effect on this property which is "distinguishable from its effect on the public generally" (Government Code 87103). We pointed out to you that this property is only one of approximately 34,000 vacant parcels of land in the unincorporated area of San Luis Obispo County, that of these approximately 25,000 are outside of urban reserve lines (and therefore affected by this ordinance), and that those 25,000 parcels could theoretically be divided into approximately 80,000 parcels under current zoning. If that in itself is not enough to place Supervisor Johnson's one parcel into a "public generally" catagory, it is difficult to envision what that catagory could apply to. Also, does your ruling mean that other members of our Board of Supervisors, along with every other city councilman and Supervisor statewide, who own property which is capable of being

CORRECTED COPY

Please note the correction in paragraph 4, line 13, (page 2) - nto to not.

...area-wide effect does not create...

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Fair Political Practices Commission
Attn: Katherine Donovan
October 16, 1989
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subdivided or built on is precluded from voting on area-wide growth control measures? If so, we would suggest that your position casts a doubt on the legality of virtually every city or county growth control measure which ever has been or ever will be passed in California!

Your decision not only is unsupported by statutory language and common sense, but is also contrary to established precedents under these statutes. As early as 1978 the California Court of Appeal held in Consumers Union v. Calif. Milk Producers Advisory Board (82 CA 3d 433) that regulatory board members whose financial interests were directly affected by their decisions were not precluded from voting on matters before the Board. Your own Commission the same year made a similar ruling as to the Funeral Board (4 FPPC 33). While other decisions rendered by your Commission have established that public officials owning property in areas affected by site-specific proposals cannot participate therein (i.e. 1 FPPC 71, 3 FPPC 38), you have also held that ownership of property which will be affected by decisions of area-wide effect does not create a conflict (4 FPPC 62).

Four of the five members of the San Luis Obispo County Board of Supervisors wish to immediately re-enact its Interim Growth Control Ordinance pending adoption of a permanent measure (which would only require three votes), in order to minimize the damage which is already occurring because of your previous ruling and to protect the citizens of this County from being inundated by sudden, unrestricted building projects. We again implore you to reconsider your ruling on Supervisor Johnson's right to help the Board do this.

Respectfully submitted,

STEPHEN N. COOL

SNC:am

Enclosures

cc: Supervisor Jim Johnson
San Luis Obispo Board of Supervisors
Telegram Tribune
Times-Press-Recorder
Senator Ken Maddy
Assemblyman Eric Seastrand
John K. Van de Kamp, Office of the Attorney General

..
DICTATED BUT NOT READ

TRANSCRIPT FROM TAPE OF BOARD HEARING
MARCH 15, 1988

PIER AVENUE IMPROVEMENTS

Subject: Whether or not to apply for a grant from the State from off-road vehicle funds. There was a stipulation that if Pier Avenue was improved, that would be the primary access to the dunes.

Mr. Johnson had stepped down because of a possible conflict of interest. Supervisor Carl Hysen was absent.

After public testimony, Jim Johnson asked County Counsel if it would be proper to convey "a little bit of conversation that I had with Lee Chavet yesterday?"

Jim Lindholm, County Counsel: As a member of the public....

Jim Johnson: OK, I'm a member of the public now. Simply a suggestion that Lee Chavet made to me yesterday, that the Board might consider requesting forty, sixty thousand dollars and act as a lead agency to do an environmental study with respect to the Oso Flaco entrance. Now, whether that has any interest to the Board or not, but that was something he conveyed to keep the dialog going and keep it open.

Evelyn Delany said that was not on our agenda, so we can't discuss that today.

Jim Johnson said, "That's a possibility of an alternative, that Mr. Dieffenderfer was looking for."

Bill Coy said we're looking for grant funds for Pier Avenue. County Counsel, is it appropriate to discuss this?

Jerry D. asked Pat Beck if the grant money could be used for something like that.

Pat Beck said that grant money had been used for environmental studies as part of a project.

Jim Lindholm, County Counsel said "alternatives are OK to discuss, because Pier Avenue is one alternative."

Evelyn then moved to turn down the grant money for Pier Avenue improvements, Bill Coy seconded, and the motion carried with Jerry Dieffenderfer also voting aye.



California Fair Political Practices Commission

August 24, 1989

Jim Johnson
4th Supervisorial District
San Luis Obispo County
City Government Center
San Luis Obispo, CA 93408

Re: Letter No. 89-500

Dear Mr. Johnson:

Your letter requesting advice under the Political Reform Act was received on August 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blance M. Breeze 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 that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh

Board plans another try on limits

By Teresa Mariani
Telegram-Tribune

The county's emergency growth control ordinance isn't dead yet.

It may rise again Oct. 24 when supervisors consider a revised version of the ordinance.

But don't rush down to the Planning Department to try to get a permit — if this version of the growth control ordinance is enacted, Oct. 24 no one who applied for a building permit after Aug. 23 will get one.

Supervisors Evelyn Delany, David Blakely and Bill Coy voted Tuesday to set another public hearing Oct. 24 to consider the new version of the ordinance.

Blakely put together the new version. It is almost exactly what supervisors tried to pass Friday, before Supervisor Jim Johnson surprised everyone by declaring a conflict of interest and stepping down on the final vote.

Johnson's action Friday left only Delany, Blakely and Coy voting to extend the temporary growth cap, which would have allowed only 826 building permits to be given out through next June.

The ordinance needed four yes votes to be extended — and Supervisor Harry Oviatt steadfastly refused to vote for it Friday. So it died.

The resurrected version of the ordinance was proposed Tuesday during a portion of the supervisors' meeting devoted to growth manage-

ment strategies the board was supposed to talk about Friday — but never got to.

Blakely's proposal Tuesday removed five paragraphs that the state Fair Political Practices Commission said caused Johnson to have a conflict of interest.

The paragraphs banned until June any subdividing of land outside the county's urban and village reserve lines. Johnson owns such property, now in the process of being annexed to the city of San Gabriel.

Except for the eliminating the ban on rural subdivisions, the ordinance is the same. Countywide supervisors agreed to Friday afternoon. It would affect only the unincorporated areas of the county.

It would pave the way for approval of all 1,718 building permits applied for between June 1 and Aug. 23 — the date supervisors passed the first emergency growth ordinance.

The 1,575 people who applied for building permits between Aug. 23 and Tuesday would not get permits — but they would still have their places on the waiting list.

"It's the same thing we talked about last Friday," Blakely stressed.

Johnson said if the FPPC allowed him to vote on it, he would. That would give the ordinance the four votes it needs to be resurrected.

Johnson said he talked with the FPPC shortly before the board reconvened after lunch. "They are looking at my situation with regard to this,"

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Johnson said, and should give him a ruling this week.

Johnson then stepped down for the vote on the new version of the ordinance, citing the FPPC's finding that he had a conflict.

Ovitt voted against trying to revive the ordinance. "I believe what I'm looking at again is an attempt to water this thing down," he said.

"We really won't have anything of a document intending to do what we really want it to do. I still don't believe (we're) in an ordinance or urgency situation."

But the rest of the board disagreed.

"We've got to do something" said Coy. "If we've got a chance, we've got to take it. If Mr. Johnson can participate next time, fine ... I hope he can ... but we've got to put a stop to the tremendous number of permits that will come in in the meantime."

"I feel extremely bad about this situation," Johnson said after the board voted on the issue, and he took back his seat and his gavel.

The resuscitation of the growth ordinance took place at the end of the supervisors' meeting, after they broke for lunch. But supervisors also heard an earful on the ordinance during the public comment period at the start of the meeting.

Several people who testified Friday got up to urge the board not to re-enact any growth ordinance — but several more got up and blasted the board for letting the ordinance die.

One of them was Ellen Eckstein from Templeton. "I've been having nightmares since Friday — but if I

called my supervisor (Ovitt), it wouldn't do any good. People in the North County who are not in the growth industry have no representation on this board."

Eckstein said anyone in the North County with children — like her first-grade son — "knows the North County has a lot of problems."

"There aren't enough classrooms. There aren't enough teachers.

"The North County has a lot of problems," Eckstein said, "and it's changed dramatically. I can't believe our supervisor doesn't see it. I think he does see. But the people around him want growth, so he's trying not to see.

"But a majority of the people don't want growth," she said. "I realize we weren't the loud people at the meetings. We have better manners. We

live quieter lives."

Cal Poly professor Ken Haggard, a Santa Margarita resident, also lashed out at the pro-growth factions that dominated the past four growth control meetings.

"All we've really seen," he said, "is hours and hours of public testimony dominated by conduct that is really inappropriate to public testimony — the catcalls, the boos, the intimidation of public speakers."

Haggard criticized the board for being swayed by the pro-growth faction, and said most of the county is in favor of growth control — as demonstrated by the rapid collection of 10,000 votes for the Fair Share growth-control initiative.

Haggard called supervisors "impotent legislators" for not keeping the temporary growth ordinance alive.

"We have seen a panic, a stampede for building permits. This is unacceptable in public government."

Former Supervisor Kurt Kupper, co-chairman of the Fair Share initiative drive, also criticized the board. Kupper chastized Ovitt for his "ability to ignore the obvious," and said Johnson ought to sell the property that caused him to have a conflict of interest.

"You need to make a choice," Kupper said, "and be a supervisor or a developer."

Ovitt's unsuccessful opponent in the past supervisorial election, Doug Beckett, also showed up. He said Ovitt was creating a "misconception" that the North County "wants business as usual or the building boom to begin — and that's so far away from the truth it's absurd."

Ovitt glad he torpedoed growth ordinance

Supervisor says feedback has been positive following dramatic vote

By Phil Dirks
Telegram-Tribune

County Supervisor Harry Ovitt said he felt good about casting the vote that scuttled the county's emergency growth-control ordinance.

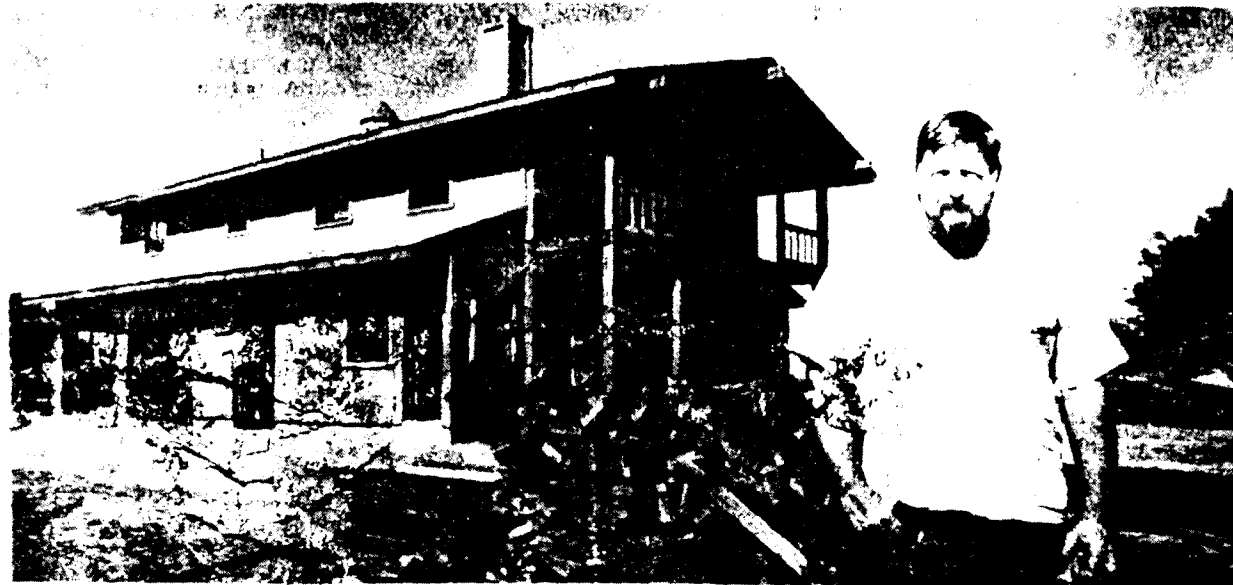
"I still believe in my decision," he said, "and it didn't hurt to walk through town and have people shaking your hand."

He cast his decisive vote Friday against continuing the 45-day-old growth-control ordinance.

He then spent most of Saturday in Paso Robles at the Pioneer Day celebration.

He said about 90 percent of the people who mentioned the ordinance to him either congratulated him or thanked him.

Saturday morning he was one of the Pioneer Day parade announcers, and in the afternoon he attended Pioneer



Supervisor Harry Ovitt says building his own home inspired him to reject growth-control ordinance.

Phil Dirks/Telegram-Tribune

Day events in two parks.

"I didn't hide," he said.

But Sunday he was on top of a remote hill south of San Miguel where he is building a home on 23 acres.

Hummingbirds and blue jays flew a few feet from his head as he sat under an oak tree and discussed his vote.

He spends most of his free time working on his partially completed home, which looks more like a barn than a house.

In fact it has three stables and two bedrooms. The stables for horses are on the main floor and the living quarters for him and his wife, Susan,

are on the second floor.

Ovitt said building his home gave him a better appreciation of the hardships being caused by the emergency growth-control ordinance.

Buying the property and building the house have been a financial strain, he said. He doubts he could

have survived the building some people faced under the ordinance.

"I got my building permit July 1989," he said. "If I'd applied months later (and come under the ordinance), I would have lost my permit."

Friday he told his fellow supervisors he was voting against the ordinance because he had a commitment to a variety of people.

Sunday he explained that comment was to "most of those people who are out there trying to do what I'm doing, get their own homes."

He said he didn't mean to offend developers. "I was not approaching them by individual major developers."

Ovitt also said it wasn't easy to be the lone holdout against continuing the ordinance.

"When Jim Johnson stepped in, it put some pressure on top of me," Ovitt said.

County Supervisor Johnson qualified himself from voting against the ordinance because of a possible conflict of interest over his part ownership

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Ovitt

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subdivision.

That meant Ovitt's one dissenting vote would kill the ordinance because it was an urgency ordinance that needed four votes.

But Ovitt said Sunday there was probably no way he would have voted for the ordinance.

The pressure on Ovitt didn't end Friday after he voted "no" the first time. The other three supervisors brought back the ordinance for several more votes in an attempt to get him to change his mind.

The other supervisors said killing

the ordinance would cause a chaotic flood of building applications. They urged Ovitt to compromise with them.

"What bothered me most," Ovitt said Sunday, "was they waited until that point to discuss points and talk about compromising."

He felt they didn't think they'd have to accommodate his views until they lost Johnson's vote.

Ovitt also felt some of the supervisors hinted they might retaliate by not cooperating with him in the future on things he wanted.

"One of the things I was most disgruntled with, was those threats," he said. "That was kind of small."

He said he will probably be isolated

on the board for a while, but he expects that will end when some of the others need his vote for something they want.

Ovitt said he doesn't share the other supervisors' fears that the death of the urgency ordinance will mean a hemorrhage of building permits.

The others fear that builders will rush in for permits to beat possible future limitations. Those limitations could come under another ordinance or from a growth control initiative that will be on next June's ballot.

"I don't think it will be that much worse than the mess we've already created," Ovitt said. "We've got a

backlog we already created."

He also said he feared retaining the emergency growth ordinance would have led to lawsuits and widespread disobedience of building permit procedures.

Ovitt also said he opposes a separate growth-control ordinance. He said growth should be managed instead by improving the county General Plan.

But he said he doesn't oppose all controls.

"There should be some form of limitations," he said, "based on resource problems — and land is a resource — and on economic concerns."

Board deadlocks, growth limits die

By Teresa Mariani
Telegram-Tribune

The county's emergency growth control ordinance was given the death sentence Friday.

It officially expires tonight at midnight. A bombshell announcement by supervisors' Chairman Jim Johnson and unshakable no votes from North County Supervisor Harry Ovitt killed it Friday night.

The killing of the ordinance involved more plot twists than a spy novel. Supervisor Bill Coy had an ailment that sent him to the emergency room during a meeting break, but he hung in for all the key votes.

Supervisor Jim Johnson's bombshell came at the end of the day when he announced that he had a conflict of interest that barred him from the final vote.

Before that, supervisors spent the entire day in the Fremont Theatre listening to hard-luck stories from people hurt by the urgency growth ordinance, passed Aug. 23 after three highly emotional public hearings.

The ordinance had limited growth to 2.5 percent until next June, when the Fair Share growth control ordinance will be on the ballot. The temporary limit translated to 826 building permits — which left about 1,000 people who wanted permits out of luck.

Under state law, the growth control ordinance had to expire tonight at midnight unless supervisors voted to extend it. Before Friday's meeting, every supervisor except Ovitt had said they wanted the ordinance extended until June.

Earlier in the day, supervisors had voted to soften the ordinance and allow about 1,000 more building per-



David Middlecamp/Telegram-Tribune

Supervisor Bill Coy implored Harry Ovitt to vote with the majority.

mits. But that went out the window at 4:45 p.m.

That's when Johnson told the board he'd received word from the state Fair Political Practices Commission Thursday at 4 p.m. that he could not vote on the ordinance if the subject of subdividing property in rural areas came up.

Johnson is part owner of a large rural subdivision to be annexed to the city of San Luis Obispo.

The way the FPPC rules are written may be for the ordinance I'd like to run against my best friend. But I'd be perfectly willing to do

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that; I have voted against my best (financial) interest all this time," Johnson said.

"As much as I hate to do this, at this time I step down and hand my gavel to vice-chair Evelyn Delany," Johnson said, and calmly walked off the Fremont Theatre stage.

Outside in the hallway, Johnson said his announcement was a surprise to his fellow board members. He said he wanted it that way.

"Nobody knew it," Johnson said. "I feel my effectiveness in (changing) the allocation system would have been greatly reduced" if other board members knew he was going to have to step down at the final vote, Johnson said.

Johnson's departure notwithstanding, the board still needed four yes votes to extend the newly-softened growth ordinance under state law. That turned Ovitt — who has consistently voted against the ordinance since it was first discussed in July — from a lone wolf into a power broker.

And that turned the tables on the entire ordinance.

The death of the ordinance means there is no growth control measure on the books now — and no restrictions on the issuance of building permits.

That means, said Supervisor David Blakely after the meeting, "something beyond hemorrhage" in the county Planning Department.

"This is a nightmare," said Blakely at one point.

The hemorrhage prognosis was apparent when, after several breaks, supervisors convened for the final time at 11 p.m. Friday — 14 hours after they'd started.

Johnson had been given time to contact his attorney to see if there was any way for him to vote on the ordinance.

But Johnson was unable to find his

attorney, Stephen Cool of Arroyo Grande, after more than two hours of trying, Delany announced at 11 p.m.

Supervisors Blakely, Coy, Johnson and Delany predicted at various times during the meeting that the death of the ordinance would bring another "permit panic" that would swamp the Planning Department and threaten the county's future.

"I think this is one of the darkest days in the county's history," Blakely said.

Despite repeated urgings, Ovitt stuck by his vote throughout the meeting. Those urgings included Blakely offering to "get down on my knees and beg," and Coy offering an apology for anything he might have said to offend Ovitt in the past.

But Ovitt stuck to his guns — something he was urged to do by a core group of about 80 hollering ordinance foes.

"This is a political decision," Ovitt said at one point. "I haven't changed my position from back in June when it first came up. I voted against it then. ... Believe me, I've done some soul searching," he said.

Though Ovitt denied any "personal vendettas," supervisors Delany, Blakely and Coy took some of it personally.

"I think it's irresponsible to be the one vote that's going to hold us hostage to the massive problems that are going to come down the line" without growth limits in place until the June election, Blakely said.

"It's totally unfair of you to do that at this point," he said.

Blakely pointed out that 1,575 requests for permits that have come in since supervisors passed the growth control ordinance Aug. 23. Those requests are on top of the 1,718 that came in between July 1 and Aug. 23.

The numbers mean that without a temporary growth control ordinance, "we've only seen the tip of the

iceberg" when it comes to permits flooding the Planning Department, Blakely said.

Johnson, earlier in the day, had urged the board to support the ordinance. Without it, the county's general plan could allow up to 100,000 requests for lot splits and building permits to come in before next June, Johnson said.

"There will be pandemonium," he said at one point.

Coy was also angry with Ovitt's uncompromising stance. "Mrs. Delany and Mr. Blakely and myself have gotten together on something we all don't agree on, and the least you could do is come forward in the moderate direction we're going.

"It will be very discouraging to me if you hold this board up on the urgency ordinance. I understand where you're coming from with your constituency ... but I've never seen a situation quite like this. We've got a whole lot of work to do in the next five months (before the June election) and we've got to work together. This is not a threat but dammit, we've got to get on this issue together," Coy said. "I appeal to you, Harry."

But Ovitt still voted against it — all four times supervisors made the motion to extend the ordinance.

"I've made a commitment to a various amount of people. There has never been an urgency. I didn't change my vote from Aug. 23. I voted no then. I don't think this (ordinance) is appropriate, and I've seen nothing today to change my mind."

In the end, supervisors voted 3-1 to have the Planning Department prepare a "regular ordinance" that would have the same effect as the emergency ordinance — and limit the number of building permits given out.

It will be at least three and a half months, however, before that ordinance could be put into effect. A regular ordinance would require only 3 votes to pass.

of permit seekers

By Teresa Mariani
Telegram-Tribune

Kathleen Endres and Sandra Modell live in Costa Mesa. That's in Orange County, "Not L.A.," they are quick to point out.

They woke up at 2 this morning and drove to San Luis Obispo to get in line to turn in their county building permit application.

And they weren't too happy about making their second trip here in four days. They were also at the growth hearing Friday. "We spent all day up here listening to that nonsense," said Endres.

The two have owned 20 acres outside Paso Robles for five years. They've planted them with pistachio trees, and now want to move up here to build a home.

They tried to drop off permits in June but were told they couldn't; then after the growth ordinance passed they said they found out they couldn't turn in any permit applications. Then they signed up and got the 270th place on the second waiting list — behind the first waiting list with about 700 people on it.

They said the growth control sentiment on the board of supervisors motivated them to make the early morning trek to San Luis Obispo.

They weren't alone.

At 6:15 this morning, there were already 12 people lined up at the Planning Department counter waiting for permits.

By 8:30 a.m., the line had grown to 28 people and snaked around a planter.

Planners weren't surprised.

"I'm not surprised in the least," said Planning Director Paul Crawford. "There were a number of people ready to file applications on Aug. 23, and there was no doubt in my mind those people would be lined up this morning."

Aug. 23 was the date supervisors passed a temporary growth cap limiting building permits to 826 until next June, when two growth control measures are expected to be on the ballot. That left about 2,300 building applications on hold. It also caused the formation of a building permit waiting list and the onset of headaches for people who had recently sold a house expecting to build another, but found they couldn't.

Despite the uproar, a majority of supervisors had wanted to extend that ordinance to June. But at a special meeting Friday they were

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Despite the uproar, a majority of supervisors had wanted to extend that ordinance to June. But at a special meeting Friday, they were unable to get the votes to do it.

So things are back to the way they were at the Planning Department — with no restrictions on growth and about 2,300 anxious people who want permits.

First in line today was Frank Graves of Paso Robles, a retiree from

Building flood comes in v

By Tom Fulks
Staff Writer

SAN LUIS OBISPO County planning officials are bracing for a rush on building permits this week after the county Board of Supervisors failed to continue a temporary building moratorium.

In a 3-1 vote, with board chairman Jim Johnson abstaining, supervisors were unable Friday to muster the four votes necessary to extend an urgency growth-control ordinance until June 5, 1990, election.

Supervisor Harry Ovitt of San Miguel was the lone holdout after more than 14 hours of deliberations that ended in a midnight vote just before the urgency ordinance adopted on Aug. 23 — was set to expire.

Supervisors Bill Coy, Evelyn Delany and David Blakely tried several times but failed to muster the four votes needed to extend the urgency ordinance beyond June 5, when the Fair Share Initiative will be on the ballot.

If adopted by voters, the Fair Share Initiative will tie this county's annual growth rate in the unincorporated areas to the state's rate of growth. The board majority wanted an alternative ordinance that would cap this county's growth rate at 2.5 percent a year.

At about 5 p.m. Friday, Johnson made a surprise announcement that he would abstain from voting due to a conflict of interest. (See related story in this edition.)

Johnson explained that the state Fair Political Practices Commission had determined that he had a conflict regarding any vote having to do with rural subdivisions because he owns a partial interest in a proposed subdivision bordering San Luis Obispo.

Johnson said Monday that he would have voted with the majority to extend the interim ordinance, but the FPPC had specifically ruled he could not.

By failing to extend the urgency ordinance, supervisors in effect gave the county Planning Department the go-ahead to begin processing more than 1,700 building permit applications that poured into the county between July 1 and Aug. 23.

After failing to gather the needed four-fifths majority to extend the interim ordinance, Coy, Blakely and



Harry Ovitt

another 1,500 building permit applications, based on number of requests for applications we now have on file," he said.

He explained that in addition to the 1,718 active applications filed between July 1 and Aug. 23, another 1,500 people submitted requests to be placed on a waiting list to submit applications.

To put those figures into perspective, Crawford said that in all of 1988, the county approved 1,291 building permits for dwelling units.

Crawford said the rush for permission to build in the county's unincorporated areas could be unprecedented.

"We will continue to move slowly forward through the process. We've received a year's worth of work in a two-month period. We will ask for more money from the board to hire contractors to check plans," he said.

Crawford said his main concern is over applications for subdivisions in the county's rural areas.

"Subdivisions are the real unknown. The interim ordinance, before it expired, prohibited subdivisions outside the urban reserve lines. The Fair Share Initiative is extremely prohibitive of subdivisions," he said.

"The problem with subdivision applications, unlike building permit

The county must act on applications for subdivisions within six months if no environmental study is required, and within one year if an environmental study is required, he said.

"The worst case is that we will get more applications than we can process and we will have some applications that will be automatically approved even though the land use is inappropriate," Crawford said.

"As for our staff caseload, we are already extremely overburdened compared to other counties. We're carrying caseloads of over 100 cases per planner. The average is from 30 to 50 per planner," he said.

Blakely, who made several attempts to compromise with Ovitt during their marathon discussions Friday, said Monday the board's failure to act bodes ill for the county.

"I fear for San Luis Obispo County," Blakely said.

"I see a planning nightmare unfolding before us. I see so much damage taking place in the county that it will take years to rectify," he said.

"I have seen what the Board of Supervisors can do to manage growth. What we did was worse than doing nothing. The Fair Share Initiative looks like the solution to me," he said.

Delany said, "I'm real discouraged. We worked real hard and I really see there is an emergency situation," she said. "I'm real disappointed the board couldn't pull together."

Delany said she plans to work to unseat supervisors Johnson and Coy, who both are up for re-election in 1990.

"I'm real concerned about getting a different mix on the board. I hope some people come forth to run in those districts," Delany said.

Coy said Monday he was unhappy with the results of the board's work. "It's a very unfortunate set of circumstances. I'm very disappointed."

"I am going to have to stress that there will be a rush for building permits. I think the kind of panic that we saw before the voting is

wake of growth limit end

the kind we could see between now and June," Coy said.

"The Planning Department is swamped. I don't think that's fair to

"I see a planning nightmare unfolding before us. I see so much damage taking place in the county that it will take years to rectify."

— David Blakely

anybody. I guess I will work on some kind of ordinance that three of us can approve," he said.

Johnson said Monday that he agonized over his decision to abstain from the vote because he supported extending the interim ordinance.

The decision to abstain was a tough one, he said, but it had to be done because FPPC lawyer Blance M. Breeze told him he could not vote.

"I did everything I could to stay in this ballgame," he said.

Johnson said that the county is facing a growth boom unlike anything in history due to Ovitt's refusal to go along with the board majority.

"I think it's potential disaster. That's why I pushed so hard to get something in place," he said.

Former Supervisor Kurt Kupper, vice chairman of the Fair Share Committee and a member of the county's Growth Management Ad-

visory Committee that first recommended the interim ordinance, said Monday the board's decision will harm the county.

"It looks like there might be a great deal of long-term damage to the county. I didn't think the board could screw it up that much," he said.

"The board was slow to make a decision in the first place and when they backed out of it, they really messed things up," Kupper said.

Backers of the Fair Share Initiative are firm in their commitment to win voter approval of the measure, he said.

"The reason we went through the initiative process in the first place was the realization that it's been very difficult for local government to change its course," Kupper said.

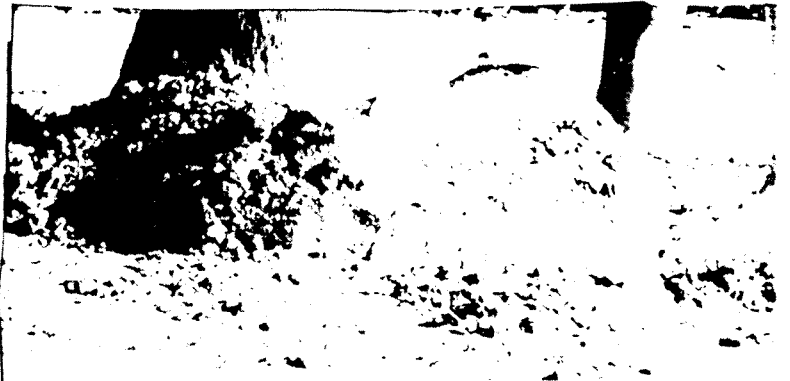
"There is no major leader on the

board to force a direction. The community says it wants things to change," he said.

"We've received a year's worth of work in a two-month period. We will ask for more money from the board to hire contractors to check plans."

— Paul Crawford

"My phone's been ringing off the hook since this went down Friday night. People are desperate for something to happen," Kupper said.



BEACH BREAK — Tim Nalty of Arroyo Grande took the day off from his business to spend some time at the beach during the recent heat wave. Nalty created a sandcastle as his project for the day.

Photo by Glenn Bolivar

"It's like I wandered around fat, job and happy and all of a sudden I have a sign problem in town," he said.

Dennis urged the audience to turn their anger into constructive action.

"The reason we are all here is because we are disgruntled with the actions for the city," he said. "Let's not leave it at this meeting. It's real easy to (complain); maybe it's not quite so easy to get involved in the process."

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ordinance, subdivisions in effect gave the county Planning Department the go-ahead to start processing more than 1,700 subdivision permit applications throughout the county between July 1 and Aug. 23.

After failing to gather the needed four-fifths majority to extend the interim ordinance, Coy, Blakely and Delany agreed to instruct the planning staff to develop language for an alternate ordinance to place some type of growth control on the ballot.

Such an ordinance would require only a simple board majority to be placed on the ballot, but it will take at least two months to get back to the board for approval.

On Monday, county Planning Director Paul Crawford said, "All I can do is speculate, but the chances seem pretty good that between now and June, we will receive a large number of applications for subdivision activity.

"We have the potential to receive

People lining up for building permit

(Continued from Page 1)

we became the owner of the property but placed into effect retroactively," she said.

"If the prospect of such an initiative had been disclosed, we could have changed our minds and made other plans," Paulich said.

She and her husband are now faced with having to pay capital gains taxes on the sale of their Los Angeles County property if they can't obtain a permit in time to complete a \$300,000 home, she said.

"Not to mention a two-year balloon payment due to our lot loan," she added.

The family has been living in the travel trailer for months and the prospects of getting into bigger digs is growing dim "thanks to this initiative," she said.

the county's land use. Subdivisions are almost unknown. The interim ordinance, before it expired, prohibited subdivisions outside the urban reserve lines. The Fair Share Initiative is extremely prohibitive of subdivisions," he said.

"The problem with subdivision applications, unlike building permit applications, is that state law requires they either be approved or rejected within a specific period of time," Crawford said.

work. "It's a very unusual set of circumstances. The board has pointed

"I am going to have to guess that there will be a rash for building permits. I think the kind of panic that we saw before the meeting is

Said Blakely: "I don't know how Mr. Crawford (Planning Director Paul Crawford) and his staff are going to deal with it."

The county has already received nearly three times the usual 1,200 requests for home building permits it gets in a year. Between July 1, when the supervisors started talking about a growth control ordinance, and Aug. 23, when they passed a temporary one, the county got 1,718 requests for permits.

And since then, the county has received another 1,575 requests.

At midnight Saturday, the temporary ordinance expired, removing the roadblock for all 3,293 permit requests. Without an emergency ordinance, the county has no right to refuse them, said Crawford.

With two growth control measures on the June 1990 ballot, the county will inevitably get even more permit applications, said Supervisor Bill Coy.

"In other counties with growth ordinances on the ballot, they've gotten 3,000, 9,000 or even 10,000 permits coming in at the last minute. That could easily happen here," Coy said. "This is insane."

Crawford said he didn't expect a lineup at the permit counter Tuesday.

What he did expect was a steady, increasing number of permits to start flowing in next week sometime — requiring the county to hire planners to evaluate them.

The emergency ordinance was originally intended to stop the flood of permits to the Planning Department until voters could decide the growth control issue in June.

When supervisors met Friday in the Fremont Theatre, they were expected

Ordinance revival to be tried

Delany, Blakely seek another growth control hearing

By Teresa Mariani
Telegram-Tribune

Two county supervisors want to resurrect the county's dead emergency growth control ordinance next week.

Supervisors Evelyn Delany and David Blakely plan to make a motion Tuesday to get another public hearing on the emergency ordinance, and ask a section that caused board Chairman Jim Johnson to abstain because of a conflict of interest.

"I want to try it again as an emergency ordinance," said Delany. "I want to take that section out and get an emergency ordinance on the permits."

Blakely predicted irreparable damage to the county unless the growth control ordinance can be revived.

"I hurt for the county now," Blakely said. "What happened as a result of the decision made Friday is going to be one of the worst things to happen to San Luis Obispo County in recent history."

To get an emergency ordinance passed, however, the board would have to hold another public hearing and give seven days notice of it — leaving a week where no permits could be refused at the Planning Department.

Blakely and Delany said that regardless of whether they can get an ordinance on the Oct. 17 agenda, there will be a flood of requests for building permits.

Today is a holiday at the county, but "I expect them to be lined up at the (Government Center) doors at midnight Monday," ready to file for permits, said Delany.

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Continued from A-1

to vote 4-1 to extend the county's emergency growth control ordinance to June, when two growth control measures will be on the ballot.

That's the way they voted at the Aug. 23 meeting which enacted the ordinance — which limited building permits to 826 between July 1 and June.

Instead, Friday's vote took several unexpected twists and wound up 3-1 in favor of the ordinance. But four votes were needed to continue the emergency ordinance, so it expired.

"They OK'd 3,000 permits the minute they did that," said board Chairman Johnson — who abstained from the final vote on the ordinance 15 minutes before Friday's meeting was supposed to end.

Johnson made his bombshell announcement at 4:45 p.m. Friday. He revealed that the state Fair Political Practices Commission told him Thursday he had a conflict of interest because of property he owns, and could not participate in the final vote.

Johnson stepped down, and that — combined with North County Supervisor Harry Ovitt's unshakable no votes — killed the ordinance.

That left Coy, Blakely and Delany angry with Ovitt — and wondering about Johnson.

"I'm real disappointed in Harry,

personally. And I'm real interested in finding out when Mr. Johnson knew he had a conflict of interest," Delany said Sunday. "It was wrong for him to run the meeting all day and pull out on us at the last minute. His presence certainly had an influence on the proceedings."

Of Johnson's conflict declaration, "I think it's very strange," Blakely said. "I hope he can participate (in a vote). If he can't participate in the growth management discussion because of a conflict of interest, I have certain concerns about whether the Board of Supervisors can do anything about growth management."

Johnson said Sunday his motives aren't any mystery.

He said he'd asked his own attorney, Stephen Cool, to evaluate whether his land holdings gave him a conflict of interest on the growth issue before the first growth ordinance meeting July 26.

He said Cool told him he had no conflict — but the two decided to seek a ruling from the state's Fair Political Practices Commission again, before the initial July 26 growth meeting.

Johnson said the commission told him it would take at least a month to issue a ruling, so he participated in the growth hearings and voted on the advice of his own attorney.

He pointed out Friday that he was at times voting against his best financial interest because the ordi-

nance contained a clause preventing lot splits on land outside the urban reserve line in the county. He's in a partnership that owns such land intended for subdivision — which is now in the process of being annexed to the city of San Luis Obispo.

He said he had no problems voting for the subdivision moratorium because it was in the county's best interest — even though it could have stalled his development if the city refuses to annex his land.

He said Blanca Breeze of the Fair Political Practices Commission called him Monday to tell him he couldn't vote on the ordinance because of the subdivision section.

"I said my district is going to be completely without representation on the discussion of allocation of permits, and I asked if possibly I could participate in that discussion and vote on it. That's what we were mainly going to be talking about Friday," he said.

He said after making sure the discussion on permit allocations wasn't going to include the subdivision moratorium. Breeze called back Thursday afternoon and "She said yes, go ahead and do that, I don't have any problem with it (participating in the permit system vote)," Johnson said.

The FPPC ruled, however, that Johnson would have to step down for the final vote on the entire ordinance, or if the subdivision clause came up, Johnson said.

Johnson said with Breeze's permission, he taped the entire phone

conversation about participating in the permit vote, to have it on record.

Johnson said if the other supervisors vote to pull the subdivision clause from the temporary ordinance, he'll ask the FPPC if he can vote on it. He won't do anything unless he gets an OK from the FPPC, he said.

Johnson still doesn't think he has a conflict. He thinks pulling the subdivision section would also be bad for the county, because it could allow a flood of legal subdivision applications between now and June.

He said he wasn't pulling a political maneuver when he stepped down Friday.

"If I wanted to get off the hot seat, I'd have gotten off the hot seat way back then" in July, Johnson said. "Nothing would have suited the developers more than to have me out of there, including my partners, because of the way Harry Ovitt was voting. Without me there (from the beginning), they'd probably never get four votes."

Rumors that he stepped down because of development interests "are the thanks I get for sticking my neck out," Johnson said.

Johnson, also, said he was "disappointed" with Ovitt for voting down the ordinance. "There are many ways Harry could have voted for the ordinance and save face. He knew four-fifths of the board wanted it, he knew I wanted it," Johnson said. "If he was really going to represent the entire county, and not just his district, he should have voted for it."

(805) 489-8433
Fax (805) 489-6702

Stephen N. Cool
Attorney at Law
1577 El Camino Real
Arroyo Grande, California 93420

Member of
Real Property Law Section
State Bar of California

January 10, 1990

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95814

Attention: Kathryn Donovan, Chief Counsel

Re: Supervisor James E. Johnson
San Luis Obispo County

Dear Ms. Donovan:

Enclosed for your information is a copy of an article beginning on the front page of the Los Angeles Times from Sunday, January 7, which graphically describes the problems being created by growth pressures on San Luis Obispo County. This was exactly the situation which the County Board of Supervisors was attempting to bring under control by an interim building moratorium during 1989. The county was unable to keep this moratorium in effect because of your commission's erroneous interpretation of the Fair Political Practices Act which precluded Supervisor James E. Johnson from voting in favor of the ordinance.

As I am sure you are aware, Supervisor Johnson has not given up his efforts to get your commission to change its position on this issue, but is continuing to push for reconsideration by your commission.

Very truly yours,



STEPHEN N. COOL

SNC:pce
Encl.

cc: Supervisor James E. Johnson
Assemblyman Eric Seastrand
Five Cities Times Press Recorder

JAN 17 9 31 AM '90
F P P C

SUGGESTED LETTER TO THE EDITOR

I am frankly baffled by the recent letters to your newspaper from George Layman suggesting that our County Supervisor, Jim Johnson, should be removed from office because of "conflict of interest as a developer". Supervisor Johnson was trying to vote for the county's interim growth control ordinance, but had to disqualify himself because the State Fair Political Practices Commission advised him that he had a conflict since he owned a 1/22 interest in some development property. In other words, by their own interpretation Supervisor Johnson was trying to vote against his interests by voting for the ordinance -- hardly something a greedy developer would be expected to do! While Mr. Layman may be unhappy with Supervisor Johnson because he would not help Mr. Layman rezone his property on the Mesa for 1 acre lots, this is no reason for unjustified name-calling against our fine 4th District Supervisor.



California Fair Political Practices Commission

June 8, 1988

Laury L. Dowd
Deputy City Attorney
P.O. Box 642
Modesto, CA 95353

Re: 88-214

Dear Mr. Dowd:

Your letter requesting advice under the Political Reform Act was received on June 7, 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).)

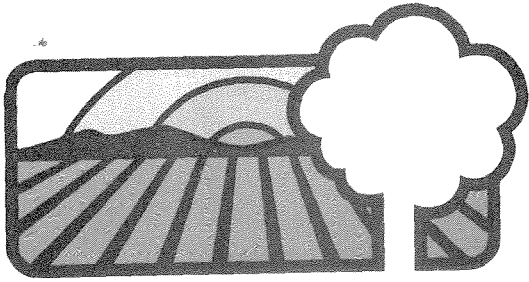
You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Stan Yamato



CITY of MODESTO

Office of City Attorney:

(209) 577-5284

801 11th Street, P. O. Box 642, Modesto, CA 95353

[TDD (209) 526-9211 Hearing and Speech Impaired only]

F P P

JUN 7 8 53 AM '88

June 6, 1988

Diane M. Griffiths
Counsel, Legal Division
California Fair Political
Practices Commission
P. O. Box 807
Sacramento, CA 95804

Dear Ms. Griffiths:

We respectfully request advice as to whether the City Attorney may participate in litigation which would affect the annexation of 152 acres of land to the City, whose nearest point is approximately 200 yards from the City Attorney's principal place of residence.

Enclosed is a diagram showing the area proposed to be annexed to the City of Modesto in cross-hatch. I have marked the existing uses. The entire cross-hatched area is north of the city's current boundaries and is designed "Urban Reserve" on the City's General Plan. The annexation application is presently pending before LAFCO. A copy of the application for annexation is attached. The applicant indicates that the project site could be developed into residential subdivisions and/or commercial uses.

The applicant maintains that sewer service will be available to the annexed area, while a 1987 analysis by the City Attorney holds that a local initiative forbids sewer service to that area without a vote of the people. It might be noted that the currently existing development is served by septic tanks, which would not be permitted if the land were annexed to the City. LAFCO cannot permit annexation unless public services such as sewer can be provided to the property. Since the applicant and the City take opposite positions on this issue, it is anticipated that LAFCO will seek a determination of this conflict in the courts. The City Attorney would be in the position of representing the City of Modesto in litigation which would affect whether the property is annexed.

Diane M. Griffiths
Counsel, Legal Division
California Fair Political
Practices Commission
June 6, 1988
Page 2

The City Attorney, Stan Yamamoto, owns his principal place of residence. It is approximately 200 yards from the nearest point of the proposed annexation and is marked by a cross on the attached diagram.

There are over 250 homes closer to the annexation than Mr. Yamamoto's home, and many more in the immediate area. The total population of the City is 144,000. The City Attorney has no financial relationship with the applicant for annexation. It is unknown whether the City Attorney's economic interest would be affected in a different way than the public generally.

Is Stan Yamamoto precluded from representing the City of Modesto in this matter by the conflict of interest laws? Please advise as quickly as possible since LAFCO will soon be acting on this application. Thank you for your assistance.

Very truly yours,



LAURY L. DOWD
Deputy City Attorney

LLD/sw
Enclosure