



California Fair Political Practices Commission

November 15, 1988

Honorable Dennis L. Stout, Mayor
City of Rancho Cucamonga
P.O. Box 807
Rancho Cucamonga, CA 91730

Re: Your Request for Advice
Our File No. I-88-313

Dear Mayor Stout:

You have requested general advice about application of conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to the duties of elected and appointed officials of the City of Rancho Cucamonga.

Because you have not asked for advice about a specific pending decision, we are treating your request as one for informal assistance.^{2/}

QUESTION

What constitutes a conflict of interest under the Act for appointed public officials who represent clients before other city agencies?

^{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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3), copy enclosed.)

CONCLUSION

A public official is disqualified from participating in a decision in which the official has a financial interest.

A public official, however, can represent the interests of a client before a city agency not under the budgetary or appointive control of the official's own agency. For example, a member of the parks and recreation commission can represent a client before the planning commission or the city council. A city councilmember, however, cannot represent a client before the parks and recreation commission.

FACTS

Recently, two appointed city officials resigned from their positions on the Park and Recreation Commission and Public Safety Commission of the City of Rancho Cucamonga. They resigned to avoid any decision in which either would have a conflict of interest. One official is an architect and the other is a developer. Both former officials sometimes represented clients before the planning commission. You are troubled by their resignations and would like more information about situations that require disqualification.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his or her official position to influence a governmental decision in which the official has a financial interest. An official has a financial interest in a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on the official or his or her immediate family or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

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

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Therefore, an official is disqualified from participating in a decision that will have a foreseeable and material financial effect on any of his or her economic interests. A public official includes all members, officers, employees or consultants of a state or local government agency. (Section 82048.)

Section 82041 defines "local government agency" as a county, city or district of any kind including "any department, division, bureau, office, board, commission or other agency of the foregoing." Generally, the Commission has treated different city departments as different agencies. For example, a planning commission is a distinct agency from a park and recreation commission.

Disqualification

An official is disqualified from a decision in which the official has a financial interest. Disqualification means that the official cannot participate in discussions, vote on a matter, or otherwise try to influence members of his or her own agency. (Levinger Advice Letter, No. I-88-328, copy enclosed.)

Prohibited "attempts to influence a decision" include contacting any member, officer, employee of the official's agency or any agency under the appointive or budgetary control of the official's agency. (Regulation 18700.1(a), copy enclosed.)

Thus, if a city councilmember's client would be foreseeably and materially affected by a pending decision, the councilmember cannot represent the client before the parks and recreation commission. The prohibition applies because the parks and recreation commission is under the budgetary control of the city council. Similarly, the city councilmember cannot contact members or employees of the parks and recreation commission on behalf of a business entity, client or customer, for the purpose of influencing a decision of the parks and recreation commission.

A disqualified official also cannot represent or purport to represent his agency before another agency regarding a decision in which the official has a financial interest. (Regulation 18700.1(c).) This includes using official stationery to communicate with a member, officer, employee or consultant of another agency. For example, a disqualified parks and recreation commissioner cannot use his agency's stationery to communicate with the city council about a client's application for a park concession. Nevertheless, that parks and recreation commissioner can appear before the city council in his private capacity to represent his or her client's interests. (Hart Advice Letter, No. A-83-264, copy enclosed.)

Exceptions to Disqualification


Subdivision (b) of Regulation 18700.1 carves out exceptions to the general prohibition against an official's influencing a decision. For example, if a planning commissioner is the sole owner of real property, he or she may appear before the planning commission as any other member of the general public solely to represent his or her personal interest in the real property. (Regulation 18700.1(b)(A).) A parks and recreation commissioner who has prepared architectural drawings for a client also may respond to questions from staff of the parks and recreation commission concerning the processing or evaluation of the drawings. (Regulation 18700.1(b)(4); see Levinger, supra.) As discussed above, the parks and recreation commissioner may fully represent his or her client before other city commissions, so long as the commissioner acts only in his or her private capacity.

Honorable Dennis L. Stout, Mayor
November 15, 1988
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I hope this letter provides you with enough guidance. I also have enclosed a copy of a pamphlet concerning conflicts of interest. If you have questions about your participation in a specific pending decision, you may request additional advice. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

MA:aa

Enclosures

CITY OF RANCHO CUCAMONGA

Office of the Mayor
Dennis L. Stout

AUG 5 2 21 PM '88
Post Office Box 807, Rancho Cucamonga, California 91730, (714) 989-1851

August 2, 1988

Mr. Gregory Baugher
Executive Director
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95804

Dear Mr. Baugher:

The elected and appointed officials associated with the City of Rancho Cucamonga are concerned about conflict of interest issues and request assistance from the Fair Political Practices Commission in clarifying the current conflict of interest laws. Specifically, these individuals wish information as to what might constitute a conflict of interest as it relates to their voluntary positions on the City Council, City Commissions and Committees.

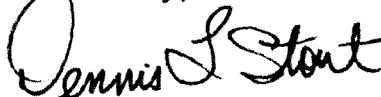
Within the last few months, two of our City Commissioners have resigned due to an apparent conflict of interest. Peter Pitassi was a member of our Park and Recreation Commission, a five member Commission appointed by the City Council to address the Park and Recreation concerns and needs within our community. Mr. Pitassi is also an architect doing business in Rancho Cucamonga and did perform some work on a City related project. He resigned his position on the Park and Recreation Commission due to a perceived conflict of interest.

Likewise, Robert Dutton was a member of our Public Safety Commission which attends to law enforcement, fire services, emergency service and other safety issues. Mr. Dutton also is involved in a development project which has been approved by the City and he, too, resigned due to a concern for conflict of interest.

Mr. Gregory Baugher
August 2, 1988
Page Two

The City would appreciate any assistance the Fair Political Practices Commission can offer, both in general and in terms of the two above individuals. Please contact our City Manager's office at 714-989-1851 should you have any questions regarding this matter. Thank you in advance for your attention.

Sincerely,



Dennis L. Stout
Mayor

DLS:jls

cc: City Council
Lauren Wasserman
Park and Recreation Commission
Planning Commission
Advisory Commission
Public Safety Commission
Mark Lorimer

88-474



CITY OF RANCHO CUCAMONGA

Office of the Mayor
Dennis L. Stout

F P F
AUG 5 2 21 PM '88

Post Office Box 807, Rancho Cucamonga, California 91730, (714) 989-1851

August 2, 1988

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Executive Director
Fair Political Practices Commission
428 "J" Street, Suite 800
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Sincerely,

A handwritten signature in cursive script that reads "Dennis L. Stout". The signature is written in black ink and is positioned above the printed name and title.

Dennis L. Stout
Mayor

DLS:jls

cc: City Council
Lauren Wasserman
Park and Recreation Commission
Planning Commission
Advisory Commission
Public Safety Commission
Mark Lorimer

88-474



California Fair Political Practices Commission

August 10, 1988

Dennis L. Stout
Mayor, Rancho Cucamonga
P.O. Box 807
Rancho Cucamonga, CA 91730

Re: 88-313

Dear Mr. Stout:

Your letter requesting advice under the Political Reform Act was received on August 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, 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