



California Fair Political Practices Commission

July 24, 1989

Kenneth L. Nelson
Torrance City Attorney
3031 Torrance Boulevard
Torrance, CA 90503

Re: Your Request for Informal Assistance
Our File No. I-89-367

Dear Mr. Nelson:

You have requested advice on behalf of Torrance City Councilmember and Redevelopment Agency Member George Nakano regarding his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is considered informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Mr. Nakano owns an interest in a limited partnership which is negotiating to purchase a parcel of property in the city's industrial redevelopment project. The limited partnership hopes to construct a hotel on the property. When must Mr. Nakano disqualify himself from decisions which come before the city council and redevelopment agency.

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).)

CONCLUSION

Mr. Nakano may not participate in any decision which will have a reasonably foreseeable material financial effect on the limited partnership.

FACTS

Councilman Nakano has a 1.1751% interest in a limited partnership. Last year he received income exceeding one-thousand dollars from the partnership. The limited partnership itself, or possibly through joining with another investment company, is negotiating with a property owner in the city's industrial redevelopment project for the purchase of a certain site. The intent is to construct a hotel on the property.

The City of Torrance has four separate redevelopment projects. A downtown redevelopment project consists of eighty-eight acres. The plan for this project was adopted in 1978. The industrial redevelopment project consists of approximately three-hundred acres adjoining the downtown project. The plan for the industrial redevelopment project was adopted in 1983. The city's two remaining redevelopment projects are Skypark and Meadowpark. These are both located on the other side of town.

The hotel, if constructed, will be located on approximately four acres of the three-hundred acre industrial redevelopment project.

Future action by the city council and redevelopment agency includes approval of budgets and annual reports, approval of development plans and approval of consulting contracts, including, in part, appraisers, engineers and attorneys. The city council may also make decisions on occupancy tax applicable to hotels.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(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 (a)-(e).

In the present situation, Mr. Nakano has an investment interest in the limited partnership which, given the amount of income he is receiving, is undoubtedly worth \$1,000 or more. Accordingly, he may not participate in any decision which will have a material financial effect on the limited partnership. However, since Mr. Nakano is less than a 10% owner of the partnership, an ownership interest in the real property owned by the limited partnership is not attributed to him. (Section 82033.)

We next provide general guidance to assist Mr. Nakano in determining whether decisions will foreseeably and materially affect the limited partnership.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Redevelopment Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copies enclosed).) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a conflict of interest. (Witt v. Morrow, supra at 823.)

In the present context, it should be noted that the very purpose of redevelopment is to improve the property conditions in the redevelopment area. (Health and Safety Code Section 33037.) Many of the decisions involving the redevelopment area will have

reasonably foreseeable effects on the limited partnership's interest in the hotel site. (See, Downey Cares v. Downey Redevelopment Commission, supra at 991; In re Oglesby (1975) 1 FPPC Ops. 71, 80, copies enclosed.)

Materiality

The Commission has adopted regulations which provide guidance on when the reasonably foreseeable effects of a decision are deemed material. A decision may have a material financial effect on the limited partnership in one of two ways. First, Mr. Nakano may not participate in a decision in which the limited partnership is directly involved. (Regulation 18702.1(a)(2), copy enclosed.) Regulation 18702.1(b) provides:

A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Regulation 18702.1(b).

For example, if the limited partnership is the applicant for a development permit, Mr. Nakano is required to disqualify himself from participating in the decision to grant or deny the permit.

Second, Regulation 18702.2 (copy enclosed) provides dollar guidelines for determining whether the effect of a decision on a business entity which is not directly involved in a decision is material. The regulation provides different guidelines depending on the size of the business entity. For purposes of this letter, we will assume that Regulation 18702.2(g), the standard for small business entities not qualified for public sale, is the applicable

standard.³ Regulation 18702.2(g) provides that the effect of a decision on the limited partnership is considered material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.


Regulation 18702.2(g).

For example, if the city council or redevelopment agency were faced with a decision to approve specific project plans which affected the property owned by the limited partnership, and the approval or disapproval of those plans would increase or decrease the value of the partnership's real property by \$2,500 or more, Mr. Nakano must disqualify himself from participating in the decision.

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

Sincerely,

Kathryn E. Donovan
General Counsel

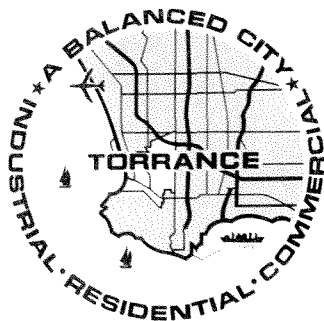

By: John G. McLean
Counsel, Legal Division

KED/JGM/aa

Enclosures

³ You will need to examine Regulation 18702.2 to determine which test is appropriate for the limited partnership.

KENNETH L. NELSON
City Attorney



CITY OF TORRANCE
3031 TORRANCE BOULEVARD, TORRANCE, CALIFORNIA
TELEPHONE (213) 618-5810 90503

June 13, 1989

Kathryn E. Donovan, General Counsel
California Fair Political Practices Commission
428 "J" Street Suite 800
Post Office Box 807
Sacramento, California 95804-0807

Dear Ms. Donovan:

As City Attorney for the City of Torrance and counsel to the Redevelopment Agency this letter shall serve as a request pursuant to 2 California Administrative Code Section 18329 for advice on the facts contained herein.

This request is made concerning George Nakano, Councilmember and Board Member of the Redevelopment Agency of the City of Torrance. Councilman Nakano has a 1.1751% interest in a limited partnership. Last year he received income exceeding one-thousand dollars from the partnership. This limited partnership itself, or possibly through joining with another investment company, is negotiating with a property owner in the City's Industrial Redevelopment Project for the purchase of a certain site. The intent is to construct a hotel on this property. Councilman Nakano has requested advice regarding his participation in future decisions of the City Council and Redevelopment Agency.

The City of Torrance has four separate redevelopment projects. A Downtown Redevelopment Project consists of eighty-eight acres. The plan for this project was adopted in 1978. The Industrial Redevelopment Project consists of approximately three-hundred acres adjoining the Downtown Project. The plan for the Industrial Redevelopment Project was adopted in 1983. The City's two remaining redevelopment projects are Skypark and Meadowpark. These are both located on the other side of town.

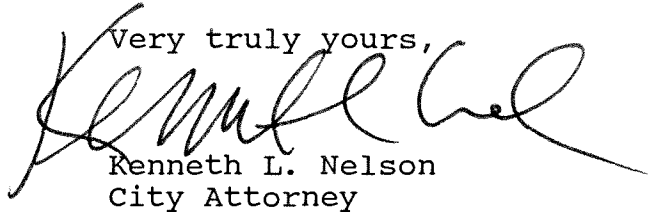
The hotel, if constructed, will be located on approximately four acres of the three-hundred acre Industrial Redevelopment Project.

Future action by the City Council and Redevelopment Agency includes approval of budgets and annual reports, approval of development plans and approval of consulting

contracts including, in part, appraisers, engineers and attorneys. The City Council may also make decisions on occupancy tax applicable to hotels. Clearly, at this point we are unable to anticipate all issues that may come before our City Council or Redevelopment Agency.

Please advise us on Councilman Nakano's participation in future decisions of the Torrance City Council and Redevelopment Agency on the basis of the facts set forth in this letter. Please feel free to contact me if any additional information is necessary for your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kenneth L. Nelson', written over the typed name.

Kenneth L. Nelson
City Attorney

cc: Councilman Nakano

EGC/mv/40



California Fair Political Practices Commission

June 19, 1989

Kenneth L. Nelson
City Attorney
3031 Torrance Boulevard
Torrance, CA 90503

Re: Letter No. 89-367

Dear Mr. Nelson:

Your letter requesting advice under the Political Reform Act was received on June 16, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean 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