



# California Fair Political Practices Commission

September 12, 1989

Burk E. Delventhal  
Deputy City Attorney  
David A. Lerman  
Law Clerk  
City Hall, Room 206  
San Francisco, CA 94102

Re: Your Request for Advice  
Our File No. I-89-377

Dear Messrs. Delventhal and Lerman:

You have requested advice on behalf of Supervisor Richard Hongisto concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1</sup> to his duties as a member of the San Francisco Board of Supervisors. The following advice is based upon the facts provided in your letter.

Since we do not have sufficient facts to provide specific advice, we are treating your question as a request for informal assistance pursuant to Regulation 18329(c).<sup>2</sup>

## QUESTION

May Supervisor Hongisto, who owns more than forty residential rental units in San Francisco, participate in voting on amendments to Section 1308 of the San Francisco Subdivision Code, which regulates the conversion of residential units to condominiums?

## CONCLUSION

Supervisor Hongisto must disqualify himself from participating in voting on amendments to Section 1308 of the San Francisco

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Subdivision Code if it is reasonably foreseeable that the amendments will have a material financial effect of \$10,000 on the fair market value or \$1,000 on the annual rental value of any of his residential units.

#### FACTS

Supervisor Hongisto owns more than forty residential units in the city and county of San Francisco. The Board of Supervisors will soon be voting on amendments to Section 1308 of the San Francisco Subdivision Code, which regulates the conversion of residential units to condominiums.

These amendments would extend the 200 unit annual limit on condominium conversion for four years, and exempt the conversion of community apartments and stock cooperatives from the 200 unit annual limitation where 75 percent of the units have been continuously occupied by owners of record for three years prior to application for conversion.

The amendments would also clarify the definition of continuous ownership, modify the definition of conversion, provide that conversion of two-unit buildings is exempt from the code where the building is owner-occupied for one year prior to application for conversion, and provide that no subdivision map is required where owners obtain an exemption under Section 1397 of the Subdivision Code.

#### ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) 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.

(Section 87103.)

As a member of the San Francisco Board of Supervisors, Mr. Hongisto is a public official. (Section 82048.) Therefore he may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any real property in which he has an interest of \$1,000 or more, or on any source of income of \$250 or more within 12 months prior to the decision. (Section 87103(b) and (c).)

"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more....

(Section 82033.)

Supervisor Hongisto will be required to disqualify himself from participating in any decision regarding the amendments to the Subdivision Code if such decision would foreseeably and materially affect any of his forty residential units.

#### Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, an effect that is merely a possibility is not reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App. 3d 983; In re Thorner 1 FPPC Ops. 198.)

#### Materiality

The Commission has adopted several regulations on the subject of material financial effect. Regulation 18702.3 (copy enclosed), contains the guidelines for determining if the effect of a decision is material when an official's ownership interest in real property is indirectly involved in the decision. Regulation 18702.3(c), which is applicable to the facts of this situation, provides that the effect of a decision is material as to real property in which an official has an ownership interest if

the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

(Regulation 18702.3(a)(3).)

The proposed amendment would extend the 200 unit annual conversion limit per year, in addition to providing exemptions for specific types of properties. We do not have any facts to know if any of the exemptions would apply to Supervisor Hongisto's units. We also do not have any facts regarding the fair market value or rental value of the units. However, if it is reasonably foreseeable that the amendments will have a material financial effect of \$10,000 on the fair market value or \$1,000 on the annual rental value of any of Supervisor Hongisto's properties, he must disqualify himself.


You specifically asked us to review a 1981 advice letter which advised Supervisor Hongisto on a similar issue. (Toomey Advice Letter No. A-81-137, copy enclosed). The advice given in that letter was that the proposed ordinance on condominium conversions did not have a foreseeable material financial effect on Supervisor Hongisto's apartments. This conclusion was based primarily upon two factors: (1) there was a two-year moratorium on condominium conversions at that time, which precluded everyone from applying for a conversion, and (2) the assessor claimed that the proposed ordinance would not have any effect on the value of the apartments. These are unique facts which have not been presented in the current situation.

Therefore, we must conclude that if there is a material financial effect as set forth in Regulation 18702.3(c), Supervisor Hongisto may not participate in any decisions regarding the amendments pertaining to condominium conversions.

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

Sincerely,

Kathryn E. Donovan  
General Counsel

By:   
Jill R. Stecher  
Counsel, Legal Division

KED:JRS:plh

Enclosures

**City and County of San Francisco:**

**Office of City Attorney**



Louise H. Renne,  
City Attorney

JUN 23 9 11 AM '89

June 22, 1989

Kathryn E. Donovan  
Fair Political Practices Commission  
Legal Division  
428 J Street, Suite 800  
Sacramento, California 95814

Dear Ms. Donovan:

At the suggestion of staff attorney John Wallace, we are formally requesting an advice letter on behalf of Richard Hongisto, a member of the San Francisco Board of Supervisors. The issue is whether Supervisor Hongisto, as the owner of more than forty residential units in the City and County of San Francisco, is legally precluded from voting on amendments to section 1308 of the San Francisco Subdivision Code, which regulates the conversion of residential units to condominiums

These amendments would extend the 200 unit annual limit on condominium conversion for four years, and exempt the conversion of community apartments and stock cooperatives from the 200 unit annual limitation where 75 percent of the units have been continuously occupied by owners of record for three years prior to application for conversion. The amendments would also clarify the definition of continuous ownership, modify the definition of conversion, provide that conversion of two-unit buildings is exempt from the code where the building is owner occupied for one year prior to application for conversion, and provide that no subdivision map is required where owners obtain an exemption under section 1397.

Essentially the same question was addressed in an F.P.P.C. advice letter written to our office by Robert M. Stern on 6/12/81. That letter found that the proposed amendments would have no material financial effect on Supervisor Hongisto. Based upon this finding the letter concluded that Supervisor Hongisto had no conflict of interest. We are requesting that your office review that letter for the purpose of advising Supervisor Hongisto regarding his participation in the process of adoption of the proposed amendments. Our reasons for the request follow:

First, new regulations regarding materiality have come into effect since the 1981 advice letter was drafted (See 2 Cal Admin Code §18702 et seq.).

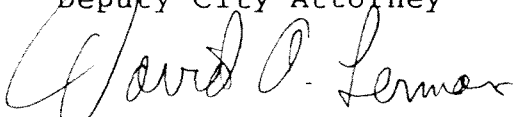
Second, the current proposed amendments to section 1308 of the San Francisco Subdivision Code are broader in scope than the legislation which was before the San Francisco Board of Supervisors in 1981.

Please feel free to telephone me at (415) 554-4233 if you have any further questions concerning this matter. Thank you for your assistance.

Very truly yours,

LOUISE H. RENNE  
City Attorney

  
BURK E. DELVENTHAL  
Deputy City Attorney

  
DAVID A. LERMAN  
Law Clerk

BED/dal  
4932g



Louise H. Renne,  
City Attorney

FPPC

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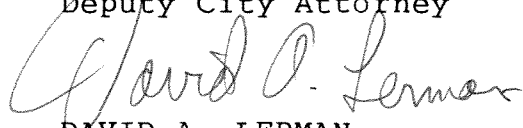
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Very truly yours,

LOUISE H. RENNE  
City Attorney



BURK E. DELVENTHAL  
Deputy City Attorney



DAVID A. LERMAN  
Law Clerk

BED/dal  
4932g



# California Fair Political Practices Commission

June 27, 1989

Burk E. Delventhal  
Deputy City Attorney  
City Hall, Room 206  
San Francisco, CA 94102-4682

Re: Letter No. 89-377

Dear Mr. Delventhal:

Your letter requesting advice under the Political Reform Act was received on June 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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, appearing to read "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh