California
Fair Political
Practices Commission

July 27, 1989

Lee C. Rosenthal
Goldfarb & Lipman
One Montgomery Street
Telesis Tower, Twenty-Third Floor
San Francisco, CA 94104

Re: Your Request For Informal Assistance
Our File No. I-89-406

Dear Mr. Rosenthal:

You have requested advice concerning the interpretation of Regulation 18702.1(a)(3)(D) which was enacted to clarify provisions of the Political Reform Act (the "Act").[1] Since you are seeking clarification with respect to a prior advice letter rather than advice regarding a specific future decision under the Act, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).[2]

You have expressed concern that the Marston Advice Letter (No. A-89-190, copy enclosed) may have represented a change in interpretation of Regulation 18702.1(a)(3)(D) (copy enclosed). That regulation states that a decision is deemed to have a material financial effect for conflict-of-interest purposes if:

> (D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee,

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[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).)

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> to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.
>
> Regulation 18702.1(a)(3)(D)

In particular, it is your understanding that the regulation applies only to decisions involving adoption or amendment of a redevelopment plan and does not apply to decisions to implement the plan. Thus, the regulation would not apply to certification of an environmental impact report (EIR) for a particular project, but only to the EIR for the plan as a whole.

We would agree that Regulation 18702.1(a)(3)(D) should only be applied to decisions in connection with the adoption or amendment of the redevelopment plan and not to decisions which involve only the implementation of the plan. Therefore, page 6 of the Marston letter, which discusses Regulation 18702.1(a)(3)(D), should not have applied the regulation to certification of the EIR, since this was an EIR for the particular project rather for the redevelopment plan as a whole. The language "to certify the environmental document" in the quoted portion of the regulation should not have been underlined. The second sentence in the paragraph following should be deleted.[3]

You also state that the decision at issue in the Marston letter did not involve an amendment to the redevelopment plan. This differs from the information provided to us by Mr. Marston. It was our understanding, as set forth on pages 2 and 3 of the letter, that the recommended location change would place the proposed plant partially outside the current redevelopment area, thereby necessitating amendment to the redevelopment plan to add territory. Our advice was based on the facts provided by the requestor. The Commission does not act as a finder of fact. (In re Oglesby (1975) 1 FPPC Ops. 71, 77 n. 6.)

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[3] It is our understanding that the members of the Willits City Council who disqualified themselves made a determination of material financial effect independent of the applicability of Regulation 18702.1(a)(3(D).

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

Sincerely,

Kathryn E. Donovan
General Counsel

By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures

cc: Lester J. Marston

The Law Offices of
GOLDFARB & LIPMAN

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July 5, 1989

Margaret W. Ellison
Fair Political Practices
Commission
428 J. Street, Suite 800
P.O. Box 807
Sacramento, California 95804

Re: Request No. A-89-190

Dear Ms. Ellison:

I have just reviewed your letter dated May 4, 1989 to Lester Marston regarding the Willits City Council and find a portion of the letter quite disturbing.

Regulation 18702.1(a)(3)(D) requires disqualification by an official in connection with decisions to adopt or amend a redevelopment plan if the official owns property in the proposed redevelopment project area. Among the redevelopment plan adoption and amendment decisions to which the regulation applies are amendment of the project area or certification of the environmental document. My understanding of Regulation 18702.1(a)(3)(D) is that it does not apply where the decision does not involve adoption or amendment of a redevelopment plan. Thus, a decision to implement the plan - for example, a decision to approve a particular development on a particular parcel within the area governed by the redevelopment plan, is not covered by Regulation 18702.1(a)(3)(D), but rather by other regulations which require virtually automatic disqualification only if the official's property is within 300 feet of the property subject to the decision.

I have some familiarity with the Willits Redevelopment Plan and the co-generation project that is the subject of the letter. It is my understanding that the change in the location of the co-generation plant location on the parcel does not involve an amendment to the Redevelopment Plan since the Redevelopment Plan does not specify the particular location of buildings or facilities on parcels included in the area governed by Redevelopment Plan. In addition, the EIR was not prepared for or in connection with adoption or amendment of the Redevelopment Plan. Rather, it was prepared in connection

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Los Angeles
213 627-6336

with the decision to approve a particular use on one of thousands of parcels within the area governed by the Redevelopment Plan.

Given my understanding of the circumstances outlined above, it is apparent to me that the Willits officials' decisions regarding the co-generation plant are decisions which implement the Redevelopment Plan and not decisions in connection with adoption or amendment of the Redevelopment Plan. Therefore, the decisions at issue, should not be within the ambit of Regulation 18702.1(a)(3)(D) and the officials should not be required to disqualify themselves solely because they own property in the area governed by the Redevelopment Plan.

To conclude otherwise would result in perversion of the intent of your regulations. The requirement for disqualification for redevelopment plan adoption and amendment decisions if an official owns property in the area governed by the redevelopment plan is one that makes some sense given the fact that adoption of a redevelopment plan is usually intended to affect all the property within the area governed by the redevelopment plan. A plan implementation decision to approve a development on a particular parcel, however, will often only have localized effects and will not affect property a mile away at the other end of the area governed by the redevelopment plan. It is for that reason that we understood that Regulation 18702.1(a)(3)(D) was limited to plan adoption and plan amendment decisions and did not cover implementation decisions which do not involve plan amendment or plan adoption.

The analysis in your letter also would lead to extremely inconsistent results. In your analysis, application of Regulation 18702.1(a)(3)(D) could be triggered by preparation of an EIR for a specific development within a redevelopment area. Under CEQA, an EIR or other CEQA action is required for approval of many specific developments within a redevelopment area because the EIR prepared in connection with the adoption of the redevelopment plan is by necessity often general and cannot analyze the specific environmental effects of specific development plan which are proposed years after the adoption of the plan. Thus, under your analysis, anytime an EIR is prepared for a specific development within the area governed by a redevelopment plan, in almost no circumstances can an official owning property in

that area vote even though that property is more than 300 feet from the specific development which is the subject of the EIR.

In contrast, if that very same specific development were under consideration in the same city but no redevelopment plan were in effect in that city, only those officials owning property within 300 feet of the specific development would be subject to almost automatic disqualification.

Under the scheme created by your analysis in the Marston letter, the extent of almost automatic disqualification based on distance of the official's property from the property on which a specific development is proposed will depend on whether or not a redevelopment plan has been adopted which includes the property on which the specific development is proposed. That is the case despite the fact that the impact of the specific development will be exactly the same on surrounding property if the development is not in a redevelopment area as it would be if the development were in a redevelopment area. Thus, the extent of required disqualification will be determined by previous inclusion or non-inclusion of the specific development in an area governed by a redevelopment plan - a factor which is entirely irrelevant in determining the impact of the specific development on surrounding properties.

I would appreciate it if you respond to this letter as quickly as possible. Until your Marston letter, all redevelopment agencies with which I am familiar have been operating on the assumption that Regulation 18702(a)(3)(D) does not apply to redevelopment agency decisions regarding specific developments within the area governed by the redevelopment plan. If the Marston letter requires a change in that assumption, it is important that redevelopment agencies be made aware of the FPPC position.

Sincerely,

LEE C. ROSENTHAL

LCR:dv
cc: Lester J. Marston

California
Fair Political
Practices Commission

July 12, 1989

Lee C. Rosenthal
Goldfarb & Lipman
One Montgomery Street
Telesis Tower, Twenty-Third Floor
San Francisco, CA 94104

Re: Letter No. 89-406

Dear Mr. Rosenthal:

Your letter requesting advice under the Political Reform Act was received on July 7, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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,

Kathryn E. Donovan

Kathryn E. Donovan
General Counsel

KED:plh