



# California Fair Political Practices Commission

July 3, 1990

Charles S. Vose, Esq.  
Oliver, Stoeber, Barr & Vose  
1000 Sunset Boulevard  
Los Angeles, CA 90012

Re: Your Request for Informal Assistance  
Our File No. I-90-415

Dear Mr. Vose:

This is in response to your letter of June 11, 1990, in which you requested advice concerning the conflict of interest provisions of the Political Reform Act (the "Act")<sup>1</sup> regarding Kathleen Midstokke, a Hermosa Beach city councilmember who is a residential tenant at property located within 300 feet of an area subject to rezoning. Since certain facts were not provided in either your letter or subsequent telephone conversations, this response will be in the way of informal assistance.<sup>2</sup>

## QUESTIONS

1. Does Councilmember Kathleen Midstokke have a conflict of interest with respect to decisions regarding certain property subject to rezoning when that property is located with 300 feet of Councilmember Midstokke's rented residence?

2. Does the fact that Councilmember Midstokke's residence is owned by another councilmember who has already declared a conflict of interest with respect to his rental property mean that Councilmember Midstokke also has a conflict of interest?

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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).)

### CONCLUSION

1. If Councilmember Midstokke has a month-to-month tenancy at her place of residence, then, based on consideration of that one fact, there is no conflict of interest, even though the residence is within 300 feet of the property subject to a rezoning decision.

2. The mere fact that the councilmember-owner of Councilmember Midstokke's residence has an acknowledged conflict of interest does not mean that Councilmember Midstokke has a conflict of interest vis-a-vis the subject property. However, if Ms. Midstokke has received income or gifts from the councilmember-owner and the income or gifts have aggregated more than \$250 in the last 12 months, then, based on the information you have provided, Councilmember Midstokke has a conflict of interest.

### FACTS

Councilmember Midstokke is a residential tenant at property located within 300 feet of an area for which a rezoning decision is pending by the Hermosa Beach City Council. She has a month-to-month tenancy. She rents the property from another councilmember who has declared a conflict of interest with respect to the pending rezoning decision based upon ownership of the rental property.

### ANALYSIS

Section 87100 prohibits public officials from making, participating in or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Whether a public official has a financial interest in a decision is governed by 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 financial effect, distinguishable from its 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 82033 defines "interest in real property" as follows:

"Interest in real property" includes any leasehold ... located in the jurisdiction owned directly, indirectly or beneficially by the public official ... or his or her immediate family....

Regulation 18233 amplifies the above by interpreting "interest in real property" and "leasehold interest" as follows:

The terms "interest in real property" and "leasehold interest" as used in Government Code Section 82033 shall not include the interest of a tenant in a periodic tenancy of one month or less.

Regulation 18233, copy enclosed.  
(Emphasis added.)

Councilmember Midstokke's month-to-month tenancy in her residence is a periodic tenancy of one month. She therefore has no interest in the real property which is within 300 feet of the area affected by rezoning measures. Since she has a no interest in the subject real property, there is no basis for disqualification under Section 87103(b). (See Bower Advice Letter, No. A-88-050, copy enclosed.)

Your second question related to a possible conflict because Councilmember Midstokke rents her residence from another councilmember who has acknowledged a conflict of interest due to the proximity of his real property to the property which is the subject of the pending rezoning decision. Those facts alone do not necessarily point to a conflict of interest. Councilmember

Midstokke would have to have a financial interest within the framework of Section 87103 and its attendant regulations. Merely being a tenant of a person who has a conflict is not in and of itself a basis for a conflict. It should be noted, however, that if Ms. Midstokke has received income from her landlord in the form of, for example, a loan or a forgiveness of rent of over \$250 in the last 12 months, then the property owner could be considered a source of income<sup>3</sup> to the Ms. Midstokke which could trigger a conflict of interest. (Section 87103(c).)

Additionally, if Ms. Midstokke's rent is at a level which is less than the current market level for similar rentals in her area, then the difference between fair market value and the discounted rent would constitute a gift to Ms. Midstokke by the landlord. (Section 82028(a).) If that amount is more than \$250 in the last 12 months, then Ms. Midstokke may have a conflict of interest because of the strictures of Section 87103(e), which states that an official has a financial interest in a decision where it is reasonably foreseeable that the decision will have a material financial effect on any donor of gifts aggregating \$250 or more received or promised to the public official within 12 months prior to the time of making the decision. We enclose copies of Regulations 18702.6, and 18702.3, which apply to determine if the source of income would be materially financially affected in this situation.

I hope that this response has answered your questions. If I can be of further assistance, please do not hesitate to call me at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Susan L. Bobrow  
Counsel, Legal Division

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Enclosures

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<sup>3</sup> "Income" includes but is not limited to any salary, dividend, interest, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received, or reimbursement for expenses. (Section 82030.)