



# California Fair Political Practices Commission

February 27, 1991

Honorable George J. Takahashi  
Mayor, City of Marina  
211 Hillcrest Avenue  
Marina, CA 93933

Re: Your Request Informal Assistance  
Our File No. I-90-535

Dear Mayor Takahashi:

This is in response to your letter requesting reconsideration of advice provided to Robert R. Wellington (Advice Letter No. I-90-249, copy enclosed) on behalf of the City of Marina with respect to the application of the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Since your question is general in nature and does not concern a specific governmental decision, we are treating your request as one for informal assistance.<sup>2/</sup>

## QUESTIONS

1. Does the public generally exception, applicable to small jurisdictions, apply to the City Council of the City of Marina, where the city boundaries include 30,113 persons but the city's population independent of the federal military base at Fort Ord is only 16,733?

2. Does the public generally exception applicable to small jurisdictions apply to other agencies in the City of Marina such as the planning commission?

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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).)

### CONCLUSIONS

1. The public generally exception applicable to small jurisdictions does not apply to the Marina City Council because the city's population exceeds the number required to fit within the exception in Regulation 18703.1. The city council's "jurisdiction," as defined in the Act, includes the population in the annexed portions of Fort Ord.

2. Other agencies may have jurisdictions that are larger or smaller than the city boundaries. If the planning commission's jurisdiction expressly excludes the Fort Ord area, that population would not be considered in applying the regulation.

### FACTS

The facts are substantially the same as in our letter to Mr. Wellington.

The City of Marina is situated west of the United States Army base at Fort Ord. Several years ago, Marina annexed a portion of Fort Ord, adding 13,380 persons to the city's existing population of 16,733.

The City of Marina does not provide municipal services to the area, such as police or fire protection, and does not collect property taxes from the area. In addition, the area is not subject to the city's transient occupancy tax, property transfer tax, planning and land use/building inspection fees and the sales and use tax on retail sales. However, the city does receive tax benefits based on population due to the inclusion of the area. Further, the residents of that area do vote in city elections.

Because the city covers a small geographic area, you have been having problems with multiple disqualifications on both the city council and planning commission levels, due to conflicts of interest. You have asked whether the public generally exception applicable to small jurisdictions, Regulation 18703.1, applies to the City Council or Planning Commission of Marina where the city boundaries include 30,113 persons, but the city's population independent of the federal areas is only 16,733.

Additional information was obtained by letter dated October 19, 1990, which was submitted by Assistant City Attorney Kenneth D. Buchert, and from a meeting with Mr. Buchert and Marina Planning Director Jeffrey P. Dack. We have incorporated this information in our analysis.

ANALYSIS

1. Conflicts of Interest Generally

The Act prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) Section 87103 provides that 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 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.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

For example, under the conflict-of-interest provisions of the Act, officials with interests of \$1,000 or more in real property may not participate in any governmental decision which will have a reasonably foreseeable material financial effect on the official's real property.

## 2. The Public Generally Exception

However, public officials with financial interests that will be materially affected by a decision may participate in the decision if the effect on their interest is not distinguishable from the effect on the public generally. (Regulation 18703, copy enclosed.) The public generally exception applies only if the decision will affect the official's interests in substantially the same manner as it would affect a significant segment of the public generally.

The "public" consists of those persons within the jurisdiction of the respective officials, i.e., the residents and persons doing business in the jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) In In re Legan ((1985) 9 FPPC Ops. 1, copy enclosed) the Commission concluded that persons could constitute part of the public even where the official's agency does not have power to legislate with respect to those persons:

The "public" includes the entire jurisdiction for the agency in question, particularly where an elective body is being considered, because all of the County's residents are constituents of the various members of the Board of Supervisors and many reside in the various incorporated cities within the County. They are all impacted in one way or another by the County's land-use decisions, even if not directly subject to the County's land-use jurisdiction. We see no reason to alter our interpretation that the residents, and businesses and property owners of the County of Santa Clara are the "public" for purposes of decisions being made by the Board of Supervisors.

In re Legan, supra, at 12.

Thus, under the traditional public generally exception, populations in federal areas must also be considered a part of the public generally, despite limited power on the part of the city council to directly control the area. Hence the exception only applies if the decision will affect the official's interests in substantially the same manner as it would affect a significant segment of the entire population of Marina, including Fort Ord.

3. The Marina City Council and Regulation 18703.1

Regulation 18703.1 (copy enclosed) provides an additional public generally exception for small jurisdictions. Pursuant to Regulation 18703.1 the effect of a governmental decision on a public official's principal residence is indistinguishable from the effect on the public generally if all the requirements of the regulation are met. Subdivision (a) of Regulation 18703.1 provides:

(a) The effect of a governmental decision on the principal residence of a public official is not distinguishable from the effect on the public generally where all of the following conditions are met:

(1) The public official's agency has jurisdiction over a population of 25,000 or less, covering a geographic area of ten square miles or less.

You have asked for reconsideration of our conclusion that under subsection (a)(1) of Regulation 18703.1 the City of Marina would be considered to have jurisdiction over the entire population of the city, including persons residing at Fort Ord.

A. The Geographic Component of Jurisdiction

Section 82035 provides:

"Jurisdiction" means the state with respect to a state agency and, with respect to a local government agency, the region, county, city, district or other geographical area in which it has jurisdiction. The jurisdiction of a member of a regional coastal zone conservation commission shall be the permit area in which the regional commission has jurisdiction. Real property shall be deemed to be "within the jurisdiction" with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

[Emphasis added.]

Thus, the Act sets forth a geographic definition of "jurisdiction" for state and local government agencies. (In re Baty (1979) 5 FPCC Ops. 10, copy enclosed.)<sup>3/</sup> For example, the jurisdiction of a state agency is the state, apparently irrespective of federal enclaves within. (Stevenson Advice letter, No. A-81-02-010, copy enclosed.)

For local government agencies, the jurisdiction is the geographic area covered by the county, city or district. Thus, for disclosure purposes we have said that a candidate for city council must disclose all his real property interests that are within the city limits, and two miles beyond. (Harris Advice Letter, A-80-03-015, copy enclosed.)

Moreover, it appears that the clear intent of Regulation 18703.1 was to consider the entire population within the geographic boundaries of a city as within the jurisdiction of the city council for purposes of subdivision (a). As described in our initial advice letter to Mr. Wellington, the language used in memoranda submitted to the Commission in the course of adopting Regulation 18703.1 never suggested that a city council could have jurisdiction over a population less than that encompassed by the city's boundaries. (Commission Memorandum: Pre-notice Discussion - Proposed Regulation 18703.1; Commission Memorandum: Adoption of Proposed Regulation 18703.1, copies enclosed.) The data contained in those memoranda concerning the number of cities which would be affected by the proposed regulation which was submitted by the League of Cities appears to be based on the cities' total population.

By annexing the Fort Ord area, the City of Marina affirmatively acted to add the area and population of Fort Ord to the geographic jurisdiction of the City of Marina.<sup>4/</sup> Consequently, Marina's "jurisdiction" for purposes of the Act includes the population in the annexed portions of Fort Ord.

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<sup>3/</sup> In discussing the appropriate interpretation of the definition of "jurisdiction" for municipal court judges, the Commission stated: "However, the courts are not considered either local government or state agencies as those terms are defined in the Act. [Citation omitted] While the jurisdiction of the courts is not specifically defined by Section 82035, we believe that the geographical concept enunciated in that section should be applied to the courts." (In re Baty, supra, at 11.)

<sup>4/</sup> "Annexation" is defined in Black's Law Dictionary (1979) as "the acquisition of territory or land by a nation, state or municipality; the legal incorporation of a town or city into another town or city."

B. The Authority Component of "Jurisdiction"

We have also noted that the traditional definition of "jurisdiction" also incorporates an authority component. Funk and Wagnalls Standard College Dictionary (1974) provides an alternative definition of "jurisdiction" as the lawful "right to exercise official authority, whether executive, legislative or judicial."

In a letter submitted by Colonel Craig S. Schwender of the Staff Judge Advocate's Office, Colonel Schwender explains the relationship between the City of Marina and the federal government with respect to Fort Ord.

The Federal government by statute has permitted states to exercise certain powers within an area of exclusive federal jurisdiction. An example is the Buck Act, (4 U.S.C. Sec. 105-110) here states are permitted to exercise certain taxing powers [citation omitted]. Another example relates to the right of residents in federal enclaves to vote in state elections, where a deprivation of that right would constitute a violation of the Fourteenth Amendment of the United States Constitution [citation omitted].

It is important to understand that the consent by the Federal Government for a state to exercise certain powers within an area of exclusive federal jurisdiction does not constitute a retrocession of the portion of that exclusive jurisdiction to the state. The term "jurisdiction" refers to the authority to legislate. By giving its consent to the exercise of certain state powers, the Federal Government has not surrendered its residual exclusive jurisdiction. It merely permits the state to exercise certain powers until the permission is subsequently withdrawn [citation omitted].

The annexation of a portion of an area of exclusive federal legislative jurisdiction by a local municipality in no way operates in derogation of these principals [citation omitted].

[Emphasis added]

We do not quarrel with Colonel Schwender's statement that the federal government has not surrendered its residual exclusive jurisdiction to the City of Marina. However, as stated in our prior advice letter, while the city council's authority with respect to the area in question is limited and apparently contingent on federal consent, the city council, nevertheless, continues to have some authority and official duties with respect to the region. We believe Colonel Schwender's letter supports this conclusion. The power to tax the population of Fort Ord suggests at least some authority over those persons. Thus, we conclude that the city council maintains some jurisdiction over the Fort Ord area notwithstanding the quality or quantity of that jurisdiction.

### C. Policy Considerations

In implementing the Act the Commission has found that it is necessary to look at the goals and intent of the Act as a whole, rather than closely scrutinizing the components of whatever definition may be applicable in a given situation.<sup>5/</sup> (In re Witt (1976) 1 FPPC Ops. 1, copy enclosed.)

There are strong policy reasons not to change our interpretation of jurisdiction as set forth in the Wellington Advice Letter. It would appear that not only are the persons residing in the federal area constituents of the city council, but they may also be impacted by city council decisions. Since the population in Fort Ord presumably does business in Marina, almost any city council decision which has an impact upon the population of Marina also affects the population of Fort Ord. For example, a decision concerning an increase in park fees would have an equal impact upon federal personnel at Fort Ord and city residents. Consequently, as discussed in the quote from In re Legan, supra, the population in Fort Ord is affected in one way or another by city decisions, just as are the other residents, even if it is not subject to the city's land use jurisdiction.

In addition, persons residing in the federal areas have a constitutional right to vote for city councilmembers and presumably a right to representation by the city council. We believe this factor further supports the conclusion that a city's jurisdiction is the entire city, without the exclusion of any segments of the population.

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<sup>5/</sup> Section 81003 states that "this title should be liberally construed to accomplish its purposes." In addition, in Watson v. California Fair Political Practices Commission (1990) 217 Cal.App.3d 1059, the court affirmed the duty of the Commission to implement the intent rather than the literal language of statutes that make up the Act.

Finally, as stated in our initial letter, Regulation 18703.1 is an exception to the general rules requiring disqualification on the basis of an official's economic interests. As such, a narrow interpretation of this exception is preferred. (Julius Goldman's Egg City v. Air Pollution Control Dept. of Ventura County (1981) 116 Cal.App.3d 741.)

#### 4. Other Local Government Agencies

However, the strict geographic definition of "jurisdiction" in the Act does not apply to every local government agency. Not all local government agencies have a jurisdiction fixed by city boundaries. For example, some local government agencies have been set up with jurisdictions that are greater than the city in which they may exist. For example, Joint Powers Authorities have jurisdictions that are set up over a geographic area greater than a single city. In our letter to Andre de Bortnowski (Advice Letter, No. I-90-356; See also, Moe Advice Letter, No. A-89-454; Dickerson Advice Letter, No. 76-256, copies enclosed) we concluded:

Under your facts, the agency's redevelopment powers are limited by the Assembly Bill that created the agency to the area within a 3-mile radius of Norton Air Force Base. Accordingly, the area currently occupied by Norton Air Force Base and all the area within a 3-mile radius of the base are part of agency's jurisdiction for disclosure and disqualification purposes of the Act. In addition, real property shall be deemed to be "within the jurisdiction" with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

In other circumstances, local government agencies may have jurisdictions which are smaller than a city in which they are based. For example, the jurisdiction of the San Diego Unified Port District was described as "over certain San Diego Bay tide and submerged lands which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation" in our advice letter to Joseph D. Patello (Advice Letter No. A-84-096, copy enclosed.)<sup>6/</sup>

Consequently, where the Marina Planning Commission's jurisdiction is the City of Marina, the population in Fort Ord is

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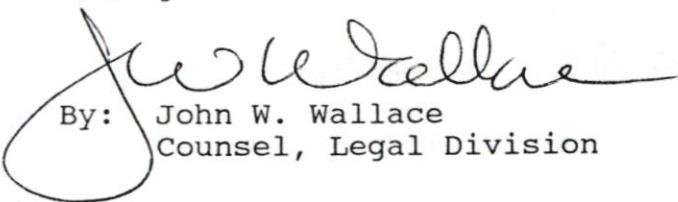
<sup>6/</sup> In re Legan, supra, addressed the jurisdiction of elected county supervisors. We believe the situation in Legan is distinguishable from other local government agencies with appointed members and specialized jurisdiction.

within the jurisdiction of the planning commission.<sup>7/</sup> However, where the planning commission's jurisdiction is expressly set up as only a portion of the city, either as a regional planning commission,<sup>8/</sup> or because the commission's jurisdiction may not extend into all areas of the city within the jurisdiction, Regulation 18703.1 may apply.

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

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

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Enclosures

cc: Randy Pestor  
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<sup>7/</sup> As we said above, by annexing the Fort Ord area to the city, the city council by definition has added the territory and population to the city council's jurisdiction.

<sup>8/</sup> Government Code Section 65101 appears to permit planning commissions to have jurisdictions smaller than the city in which they are based. However, the Commission has no authority to advise with respect to Section 65101.