



California Fair Political Practices Commission

September 19, 1990

Gary Morrison
Deputy General Counsel
University of California
300 Lakeside Drive
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-90-538

Dear Mr. Morrison:

This is in response to your letter of August 16, 1990, seeking advice regarding the responsibilities and duties under the conflict of interest provisions of the Political Reform Act ("the Act")¹ of Meredith J. Khachigian, a member of the Board of Regents of the University of California.

QUESTIONS

In light of the financial interests of Regent Khachigian, described below:

(1) May Regent Khachigian participate in the deliberations and votes of the site selection task force in connection with recommendations it makes to the President of the University who will, in turn, make a recommendation to the Board?

(2) May Regent Khachigian participate in decisions by the Board to narrow the list of sites and to choose the final site?

CONCLUSIONS

(1) Regent Khachigian may participate in the deliberations and votes of the site selection task force in connection with recommendations it makes to the President of the University who

¹ Government Code Sections 81000-91015. All section references are to the Government Code.

will, in turn, make a recommendation to the Board, because the owner of the affected property has not been a source of income to the Regent during the 12 months preceding such participation.

(2) Regent Khachigian may participate in decisions by the Board to narrow the list of sites and to choose the final site because the owner of the affected property has not been a source of income to the Regent during the 12 months preceding such participation.

FACTS

1. Meredith J. Khachigian is a member of the Board of Regents of the University of California (the "Board").
2. In November 1988, the Board authorized University of California President, David P. Gardner, to begin the process of planning for possible new campuses of the University.
3. In March 1989, President Gardner appointed a site selection task force (the "task force") made up of Regent Khachigian, two other members of the Board, and six members of the University faculty and staff. The task force is charged with advising the President on the development and application of criteria and methodology for choosing new campus sites. The President considers the recommendations of the task force in making his recommendations to the Board, which makes the final decisions.
4. In order to avoid any appearance of conflict of interest in the site selection process, The Regents adopted special financial disclosure requirements that before any action is taken by the Board to narrow the list of potential sites, members of the Board disclose any economic or personal interest they or members of their families may have related to identified potential sites. The first such disclosure was due in connection with the July 19, 1990, meeting of the Board to consider reducing to eight the sites under consideration in the central region of the state. In early July, in the process of making this disclosure, Regent Khachigian was informed that a portion of one of the eight sites was owned by Mr. Richard Gunner. Regent Khachigian's husband, Kenneth, an attorney, had once performed legal services as described below for Mr. Gunner on behalf of the Gunner Ranch (hereafter "Gunner").
5. In January 1989, prior to Regent Khachigian's appointment to the task force, and in connection with matters unrelated to the University of California, Gunner contacted Mr. Khachigian regarding advice on infrastructure development in the vicinity of property he owned in Madera County--one parcel of which is now among the eight sites referenced above.

6. On April 20, 1989, Mr. Khachigian received a retainer fee of more than \$500 from Gunner. Thereafter, Mr. Khachigian performed legal services for Gunner related to their discussion in January. These legal services were discontinued as of July 6, 1989, and no professional fees were received by Mr. Khachigian subsequent to April 20. However, Mr. Khachigian did receive reimbursement for direct out-of-pocket expenses in the sum of \$523.88 on June 7, 1989, and in the sum of \$263.92 on August 7, 1989. The August 7 payment was the final reimbursement of Mr. Khachigian by Gunner. Regent Khachigian has a community property interest of less than \$250 in the August 7 payment and of more than \$250 in the June 7 payment as well as the April 20 fee. No income of any kind has been received by Mr. Khachigian from Gunner during the last 12 months. Neither Mr. Khachigian nor Regent Khachigian has engaged in any other contracts or business transactions with Gunner.
7. At all times during the task force's deliberations and until July 11, 1990, the sites being considered by the task force were presented to its members by code designations. So, for example, the site which includes the Gunner property was never referred to by any of its owners' names, but as MD 1. At the June 8, 1990, task force meeting--at which some 20 sites were brought in by the University staff with recommendations to reduce the selection to seven--the final sites were still referenced by code designations. On June 8, the task force received and accepted the recommendations of its staff.
8. On June 21, 1990, President Gardner wrote to all the members of the Board, enclosing a list of counties in which the sites were located in order that further information could be provided to members who believed these counties might potentially require further disclosure. Regent and Mr. Khachigian were out of the state on vacation from July 1 to July 8, 1990. Upon returning, the two of them reviewed President Gardner's communication, and on July 11 replied by facsimile transmission that three counties would require further information--Tulare, Fresno and Madera. The Khachigians have numerous relatives in Tulare and Fresno Counties, and Mr. Khachigian and previous (though no active) clients in all three counties.
9. On July 11, 1990, Regent Khachigian made specific inquiries to University personnel about the sites and was informed that Mr. Gunner owned property in the site previously referred to as MD 1. That was the first time Regent Khachigian became aware that a site under consideration by the task force and the Board included real property owned by her husband's former client.
10. Due to a previous commitment, Regent Khachigian did not attend the July 19, 1990, meeting of the Board at which the

Board voted to further consider the eight sites referred to it, including the parcel owned or controlled by Gunner. Thus, from the time Regent Khachigian learned of the ownership by Gunner, she has not participated in any decision relating to new site selection. On July 18, 1990, based on the foregoing facts, your office rendered an opinion to Regent Khachigian that she did not have a disqualifying financial interest and could participate fully in site selection issues.

11. Absent any disqualifying financial interest, Regent Khachigian would anticipate participating in the following activities of the task force and the Board:
 - a. In late September or early October the members of the task force plan to personally visit each of the eight sites currently under consideration. You anticipate that the sites will be the subject of informal discussion among members of the task force, but no action will be taken or recommendation made at that time.
 - b. Coincident with the site visits described above, the task force will hold a series of public forums in the areas of the potential sites. The task force plans to listen to persons in affected communities; no action will be taken or recommendation made by the task force at that time.
 - c. On November 9, 1990, the site selection task force will have a meeting to consider available information about the eight sites under consideration. You anticipate that each of the eight sites will then be subject to a vote by Regent Khachigian and the members of the task force as to whether it should be recommended to President Gardner. The task force will then forward the results of its vote to President Gardner to use in connection with his recommendation to the Board of Regents at the November meeting, when the Board plans to reduce the eight sites to two or three. In voting on whether to forward the sites for further consideration by President Gardner, the task force will be informed by a number of reports from outside consultants with respect to the criteria applicable to narrowing the sites at this stage. The professional staff of President Gardner will also offer its recommendations to assist the site selection task force in its considerations.
 - d. At its November 1990 meeting the Board, including Regent Khachigian, is scheduled to vote to narrow the eight sites currently under consideration to two or three for more intensive further consideration.

- e. The current schedule calls for the Board, including Regent Khachigian, to vote to choose a site for a new campus at its November 1991 meeting after considering environmental impact report(s) and additional detailed data on the sites remaining under consideration.

ANALYSIS

Section 87103 provides:

"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.

"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."

Only subsection (c) of section 87103 would seem to be applicable to the facts stated above. However, Regent Khachigian has not received income, either directly or through her spouse, from Mr. Gunnar during the 12 month period preceding the future Board activities in which the Regent would be participating. Thus, Mr. Gunnar would not be a disqualifying "source of income" for those activities.

Since no disqualifying economic interest appears from the facts stated in your letter as to future activities of the Board of Regents, Regent Khachigian need not disqualify herself from the planned participation.


The foregoing advice is limited to the facts stated in your letter as to future conduct of the Regent. As you stated in our recent telephone conversation, you did not intend to seek our advice as to past conduct. Furthermore, we do not advise with respect to past conduct. (Regulation 18329(c).)

I trust this letter has provided you with the guidance you requested. For your convenience, a copy of your incoming letter is enclosed.

If you have any further questions regarding this matter please contact me at (916) 322-5091.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Joseph Garcia
Senior Commission Counsel,
Legal Division