



California Fair Political Practices Commission

March 6, 1992

Steven Dorsey
City Attorney
City of Norwalk
c/o Richards, Watson and Gershon
333 South Hope Street, Thirty-Eighth Floor
Los Angeles, CA 90071-1469

Re: Your Request for Advice
Our File No. A-92-089

Dear Mr. Dorsey:

This is in response to your letter requesting advice on behalf of Norwalk City Councilmember Luigi Vernola concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Is Councilmember Vernola legally required to participate in a decision despite a conflict of interest, if a quorum of the city council cannot be reached without his participation due to another councilmember's illness or resignation?

CONCLUSION

Councilmember Vernola may participate despite his conflict of interest if it is impossible to make a quorum absent the councilmember.

FACTS

The Norwalk City Council is currently considering Resolution No. 4160, a resolution of necessity to acquire property located in the city. The city wants to acquire the property to be used as a parking lot for a sports facility which is under construction and

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.

a future cultural arts center. In addition, the city wants to use the area below the property for a water reservoir. Section 1245.240 of the California Code of Civil Procedure provides that such a resolution requires at least a four-fifths vote of the full city council for adoption.

The Norwalk City Council is composed of five members. You stated that Norwalk City Councilmember Luigi Vernola has a conflict of interest with respect to the decision due to an interest in real property within 300 feet of the property that the city wishes to acquire. Another councilmember suffered a stroke late last year and has been unable to carry out his duties as a member of the city council. You stated that the councilmember's prognosis is uncertain and that the councilmember's doctors have forbidden visitors. You believe the councilmember may be unable to fulfill his duties as a Norwalk City Councilmember for an extended period of time.

You have asked whether Councilmember Vernola's participation is legally required despite his conflict of interest. You also asked if the result would be different if Councilmember White were to resign and a vacancy existed.

ANALYSIS

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. You stated that pursuant to the provisions of the Act, Councilmember Vernola has a conflict of interest with respect to Resolution No. 4160, which is a necessary prerequisite to the purchase of property by the city, because the property to be purchased is within 300 feet of property in which Councilmember Vernola has an economic interest.

Section 87101 and Regulation 18701 provide a limited exception where the official's participation is legally required:

Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made.

Section 87101.

(a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

* * *

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Government Code Section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.

Regulation 18701.

This exception has been narrowly interpreted to permit the participation of the fewest financially interested persons possible in any decision. (In re Hudson (1978) 4 FPPC Ops. 13; Hill Advice Letter, No. I-89-160.) Consequently, where only a single member is needed to make a quorum, only one disqualified member is permitted to participate in the decision. (Skousen Advice Letter, No. A-88-162; Martin Advice Letter, No. I-88-375.) This is because "... the purposes of the Act are best served by a rule which minimizes participation in government decisions by officials with a conflict of interest." (In re Hudson, supra.)

Factually, the Hudson Opinion concerned the 5-member Petaluma Board of Building Review, three of whom had an economic interest in an applicant before the board. The Commission stated:

In the present case, the Board of Building Review is the only body that is authorized to hear an appeal from an order of the Chief Building Inspector and the Fire Marshal. Furthermore, there is no provision in the City of Petaluma ordinances which would permit either the changing of the quorum requirements of the Board or temporary appointment of an alternate member or members to the Board as a means of resolving the problem created by the conflicts of interest of the three Board members. It is clear, therefore, that under these facts no alternative source of decision exists.

In 1982 subdivision (c) of Regulation 18701 was substantially rewritten to include the language in subdivision (c)(2). The purpose of the amendment was described in the

Statement of Reasons as follows: "Due to frequent questions about whether problems in obtaining a quorum means that an official's participation in a vote is "legally required"... , an amendment to this regulation is necessary. The proposed amendment specifies that "legally required participation" applies only where disqualification, under Government Code Section 87100, has made a quorum impossible. This change will correct any confusion resulting from this regulation." (Emphasis added.)

Thus, for example, in the Sutton Advice Letter, No. A-90-643, we advised that where one seat of the Irvine City Council was subject to an election and could not be filled prior to an election, use of the exception might be appropriate. We advised:

If the Irvine City Charter provides no alternate source of decision for its requirement of four votes, there appears to be no alternative source of decision, and [the disqualified councilmember] may participate in the decision despite [the] financial interest. Again, this advice is based on the specific facts presented. If it were possible for the vacancy to be filled, our advice probably would change.

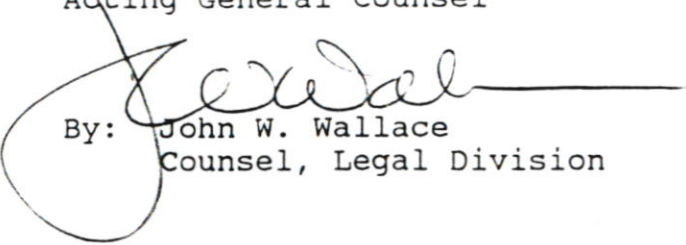
Here, the issue is whether Councilmember White's medical condition makes it impossible to obtain a quorum within the legally required time to make the decision, under circumstances where there is no alternative source of decision other than the city council. Under the particular circumstances you describe, Councilmember Vernola may participate.

You also asked whether Councilmember Vernola could participate if Councilmember White resigns. In accordance with the Sutton Advice Letter, if the Norwalk City Charter provides no alternate source of decision, and the vacancy cannot be filled prior to the decision, the exception in Section 87101 and Regulation 18701 may be utilized.

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

SH:JWW:aa