



# California Fair Political Practices Commission

May 26, 1992

Roger W. Krauel  
City Attorney for the  
Cities of Coronado, Del Mar and Encinitas  
c/o Krauel & Krauel  
Governor Park  
5090 Shoreham Place, Suite 101  
San Diego, CA 92122-5934

Re: Your Request for Informal Assistance  
Our File No. I-92-283

Dear Mr. Krauel:

This is in response to your letter requesting further assistance with respect to the conflict-of-interest provisions of the Political Reform Act<sup>1</sup> as discussed in three prior letters, Krauel Advice Letters, Nos. I-92-118, I-92-119, and I-92-147. As you note in your letter, the Commission's written advice is the application of the law to a particular set of facts. Since the memorandum you have submitted pertains to the application of prior advice letters and Commission regulations to several hypothetical fact patterns, we are providing the following informal response to your question.<sup>2</sup>

The memorandum you have submitted is an accurate general restatement of the advice provided to you in the three prior letters. However, we would like to note two discrepancies between your memorandum and the prior letters. On page 7 of your memorandum you refer to the "public generally" exception and the exception's application to a vote to adopt the traffic element of

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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).)

the general plan. In fact, the Krauel Advice Letter, No. I-92-147, provided that the "public generally" exception applied to the adoption of the general plan as a whole. This special "public generally" exception has never been applied to consideration of a single element of the general plan.<sup>3</sup>

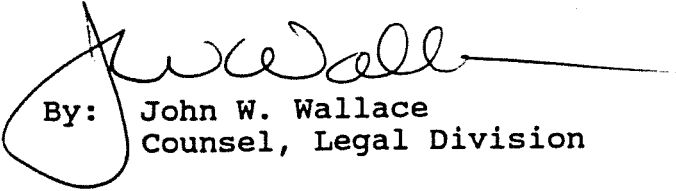
In addition, on page 8 of the memorandum you discuss the conclusion in the Krauel Advice Letter, No. I-92-118, that in measuring distances for purposes of Regulation 18702.3 one could use the boundary of the actual construction site rather than the boundary of the entire lot that the site may be located on. You should also note, however, that as we cautioned on page 4 of the letter, the boundaries of the construction site may be the appropriate point to measure from where those boundaries have been set for city council consideration in the applicable documentation for the project. Absent such clear delineation of the scope of the project and decision, the appropriate point to measure from would be the boundary of the lot as a whole. In other words, merely looking at the location of the construction site would not be appropriate in all cases.

Finally, as you note in your memorandum, application of the provisions of the Act is dependent on facts. Consequently, when a situation arises involving any of the issues discussed in your memorandum, you should contact the Commission for formal or informal advice.

I trust this general information has provided guidance in applying the Act to your situation. 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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<sup>3</sup> Generally, the Commission will refrain from providing per se exceptions to the conflict-of-interest provisions of the Act. While under some factual scenarios the effect on a public official from a specific element of the general plan will be the same as the effect on the public generally, it does not appear that this will always be the case. Thus, if you are confronted with this issue you should contact us for further advice with specific facts pertaining to the effect of the element on the official and jurisdiction as a whole.