



California Fair Political Practices Commission

July 16, 1992

Tami Knutson
Resource Conservation Supervisor
Environmental and Utilities Commission
City of Redondo Beach
415 Diamond Street
P.O. Box 270
Redondo Beach, CA 90277-0270

Re: Your Request for Advice
Our File No. A-92-348

Dear Ms. Knutson:

This is in response to your letter requesting advice on behalf of Commissioners Stephen R. Garfield and Margot A. Nelligan regarding their responsibilities as members of the Environmental and Utilities Commission of the City of Redondo Beach under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.)

QUESTION

May Commissioners Garfield and Nelligan participate in the Environmental and Utilities Commission's consideration of a new recycling fee plan that would apply to all owners of multifamily residences (condominiums in complexes with four units or more) where each commissioner owns a condominium in the jurisdiction which will be subject to the new plan?

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.

CONCLUSION

So long as the new rate structure will not affect the commissioners' interests in a manner that is distinguishable from the effect on a significant segment of the jurisdiction, the "public generally" exception would apply and the commissioners may participate.

FACTS

The Environmental and Utilities Commission (the "commission") of the City of Redondo Beach was created in January 1990 to advise the mayor and city council with respect to solid waste disposal, recycling, and utility-related subjects. The seven members on the commission are appointed by the mayor and serve on a volunteer basis. You stated in our telephone conversation of June 18, 1992, that the members of the board are required to file statements of economic interests.

The commission is currently considering modification of the recycling rates for multifamily buildings (four or more units). You stated in our telephone conversation of June 19, 1992, that there are approximately 13,000 multifamily residences in the jurisdiction, housing a population of approximately 23,019 persons which constitutes 38 percent of the 62,000 population of Redondo Beach.

The existing plan calls for a flat rate of \$1.70 per month applicable to each unit. The new plan would link the recycling fee to the volume of refuse generated by the building. The proposed formula would affect condominium owners differently depending on the number of units in the complex. You estimated in our telephone conversation of July 6, 1992, that approximately one half of the multifamily residences in the jurisdiction will experience an increase in their fees, and the other half will experience a decrease.

For example, in complexes of 385 units, the per unit monthly fee would be reduced by \$.45. In 54-unit complexes, the per unit monthly fee would be reduced by \$.38. In 12-unit complexes, the per unit monthly fee would be reduced by \$.55. In 9 unit-complexes, the per unit monthly fee would be reduced by \$.17. In 8 unit-complexes, the per unit monthly fee would be increased by \$.02.

Using the same formula, it appears that in 7-unit complexes, the per unit monthly fee would be increased by \$.24. In 6-unit complexes, the per unit monthly fee would be increased by \$.92. In 5-unit complexes, the per unit monthly fee would be increased by \$1.06. You also provided that in 4-unit complexes, the per unit monthly fee would be increased by \$1.72.

Commissioners Garfield and Nelligan own condominiums in the jurisdiction. Commissioner Garfield owns a condominium in a 12-unit complex and will pay \$.55 less for recycling per month; Commissioner Nelligan owns a condominium in a four-unit complex and will pay \$1.72 more per month.

ANALYSIS

Conflicts of Interest

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. A "public official" is defined in Section 82048 and Regulation 18700 as every natural person who is a member, officer, employee, or consultant of a state or local government agency. As members of the Environmental and Utilities Commission of Redondo Beach, a decision-making commission, Commissioners Garfield and Nelligan are public officials under the Act.²

Section 87103 specifies that a public official has a financial interest in a decision if it is reasonably foreseeable³ 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:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

You stated that the commission is considering the modification of the recycling fee imposed on owners of condominiums in the jurisdiction. Regulation 18702.1(a)(3)(C) provides that the effect of a decision is material if the decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the official's property. We have advised that where a governmental decision involves the imposition of trash collection fees, Regulation 18702.1(a)(3)(C) would apply.

² You confirmed in our telephone conversation of June 18, 1992, that the members of the board were designated in a conflict of interest code and are public officials.

³ Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.)

(Chamberlain Advice Letter, No. I-92-183.) Consequently, commissioners that are subject to the recycling fee, such as Commissioners Garfield and Nelligan, are financially interested in the decisions.

Exceptions

Public officials with financial interests that will be materially affected by a decision may participate in the decision if the effect on their economic interests is substantially similar to the effect on the public generally. (Regulation 18703.) For the "public generally" exception to apply, a decision must affect a significant segment of the public⁴ in substantially the same manner as it would affect the official's interest. (Regulation 18703.)

The Commission considered the application of the "public generally" exception with respect to residential home owners in In re Owen, supra. In the Owen Opinion the Commission stated:

[W]e conclude that residential home owners within and in the immediate vicinity of the "core area" constitute a "significant segment" of the public.... While certain aspects of the plan may operate to increase the value of this home...it is apparent that the plan will have a "substantially similar" effect on numerous other residential properties, perhaps throughout the entire city as well those near the "core area."

* * *

More importantly, there is no indication that the plan or any portion thereof will have a peculiar impact on the value of [the official's] property. If further evidence emerges in the development of the plan which would distinguish the effect of the plan or a portion of it upon [the official's] interest in comparison to other residential property owners, he may be required to disqualify himself with respect to the matter before him for decision.

Under your facts, the new rate structure based on the volume of trash produced will apply to all multifamily residences in the jurisdiction. You stated that there are approximately 13,000 multifamily residences in the jurisdiction, housing a population

⁴ The "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77.)

of approximately 23,019 persons which constitutes 38 percent of the population of Redondo Beach.⁵

In addition, you estimated that one-half of the 38 percent would experience an increase in fees and the other half a decrease in fees. The extremes in the fee changes range from a savings of \$.55 per month for persons in complexes of 385 units, to an increase of \$1.72 per month for complexes of 4 units or less (a difference of \$1.17 per month, and \$14 dollars a year.)

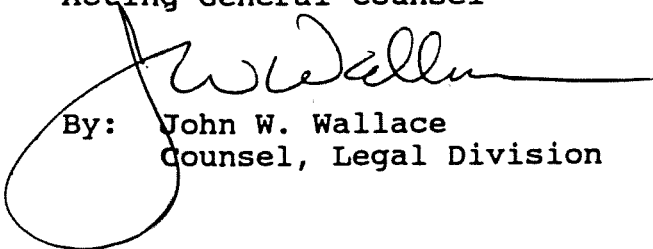
While it would appear that, despite the fact that some of the affected population will experience increases in their fees and others decreases in their fees, all the fee changes would be substantially similar in amount. Yet, even where increases and decreases are considered separately, the effect will be substantially similar to the effect on approximately 19 percent of the population of the jurisdiction. Thus, since a significant segment of the population will either be subject to the increase or subject to the decrease similar to the effect on the commissioners, the commissioners may participate in the decision.

Of course, as cautioned the Owen Opinion, if facts develop that suggest that the plan or any portion of the plan will have a peculiar impact on either of the commissioners, they will be required to disqualify themselves with respect to the decisions.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁶

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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⁵ According to the California Roster for 1991, the population of Redondo Beach is approximately 62,000.

⁶ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.