



California Fair Political Practices Commission

July 23, 1992

William M. Wilcoxin
Capistrano Bay Park and
Recreation District
801 Glenneyre, Suite A
Laguna Beach, CA 92651

Re: Your Request for Informal Assistance
Our File No. I-92-412

Dear Mr. Wilcoxin:

This is in response to your letter requesting advice regarding the responsibilities of members of the Capistrano Bay Park and Recreation District pursuant to the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your questions are general in nature and you have not named a specific public official on whose behalf you have requested this advice, we are treating your request as one for informal assistance.²

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

Do members of the Capistrano Bay Park and Recreation District have a conflict of interest with respect to decisions to purchase a building which will be leased to the Dana Point Historical

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Society, if the members are also dues-paying members of the Historical Society?

CONCLUSION

Members of the Capistrano Bay Park and Recreation District who are also dues-paying members of the Dana Point Historical Society do not have an economic interest in decisions that effect the Historical Society by virtue of their membership.

FACTS

The Capistrano Bay Park and Recreation District (the "district") is considering the purchase of a building in the jurisdiction. The building, if purchased, will be leased to the Dana Point Historical Society and other nonprofit organizations.

Some of the members of the district's board are members of the Historical Society and pay annual dues. You have asked whether this relationship with the Historical Society creates a conflict of interest for those members with respect to decisions that affect the Historical Society.

ANALYSIS

The Political Reform Act was enacted by the people of the State of California by initiative in 1974. The purpose for the disclosure and disqualification provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, 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. This definition would include a member of the Capistrano Bay Park and Recreation District.

Section 87103 specifies that a public official has a financial interest in a decision 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.

* * *

(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.

A "business entity" is any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. (Section 82005.) The Historical Society is a nonprofit agency, and therefore the Historical Society could not be an economic interest under either Section 87103(a) or (d).

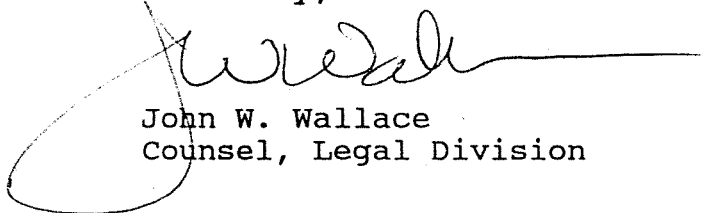
Moreover, in our telephone conversation of July 13, 1992, you stated that none of the members were salaried employees of the Historical Society. Thus, we assume that none would have received income or gifts from the Historical Society of \$250 or more.³ (Section 87103(c) and (e).) Please note, Section 82028 defines "gift" to include a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

³ If the members have received income or gifts, the Historical Society would be an economic interest of the members and the members might have a conflict of interest. We have enclosed some general materials discussing how to analyze conflicts of interest should the Historical Society be a source of income or gifts to the members.

Thus, absent some other economic interest in the Historical Society,⁴ the members may participate in the decisions to purchase the building even if the decision will affect the Historical Society.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁵

Sincerely,



John W. Wallace
Counsel, Legal Division

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Enclosures

⁴ For example, members will still have a conflict of interest in a decision if the decision will affect the members' personal expenses, income, assets, or liabilities by \$250 or more. (Regulation 18702.1(a)(4).) Thus, if the decision were to reduce or increase the fees the members paid to the Historical Society, and the change in fees would be \$250 or more, the dues-paying members of the Historical Society would have to disqualify themselves from the decision.

⁵ 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.