



California Fair Political Practices Commission

October 1, 1992

Barton G. Hechtman
Assistant City Attorney
City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066

Re: Your Request for Advice
Our File No. A-92-469

Dear Mr. Hechtman:

This is in response to your letter requesting further advice on behalf of Scotts Valley Planning Director Robert Hanna regarding his responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is intended as supplemental advice with respect to the Logan Advice Letter, Nos. A-92-439 and A-92-555.

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 Scotts Valley Planning Director Hanna participate in the decisions concerning the Sky Park project despite owning a residence which is more than 300 feet, but within 2,500 feet from the site of the project?

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

Planning Director Hanna may participate in the decisions concerning the Sky Park project so long as the effect of the decisions on his property is not distinguishable from the effect on the public generally.

FACTS

The facts are identical to those in the Logan Advice Letter, supra. Planning Director Hanna owns a personal residence which is more than 300 feet from the Sky Park project, but within 2,500 feet of the project. The Sky Park project is a 98-acre project which will include 200 to 350 new housing units, retail and business property, a new school, and 21 acres of open space. You stated that as planning director, Mr. Hanna is responsible for preparing plans and recommendations for the planning commission and the city council with respect to a specific plan for the Sky Park project.

You also stated that the population of Scotts Valley was approximately 9,000, and that there are approximately 900 residential units that are approximately the same distance from the project and which houses an estimated 1,721 persons. This is 19 percent of the population of the jurisdiction.

ANALYSIS

As was discussed in the Logan Advice Letter, supra, public officials with financial interests that will be materially affected by a decision may participate in the decision if the decision will affect the official's interest in substantially the same manner as it would affect a significant segment of the public.² (Regulation 18703.)

For example, in In re Owen (1976) 2 FPPC Ops. 77, the Commission considered whether city officials could participate in a plan for the "core area" of the City of Davis despite the fact that the officials owned property within the area. The Commission concluded that since residential homeowners in and immediately adjacent to the core area were a significant segment of the population of Davis and would be similarly affected, the officials who owned residences in the area could participate in the decision. However, they cautioned that if in fact the effect on the officials' interests would be different in relation to the effect on other owners of residential property, the officials would

² The "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77.) This is so because all the residents of the jurisdiction are constituents of the official.

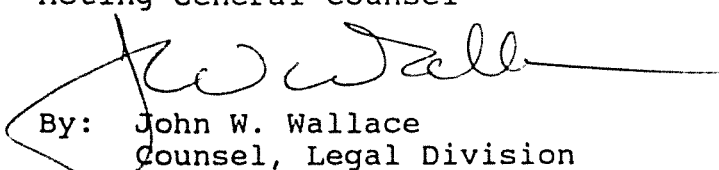
still be required to disqualify themselves.

The exception would apply to your facts if the Sky Park project will affect the councilmember's residence in substantially the same manner as it will affect a significant segment of the population of the City of Scotts Valley. Eighteen to 19 percent of the population would appear to be a significant segment of Scotts Valley. (Morton Advice Letter, No. I-91-374.) Thus, so long as the effect on the significant segment of the public is substantially similar, the planning director may participate in the decision.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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³ 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.



California Fair Political Practices Commission

September 9, 1992

Barton G. Hechtman
Assistant City Attorney
City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066

Re: File No. 92-469

Dear Mr. Hechtman:

Your letter requesting advice on behalf of Planning Director Robert Hanna pursuant to the conflict-of-interest provisions of the Political Reform Act was received on September 3, 1992, by the Fair Political Practices Commission. Your letter seeks follow up advice with respect to our letter to Scotts Valley City Attorney Robert Logan (Advice Letter A-92-439 and A-92-555). Your letter has been assigned to me for response.

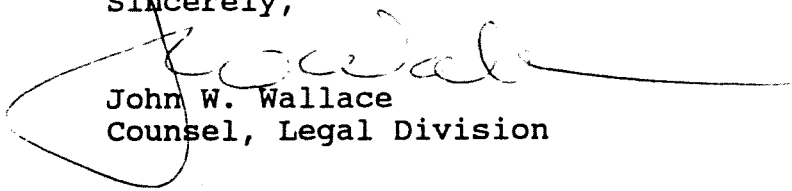
We note that your letter concerns the application of the "public generally" exception of Regulation 18703. The "public generally" exception is based on population. The "public" consists of the population of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPFC Ops. 77.) For the "public generally" exception to apply to a governmental decision, the decision must affect a significant segment of the population of the jurisdiction in substantially the same manner as it would affect the public official.

Consequently, before we can proceed with the further analysis with respect to Planning Director Hanna's duties under the Political Reform Act, we need an estimate of the population that is similarly situated to the planning director. Once we have this information we can proceed with the letter.

Government Code Section 83114(b) provides that the Commission will provide advice within 21 days of the receipt of a request. You should also be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

If you have any questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,


John W. Wallace
Counsel, Legal Division