



California Fair Political Practices Commission

June 10, 1993

Daniel L. Rosenberg
The United Long Beach Residents Defense League
1325 East 7th Street, #9
Long Beach, CA 90813

Re: Your Request for Informal
Assistance
Our File No. I-93-231

Dear Mr. Rosenberg:

This is in reply to the questions posed in your letter dated May 5, 1993. Your letter asks several questions concerning Assembly Bill 598 (Chapt. 1253, Stats. 1992) ("AB 598"), a statute enacted by the Legislature in 1992 and whether certain actions by the City of Long Beach in response to that statute conform with the Political Reform Act (the "Act").¹

Under Commission regulations, we are precluded from giving specific formal advice concerning the past conduct of third parties. (See Commission Regulation 18329(b)(8)(A) and (B).) Therefore, we treat your request for information as a request for informal assistance.² This letter is not meant to comment on any past activities of project area committees formed pursuant to AB 598.

AB 598 was passed by the Legislature in 1992 and became effective on January 1, 1993. This bill provides waivers to the Cities of Long Beach and Signal Hill from various redevelopment laws and procedures, apparently for the purpose of facilitating the rebuilding of areas in these cities damaged in the civil

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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

disturbances in 1992 known as the Los Angeles riots. In addition, Section 1, subdivision (g) of AB 598 requires these cities, as part of this redevelopment, to form project area committees consisting of residents and community organizations in the redevelopment project area. Subdivision (g)(3) of that section states:

(3) Members of any project area committee or committees formed pursuant to this section or already formed and operating within the area described in Section 2 of this act may participate in all decisions of the project area committee and shall not be public officials within the meaning of Section 87100 of the Government Code.

(Emphasis added.)

Based upon subdivision (g)'s language pertaining to Section 87100 of the Government Code (which is located in the Political Reform Act), you pose several questions. Essentially, you ask whether this language affects the application of the Political Reform Act to members of these project area committees.

Before specifically addressing the language of Section 1, subdivision (g)(3) of AB 598, there is another provision of the bill that is pertinent to your questions. That is subdivision (g)(4) of Section 1. Subdivision (g)(4) abrogates the requirement under Health and Safety Code Section 33366 that a two-thirds vote of the legislative body is necessary to adopt a redevelopment plan on which a project area committee has recommended against approval. In a formal opinion issued in 1976, entitled In re Bonfa (1976) 2 FPPC Ops. 146, the Fair Political Practices Commission stated that, as a general rule, members of a project area committee are not "public officials" within the meaning of the Political Reform Act and, therefore, not subject to the Act's financial disclosure and conflict-of-interest disqualification provisions. However, the Commission qualified this ruling by stating that members of project area committees could become public officials subject to financial disclosure and conflict-of-interest disqualification if, pursuant to Commission Regulation 18700(a)(1)(C), the committee "makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or government agency." (See In re Bonfa (1976) 2 FPPC Ops. at pages 149-150.) A copy of the Bonfa Opinion and Regulation 18700 are enclosed for your reference.

In 1987, approximately 11 years after issuance of the Bonfa Opinion, the Commission issued an opinion entitled In re Rotman (1987) 10 FPPC Ops. 1. In Rotman, the Commission revisited the issue of whether members of project area committees were public officials. The issue was revisited because, subsequent to Bonfa, several provisions of the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) relating to project area

committees were amended. Prior to these amendments, a project area committee could recommend against approval or amendment of a redevelopment plan, but the legislative body was free to ignore the recommendation. The Community Redevelopment Law amendments modified matters so that a two-thirds vote by the legislative body was necessary to approve a plan or plan amendment for which the project area committee had recommended disapproval. (See current Health and Safety Code Sections 33366 and 33385.5.) On this basis, the Commission concluded that members of project area committees were now public officials under the Act. A copy of the Rotman Opinion is enclosed for your reference.

Subdivision (g)(4) of Section 1 of AB 598 removes the two-thirds vote requirement when the legislative body votes upon a redevelopment plan opposed by the project area committee. Accordingly, the Commission's Bonfa Opinion would apply in this situation and members of project area committees subject to this bill would not be public officials unless, as stated in Bonfa, their recommendations are routinely approved over an extended period of time as set forth in Regulation 18700(a)(1)(C).³

Finally, we would like to briefly address subdivision (g)(3) of Section 1 of AB 598. On its face, this subdivision exempts members of covered project area committees from parts of the Political Reform Act. According to Government Code Section 81012, if the Political Reform Act is to be amended by the Legislature, the Legislature must follow certain procedural and substantive requirements. Specifically, Section 81012(a) states:

This title may be amended to further its purposes by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 12 days prior to passage in each house the bill in its final form has been delivered to the commission for distribution to the news media and to every person who has requested the commission to send copies of such bills to him or her.

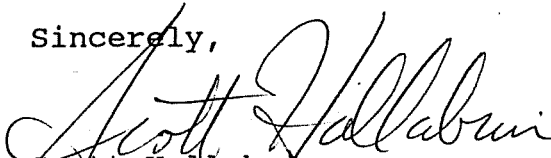
The Legislature did not comply with the 12-day notice requirement of Section 81012 when it passed AB 598. Furthermore, we do not see how exempting persons, who would otherwise be public officials, from the financial disclosure and conflict-of-interest disqualification provisions of the Act would further the Act's

³ We note that subdivision (g)(4) does not make reference to Health and Safety Code Section 33385.5, which, as opposed to Health and Safety Code Section 33366, requires a two-thirds vote by the legislative body to approve an amendment to the redevelopment plan which was opposed by the project area committee. We assume that, given the December 31, 1993 expiration date of AB 598, it is not contemplated that there will be an opportunity to amend any redevelopment plan created under this bill.

purposes. Therefore, we believe there is a significant legal issue as to the validity of subdivision (g)(3) of Section 1 of AB 598. However, as discussed above, in accordance with the Commission's Bonfa Opinion, members of these project area committees will not be subject to the Act, unless their recommendations are routinely approved over an extended period of time. Until that occurs, the issue regarding the potential invalidity of subdivision (g)(3) is a moot question.

I hope this has been of assistance. Should you have further questions, please contact me at (916) 322-5901.

Sincerely,



Scott Hallabrin
Assistant General Counsel

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Enclosures

cc: Heather A. Mahood, Deputy City Attorney
City of Long Beach

David Aleshire, City Attorney
City of Signal Hill

T. Brent Hawkins