



California Fair Political Practices Commission

March 22, 1995

William B. Rick
5620 Friars Road
San Diego, California 92110-2596

Re: Your Request for Advice
Our File No. A-95-048

Dear Mr. Rick:

You have requested advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ as they pertain to your position as a member of the California Coastal Commission.

QUESTION

May you participate in California Coastal Commission decisions regarding clients of Rick Engineering Company, which is a source of income to you?

CONCLUSION

You have not provided any information regarding decisions pertaining to clients of Rick Engineering Company who will appear before the California Coastal Commission. Therefore, we can only provide general advice that clients of Rick Engineering Company who either promised to pay or who paid their bill on or before December 31, 1994 (the day you sold your remaining ten percent interest in the company) are considered a source of income to you for twelve months after the date of the promise to pay or the date of the actual payment, as long as your pro rata share of the payment was \$250 or more. You may not participate in a decision regarding any of these clients for the twelve months period from the date of the payment or the promise to pay.

In addition, you may not participate in any decision which will have a reasonably foreseeable material financial effect on Rick Engineering Company, since it is a source of income to you.

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, Sections 18000-18954.

FACTS

You are a governor's appointee member of the California Coastal Commission. Until January 1, 1993, you were employed by Rick Engineering Company and held the title of Chairman of the Board. You received a salary and payments on a note reflecting the purchase of stock under a buy-sell agreement with Rick Engineering Company.

From January 1, 1993 until December 1, 1994, you continued to act as Chairman and to receive payments on the note. You still owned ten percent of the stock of Rick Engineering Company, but you received no salary or other remuneration.

As of December 31, 1994, you no longer had responsibility for any part of the operation of Rick Engineering Company, but were given the honorary title of Chairman Emeritus. On December 31, 1994, you also sold your remaining ten percent interest in the company. Therefore, as of January 1, 1995, you no longer owned any shares or had any other ownership interest in Rick Engineering Company.

You currently receive payments under the above-mentioned note and payments under a second note from Rick Engineering Company, representing the purchase of your remaining ten percent interest in the company. In approximately 2003, you will be fully paid on both the first and second notes.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his 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.

(b) Any real property in which the public official has a direct or indirect interest 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.

Section 87103.

Accordingly, you may not make, participate in making, or attempt to use your official position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any of your economic interests, including Rick Engineering Company and clients of the company, which are both sources of income to you at this time.

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 FPCC Ops.198.)

We do not know the amount of the payments you receive under either the first or second note, but as long as Rick Engineering Company is a source of income or promised income of \$250 or more, you are considered to have an economic interest in this business entity.² If a Coastal Commission decision will have a reasonably foreseeable financial effect on Rick Engineering Company, you may not participate in the decision.

Regulations 18702.1 and 18702.2 (copies enclosed) set forth the criteria to determine whether there will be a material financial effect on a business entity which is either directly or indirectly involved in a decision. For example, if Rick Engineering Company is an applicant before the Coastal Commission, it would be considered directly involved in the decision and Regulation 18702.1 would apply. If Rick Engineering Company represents a client before the Coastal Commission, it would be considered indirectly involved in the decision and Regulation 18702.2 would apply.

In order for a client of a business to be considered a source of income to the official, the official must have a ten percent or greater ownership interest in the business. Under Section

² Rick Engineering Company remains a source of income to you for twelve months from the time of the last payment from the company.

82030(a), "income of an individual includes a pro rata share of any income of a business entity in which the individual owns a ten percent interest or greater."

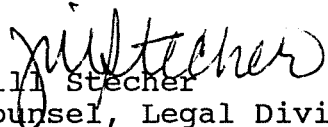
On December 31, 1994, you sold your remaining ten percent of the stock of Rick Engineering Company and thereafter, no longer had any ownership interest in the company. Therefore, a client who paid or promised to pay the company \$2,500 or more on or before December 31, 1994 is a source of income to you of \$250 or more for twelve months from the date of the promise to pay or the date of the payment. As long as your pro rata share of the payment was \$250 or more, a client is considered a source of income to you for twelve months (Section 87103(c) and you may not participate in a decision where the client is an applicant or the named party in a decision before the Coastal Commission. (Regulation 18702.1(a)(1)).

After this twelve months period, a client of Rick Engineering may be a source of income to the company, but would no longer be a source of income to you since you no longer have any ownership interest in Rick Engineering Company.

I hope this provides guidance regarding who is a source of income and for what period of time. If, at a future time, you have a question regarding participation in a specific decision, please contact this office.

Sincerely,

Steven G. Churchwell
General Counsel

By:  Jill Stecher
Counsel, Legal Division

SGC:JS:ak

Enclosures