

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 25, 1997

Diane Byrne
Councilmember
City of Calistoga
1328 Berry Street
Calistoga, California 94515

**Re: Your Request for Advice
Our File No. A-97-483**

Dear Ms. Byrne:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Do you have a conflict of interest because you are a city councilmember who is employed in the lodging industry and the city council will be deciding whether to rezone three Bed & Breakfast establishments from "commercial" to "residential"?

CONCLUSION

The Bed & Breakfast establishments that are the subject of the city council's decision are not economic interests of yours. In addition, the council's decision will not have a reasonably foreseeable and material financial effect on the Calistoga Hot Springs Spa which is an economic interest of yours. Thus, absent some direct financial effect on you personally resulting from the city council's decision regarding the rezoning of three Bed & Breakfast establishments from "commercial" to "residential," you may make, participate in making, or use your official position to influence such a decision.

FACTS

You are a city councilmember in Calistoga. You work at the Calistoga Spa Hot Springs, which is a 57 room lodging and spa facility. You are employed as an assistant manager.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

The city is considering changing the way three Bed & Breakfast ("B&B") establishments are billed for their water rates. As it now stands, they are all three zoned "commercial" which had doubled their water rates. They have asked to be grouped with the rest of the B&B industry which is zoned "residential."

You do not believe that you personally, nor the Calistoga Spa Hot Springs will benefit one way or the other from any change in water rates to these businesses. Your employer's rates are not in question nor would they change in any way regardless of what the council may decide on the rezoning issue.

ANALYSIS

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. (Section 87100.) The Act specifies that an official has a financial interest 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.

(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.)

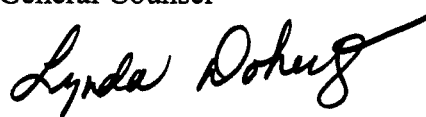
Finally, Regulation 18702.1(a)(4) provides that an official may not participate in a decision if it will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250 in a 12-month period. Regulation 18702.1(a)(4) does not apply to a financial effect on the value of real property owned directly or indirectly by the official, or a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has an investment interest.

From the information you have provided, the Bed & Breakfast establishments that are the subject of the city council's decision are not economic interests of yours. Further, based on the facts you have provided, the council's decision would not have a reasonably foreseeable and material financial effect on the Calistoga Spa Hot Springs which is an economic interest of yours. (Section 87103(d); *In re Thorner* (1975) 1 FPPC Ops. 198.) Thus, absent some direct financial effect on you personally resulting from the city council's decision regarding the rezoning of three Bed & Breakfast establishments from "commercial" to "residential," you may make, participate in making, or use your official position to influence such a decision.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Lynda Doherty
Political Reform Consultant, Legal Division

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