



FAIR POLITICAL PRACTICES COMMISSION

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June 19, 2002

Lynn Tracy Nerland, Asst. City Attorney
City of Emeryville
Office of the City Attorney
1333 Park Avenue
Emeryville, CA 94608-3517

Re: Your Request for Informal Assistance
Our File No. I-02-059

Dear Ms. Nerland:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ In mid-April the portion of your advice request concerning a possible conflict-of-interest was withdrawn under regulation 18329, and therefore this letter addresses only the remaining question about the term "homeowners."

QUESTION

If two individuals jointly own a home, does it count as two "homeowners" under the public generally regulation 18707.1(b)(1)(B)?

CONCLUSION

Yes. In applying regulation 18707.1(b)(1)(B), two individuals who jointly own a home count as two "homeowners."

ANALYSIS

Regulation 18707.1, the public generally rule, provides in part:

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. Because you are requesting general advice about the Act, we are treating your request as one for informal assistance, indicated by the file number prefix "I." Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Reg. 18329(c)(3), copy enclosed.)

“(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

(b) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a ‘significant segment’ of the public generally if any of the following are affected as set forth below:

(A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:

(i) Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 individuals who are residents of the jurisdiction.

(B) Real Property. For decisions that affect a public official's real property interest, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency.

¶ . . . ¶

(2) Substantially the Same Manner: The governmental decision will affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation.

Regulation 18707.1(b)(1)(B)(i) sets forth the “public generally” exception if a real property decision would affect ten percent or more of “property owners” or “homeowners” in the jurisdiction² (assuming that the other requirements in regulation 18707 are met). You state that you understand “property owners” to be separately owned legal parcels and can access that data fairly easily. However, you ask for clarification concerning the meaning of the term “homeowner.”

In the *Furth* Advice Letter, No. A-99-035, we advised as follows concerning the definitions of “property owner” and “homeowner” used in regulation 18707:

² The language of this section was formerly found in regulation 18707(b)(1)(A)(ii) and defined the significant segment as “[t]en percent or more of all property owners, all home owners, or all households in the jurisdiction of the official's agency or the district the official represents. . . .” The Commission adopted the present version of regulation 18707.1 in November of 2000, which just refers to “property owners” and “homeowners.” The term “households” was deleted from the regulation because it was thought to be unclear.

“Since these terms are not defined in the regulation, we must assume that the Commission intended for the terms to have their plain meaning. Therefore, a ‘property owner’ generally refers to a person who owns improved or unimproved real property (commercial, governmental or residential). A ‘homeowner’ appears to mean an individual who owns residential property that is his or her domicile or principal place of residence. Thus, ‘homeowner’ excludes a person who owns a non-owner occupied residential dwelling or commercial structure.”

For purposes of applying the regulation, if two individuals jointly own a home that is their domicile or principal place of residence, they count as two “homeowners.”

Further, you mentioned in your letter that the City of Emeryville fits within the definition of a “small jurisdiction” in regulation 18707.3, the public generally exception for small jurisdictions. For your information, staff will be reviewing regulation 18707.3 and holding an interested persons meeting on the regulation this summer. The Commission may consider amendments to the regulation in the fall.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

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