



FAIR POLITICAL PRACTICES COMMISSION

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May 11, 2007

Jerry B. Edelen
Vice Mayor
City of Del Rey Oaks
650 Canyon Del Rey Rd.
Del Rey Oaks, California 93940

**RE: Your Request for Informal Assistance
Our File No. I-07-059**

Dear Mr. Edelen:

This letter is in response to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Also, please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflicts of interest or Government Code Section 1090. The Commission does not act as a finder of fact when providing assistance; this assistance is based solely on the facts you provide. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Thus, we are providing you with general advice and are treating your request as one for informal assistance.²

QUESTION

Despite identifying a disqualifying conflict of interest, may you – a member of the City council and director of a redevelopment agency – present your own personal views, as a member of the public, in connection with the City's Project which gives rise to your disqualifying conflict of interest?

¹ Government Code sections 81000-91014. Commission regulations appear at title 2, sections 18109-18997, 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. (Reg. 18329(c).)

CONCLUSION

You may address the City council or the public at large regarding your personal views on the Project that has given rise to your conflict, so long as you operate within certain parameters. These parameters include, but are not limited to, the requirement that you present yourself as a member of the general public, with no reference – explicitly or implicitly – to your official status, who is speaking on behalf of himself as a private citizen and is not acting on behalf of any other person or group.

FACTS

You are the Vice Mayor of the City of Del Rey Oaks (“City”), located in Monterey County, a member of the City council, and director of a redevelopment agency.

The City recently acquired almost 360 acres of the former Fort Ord which will be developed by the City (the “Project”). The Project will include an 18-hole golf course, two hotels, a commercial area, and over 500 residences (timeshares, condos, townhouses, etc.).

Your personal residence is located within 500 feet of the forward edge of the Project area. You indicate that you believe that this fact (perhaps along with other facts not included in your letter) creates a disqualifying conflict of interest for you. You also indicate that as a result of this conflict of interest, you believe that you are precluded from participating, in your official capacity, in any deliberations or discussions the City council may have regarding the Project.

Under the assumption that you have an actual, disqualifying conflict of interest with regard to making, participating in making, or attempting to use your official position to influence the City’s deliberations or discussions regarding the Project, you request advice regarding if and how you may express your views regarding the Project as a private citizen.

ANALYSIS

As Vice Mayor of the City, a City council member, and director of a redevelopment agency, you have described yourself as one who occupies a position that requires you to make, participate in making, and/or influencing governmental decisions regarding the Project. (See Regs. 18702 - 18702.4.) Consequently, barring any applicable exception, you are prohibited from making, participating in making, or otherwise attempting to use your official position to influence any decision that will have a reasonably foreseeable material financial effect on any economic interest you may have.

A. Representing the Official's Own, Personal Interests

Even if a conflict of interest is present, a public official may appear before his or her agency as any other member of the general public in the course of its prescribed governmental function in order to represent himself or herself on matters related solely to his or her "personal interests". (Reg. 18702.4(a)(2), (b)(1).) Such an appearance, properly made, does not constitute making, participating in making, or influencing a governmental decision. An official's "personal interests" include, but are not limited to, an interest in real property that is wholly owned by the official or members of his or her immediate family. (Reg. 18702.4(b)(1)(A).)

As indicated above, if this exception applies and you address the Council as a member of the general public, you must be careful to avoid giving the impression that you are speaking in the interest of any other person or group, or that you are acting in any official capacity.

In addition, an official is not attempting to use his or her official position to influence a governmental decision of an agency, as described in Regulation 18702.3(a), if the official communicates with the general public or the press. (Reg. 18702.4(b)(2).) We have advised that under the proper circumstances, a city council member may express his or her opinion to the public or the press by, for example, writing a newspaper article or appearing on a radio program regarding a matter in which he or she has a conflict of interest under the Act. (*Acker Advice Letter*, No. A-01-117, copy enclosed.)

B. Methods of Recusal

Because a member of a city council is a public official who holds an office specified in section 87200, the council member is subject to certain procedures concerning the manner of disqualification. (Section 87105; Regs. 18702.1 and 18702.5.) If the council member has a conflict of interest in a decision to be considered at a noticed public meeting, then the council member must: (1) immediately prior to the discussion of the item, publicly identify on the record of the meeting each type of economic interest involved in the decision as well as details of the economic interest as discussed in regulation 18702.5(b)(1)(B); (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. (Reg. 18702.5(b); copy of Regulation 18702.5 enclosed.) However, Regulation 18702.5, subdivisions (d)(1) and (d)(3) provide the following exceptions:

Uncontested Matters: Section 87105(a)(3) provides an exception for matters on consent calendars. When the matter in which the public official has a financial interest is on the consent calendar, the public official must disclose the economic interests giving rise to his or her conflict-of-interest (pursuant to Reg. 18702.5 (b)(1) and (2)) and recuse himself from the vote. (Reg. 18702.5(d)(1).) It should be noted that the public official is not required to leave the room during the vote on a consent calendar. (*Ibid.*)

Speaking as a Member of the Public Regarding an Applicable Personal Interest: When a personal interest as identified in Regulation 18702.4(b) (see copy of Regulation 18702.4, enclosed) is affected, a public official may speak as a member of the general public so long as he discloses the economic interests giving rise to his or her conflict of interest (pursuant to Reg.18702.5 (b)(1) and (2)) and recuses himself from the vote. (Reg. 18702.5(d)(3).) He or she must then leave the dais to speak from the same area as the members of the public. (*Ibid.*) The official may listen to the public discussion of the matter with the members of the public. (*Ibid.*)

C. Conclusions

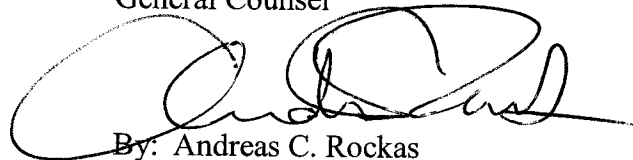
If you follow the guidelines set out above, you may: (1) be present in the audience during city council presentations with regard to the Project, (2) present your views on the Project in a letter to the editor of your local newspaper, and (3) present your views on the Project during the city council's EIR discussions before the city council.

Whether you may make, participate in making, or attempt to use your official position to influence a governmental decision regarding specific aspects of the Project that are located more than 500 feet from your residence cannot be determined based upon the facts you have provided. To answer that question would require information about all of your possible economic interests (as those are defined under the Act) and the degree of interconnection between the specific aspects of the Project to which you refer and the Project as a whole.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Andreas C. Rockas
Senior Counsel, Legal Division

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Enclosures