



FAIR POLITICAL PRACTICES COMMISSION

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February 9, 2010

John G. Barisone
City of Capitola
Office of the City Attorney
333 Church Street
Santa Cruz, CA 95060

Re: Your Request for Advice
Our File No. A-09-277

Dear Mr. Barisone:

This responds to your request for further advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This supplements our letter of November 18, 2009, (*Barisone* Advice Letter, No. I-09-234). This letter is based on additional information you provided in your letter of December 22, 2009, and in our telephone conversation on February 1, 2010. The facts in your prior request for advice are incorporated herein by reference, except for those portions inconsistent with the new facts or clarifications provided. In addition, this letter is based solely on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

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 conflict of interest or Government Code Section 1090.

QUESTION

Would the "public generally" exception for small jurisdictions allow Councilmembers Dennis Norton and Ron Graves and Planning Commissioners Gayle Ortiz and Michael Termini and to participate in decisions on the Capitola Village Parking project?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

Based upon the additional facts provided, only Councilmember Norton and Commissioner Termini qualify under the public generally exception for "small jurisdictions" under Regulation 18707.10 as discussed below.

FACTS

In your December 22, 2009 request for further advice and in a telephone conversation on February 1, 2010, you submitted additional information to supplement your original request for advice.

You provided corrected information stating that the personal residences of Councilmembers Dennis Norton and Ron Graves and Commissioners Gayle Ortiz and Michael Termini are *not* within the boundaries of the Parking Study Area, which is the subject of the governmental decision.

You also provided additional information explaining that no part of the residences of Councilmember Norton and Commissioner Termini are within 300 feet of the boundaries of the Parking Study Area. Councilmember Graves' personal residence is within 300 feet of the Parking Study Area.

Your facts also indicate that Commissioner Ortiz has a personal residence more than 300 feet from the Study Area, but she has real property (that is not her personal residence) within 500 feet of the Study Area. Because of the proximity of her real property (which does not qualify for the public generally exception for small jurisdictions) to the subject of the governmental decision, one of her properties is deemed directly involved in the decision. Therefore, it is presumed that the decision will have a reasonably foreseeable material financial effect on her real property, and she may not participate. (Regulation 18704.2(a)).² Accordingly, we do not include her facts in the analysis below.

Because your question deals solely with the application of the public generally exception for small jurisdictions in Regulation 18707.10, we limit our analysis to this single issue.

² Regulation 18704.2(a), states, in pertinent part, that real property in which a public official has an economic interest is *directly* involved in a governmental decision if "[t]he real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision . . ."

ANALYSIS

Public Generally Exception – Regulation 18707.10 – Small Jurisdictions – Effects on an Official’s Domicile

Regulation 18707.10 is limited in its application to a public official’s *personal residence*, in small jurisdictions only. It provides, in pertinent part, as follows:

“(a) The effect of a governmental decision on the residential real property that is the domicile of a public official is not distinguishable from the effect on the public generally if all of the following conditions are met:

“(1) The jurisdiction of the public official’s agency has a population of 30,000 or less and covers a geographic area of ten square miles or less;

“(2) The public official is required to live within the jurisdiction;

“(3) The public official, if elected, has been elected in an at-large jurisdiction;

“(4) The official’s property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;

“(5) The official’s property is located on a lot not more than one-quarter acre in size or not larger than 125 percent of the median residential lot size for the jurisdiction; and

“(6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value.”

In order to qualify for the public generally exception under Regulation 18707.10, an official’s residence must meet *all* six requirements under the regulation. (Regulation 18707.10(a); *Gogna* Advice Letter, A-09-171.)

In our previous letter, *Barisone* Advice Letter No. I-09-234, your facts indicate that all factors under Regulation 18707.10(a) have been met with exception to the factor in subdivision (a)(4). This factor requires the official’s property be more than 300 feet from the boundaries of the property that is the subject of the governmental decision. You have provided additional facts for us to make a determination.

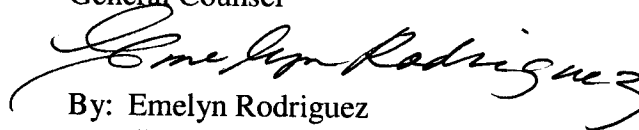
Based on additional facts you provided, only Councilmember Norton and Commissioner Termini meet the requirements of Regulation 18707.10(a)(4) because their personal residences are more than 300 feet from the Parking Study Area.

Councilmember Graves' residence is within 300 feet of the Parking Study Area. Therefore, he does not qualify under the exception and may not participate in decisions involving the Parking Study Area.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script that reads "Emelyn Rodriguez". The signature is written in black ink and is positioned above the typed name and title.

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl