

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

August 16, 1985

Jon A. Blegen
City Attorney
City of Rio Vista
P.O. Box 745
Rio Vista, CA 94571

Re: Your Request for Advice on Behalf
of Councilmember Andrew Stephens
Our File No. A-85-176

Dear Mr. Blegen:

You have written at the request of Rio Vista City Councilmember Andrew M. Stephens regarding his participation in the consideration of Resolution No. 85-50 by the Rio Vista City Council. (A copy of the resolution is attached.) The facts presented by this request are as follows:

FACTS

Councilmember Stephens is the majority shareholder (52%) and President of A. M. Stephens Construction Co., Inc., a general contracting firm. The company specializes in the construction, winterization and abandonment of natural gas well sites. Approximately three-fourths of the company's business is devoted to such work and covers an area from Merced County to Tehama County. The remaining one-fourth of the company's work is of a general construction nature. Councilmember Stephens is also a member of the Board of Directors of the California Independant Producers Association. There are approximately 26 to 28 members of this board. The purpose of the organization is to serve as a watchdog with reference to all proposed local and state and federal legislation which may have an effect upon the natural gas production industry. It does employ a lobbyist and the members are required to pay dues; however, the board members are not compensated in any way for their services, nor are they given any type of expense allowance.

The City of Rio Vista is a rural community with a population of approximately 3,200 people. The local economy is primarily related to agriculture, recreation, and the gas well industry. There are many businesses located within the City or in near proximity to the City which are connected with the gas

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well industry. They employ many people who live within the City and have a substantial effect upon the local economy.

Resolution 85-50, a copy of which is enclosed herein, will be submitted to the City Council for consideration at its August 15, 1985 meeting. If passed, it will evidence the City's support of Assembly Bill 735. If passed, the proposed legislation would require utility companies to purchase gas on an average cost basis. This concept is more particularly described in the Resolution. A request for the City's support, which resulted in the preparation of this resolution was received by way of a letter from Ronald D. Leineke of Venada National, addressed to Councilmember Stephens. (A copy is attached.)

As can be seen from a review of the letter from Mr. Leineke of Venada National, the purpose of the proposed resolution is to show that the City of Rio Vista supports the passage of AB 735 and urges its passage by the State Senate. The basic effect of enactment of AB 735 would be an increase in demand for natural gas produced in Northern California, with a concomitant increase in exploration and drilling activity. AB 735 would have an effect upon each of the 30 or so companies with which A. M. Stephens Construction Co., Inc., does business relative to drilling of gas wells. These customers of Mr. Stephens' company range in size from Chevron (his largest account at over \$1 million gross revenues per year) to much smaller "independents." (The smallest job with any of the 30 companies is \$10,000 normally, \$5,000 at the very least.) Venada National is one of his smaller accounts.

Mr. Stephens states that every time a gas well is drilled, \$150,000 to \$1 million is spent. His fees are approximately 5% of the cost in either case.

CONCLUSION

Mr. Stephens must disqualify himself from participation in the consideration of Resolution No. 85-50. I advised you of our conclusion by telephone on August 15, 1985.

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires disqualification by an official from making, participating in

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

making or using his or her official position to influence the making of any governmental decision in which the official has a financial interest. Section 87100.

First we must determine whether Mr. Stephens is making or participating in making, or using his official position to influence, a governmental decision, since the actual decisions on AB 735 are being made by the State Legislature and the Governor. We have considered the question of City Council resolutions addressed to other governing bodies before and concluded that such resolutions are covered. See, Advice to Scott Keene, No. A-81-512, copy enclosed. We concluded that since the affected entity requested that the city council adopt the resolution, it was obviously their belief that the resolution would have some effect; consequently, it was a reasonably foreseeable effect of the council's decision that the desired end result would occur. The same analysis applies here. However, since the time of the Keene letter, a new regulation 2 Cal. Adm. Code Section 18700.1, has been adopted by the Commission. Subsection (c) provides as follows:

(c) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

In proposing the resolution in question and in any action to secure the resolution's passage and transmission to the Legislature, Councilmember Stephens would be using his official position to influence the Legislature's governmental decision. His actions would be taken specifically for the purpose of putting forth the position he wishes to advance as being the position of his agency, the City of Rio Vista. When legislators hear from elected local officials acting in their official capacity, they naturally presume that the official is speaking in his or her representative capacity on behalf of his or her constituents and not on behalf of his or her own, private financial interest. Consequently, an official may not use his or her official position to try to influence another agency's actions when he or she would be disqualified from taking such actions directly.

A financial interest, as prohibited by Section 87100, exists when the official's own pocketbook will be affected by

the decision (Section 87100) or when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect upon the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment 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.

* * *

Section 87103.

Mr. Stephens clearly has an investment in A. M. Stephens Construction Co., Inc., of \$1,000 or more. He owns 52% of the company's stock. The company is clearly a source of income to him of \$250 or more during the preceding 12-month period. In addition, as president, he is clearly an officer of the company. Thus, Mr. Stephens has an economic interest in A. M. Stephens Construction Co., Inc., pursuant to Section 87103(a), (c) and (d). Consequently, we must examine the effects of the decision on his company.

However, our inquiry is not limited to just his company. Mr. Stephens owns more than 10% of A. M. Stephens Construction; therefore, each source of income to the company is a source of income to him on a pro rata basis. Section 82030(a). In this case, 52% of all receipts of the company are attributable to Mr. Stephens. Consequently, any customer of the company which paid the company \$490 or more in the preceding 12 months is a source of income to Mr. Stephens of \$250 or more and an economic interest exists for Mr. Stephens in that customer. (Note: Since A. M. Stephens is not a retail business, the provisions of Section 87103.5 are not applicable.) Since the smallest amount which any of the customers in the gas well industry would

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provide would be \$5,000 plus, each will be a "source of income" to Mr. Stephens within the meaning of Section 87103(c).

As a result, we must determine whether it is reasonably foreseeable that the effect of passage of AB 735 upon any one of Councilmember Stephens' many financial interests will be material as to that interest and distinguishable from the effect upon the public generally.

Since Mr. Stephens' own company is privately held, a \$10,000 effect upon gross revenues would be considered material. Regulation 2 Cal. Adm. Code Section 18702.2(g). Given the fact that work on one additional gas well would be sufficient to generate \$10,000 in additional gross revenues, it seems clear that enactment of AB 735 would result in a reasonably foreseeable material financial effect upon Councilmember Stephens' own business, A. M. Stephens Construction Co., Inc.

We do not have sufficient information to enable us to determine if the reasonably foreseeable effects upon Mr. Stephens' customers would be material (for large companies such as Chevron and Union the effect on annualized gross revenues or on assets [they probably own gas rights] would need to be \$1 million). However, it seems clear that Venada National anticipates a "significant" (2 Cal. Adm. Code Section 18702(a)) impact upon its own business, because it has urged Mr. Stephens to introduce the resolution.

Consequently, it is reasonably foreseeable that at least some of Mr. Stephens' sources of income will be affected in a "material" manner.

The last consideration which we must address is whether Mr. Stephens' economic interests will be affected in a manner which is "distinguishable from the effect upon the public generally." Section 87103. We have been told that Rio Vista's main "industry" is agriculture. The "gas patch" (gas production and exploration) is second and tourism/recreation is third.^{2/} In addition, there is the usual mixture of retail and service industry.

Under the Commission's regulation, 2 Cal. Adm. Code Section 18703, the "public generally" exception applies if the official's economic interest(s) will be affected in

^{2/} Howard Gambil, former councilman and manager of the local PG&E office (and an opponent of Resolution No. 85-50 and AB 735) has stated that he believes tourism/recreation is larger than the "gas patch" associated industry.

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substantially the same manner as a significant segment of the public. As a general rule, an "industry, trade or profession" does not constitute a "significant segment" of the general public. However, in certain limited circumstances, the regulation provides that an "industry, trade or profession" of which the official is a member will be treated as a "significant segment" if it is a "predominant industry" in the official's jurisdiction. Regulation 2 Cal. Adm. Code Section 18703(b).

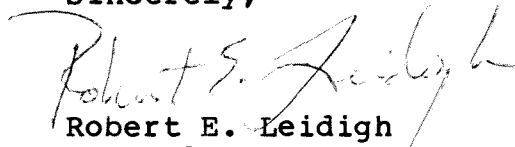
This provision was adopted to deal with situations where a local economy is based on one industry so that virtually anyone who would serve in office would be drawn from that industry, trade or profession. The facts here do not support such a conclusion in this instance. Agriculture is a separate and equally great or greater industry in Rio Vista and recreation and tourism are also substantial industries in the community's economy. Thus, the "gas patch" does not predominate the economy.

Furthermore, in order for the exception in 2 Cal. Adm. Code Section 18703 to apply, the economic interests of Mr. Stephens must be affected in "substantially the same manner" as the "significant segment" in question. We are unable to determine that this would be the case. Mr. Stephens' business will be substantially impacted because its work relates directly to exploration. Other "gas patch" industries may not be affected in the same magnitude. In addition, if Chevron, Union or any other source of income to Mr. Stephens was affected to a much greater extent than the "gas patch" businesses in Rio Vista, the "predominate industry" exception would not apply. See Gillmor Opinion (No. 76-089), 3 FPPC opinions 38 at 43, fn. 5, April 6, 1977.

As a result, we must conclude that Councilmember Stephens is disqualified from participating in any of the deliberations regarding Resolution No. 85-50.

If you have any questions regarding this advice, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure
cc: Andrew M. Stephens
Howard Gambil



CITY OF RIO VISTA

AUG 5 2 26 PM '85

One Main Street

P. O. Box 745

RIO VISTA, CALIFORNIA 94571

August 2, 1985

COUNCIL

707-374-6451

MAYOR

Milton Wallace

MAYOR PRO TEMPORE

Andrew Stephens

Elger Vengley
Grace Anderson
Emilia Seiferling

CITY ADMINISTRATOR

Robert R. Brown
707-374-5773

CITY CLERK

Anita Reineke
707-374-6451

CITY TREASURER

Carl Kelly
707-374-6451

CITY ATTORNEY

Jon Blegen
707-374-6417

DIRECTOR OF FINANCE

Peter Woodruff
707-374-6451

POLICE CHIEF

Richard Cook
707-374-6366

FIRE CHIEF

Stan Simi
707-374-2233

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Attention: Robert Leidigh, Esq.

Re: COUNCILMAN ANDREW STEPHENS
CITY OF RIO VISTA

Dear Mr. Leidigh:

Pursuant to our telephone conversation of July 31, 1985, please consider this letter as a request for a legal opinion as to whether or not Councilman Stephens should or should not be disqualified from voting with reference to City Resolution 85-50.

Resolution 85-50, a copy of which is enclosed herein, will be submitted to the City Council for consideration at its August 15, 1985 meeting. If passed, it will evidence the City's support of Assembly Bill 735. If passed, said proposed legislation would require utility companies to purchase gas on an average cost basis. This concept is more particularly described in the Resolution. A request for the City's support which resulted in the preparation of this Resolution was received by way of a letter from Ronald D. Leineke of Venada National addressed to Councilman Stephens. A copy is enclosed.

Councilman Stephens is the President of Stephens Construction, a local construction company which specializes in the construction, winterization and abandonment of natural gas well sites. Approximately 3/4ths of the company's business is devoted to such work and covers an area from Merced County



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to Tehama County. The remaining 1/4th of the company's work is of a general construction nature.

Councilman Stephens is also a member of the Board of Directors of the California Independent Producers Association. There are approximately 26 to 28 members on this board. The purpose of the organization is to serve as a watchdog with reference to all proposed local and State and federal legislation which may have an effect upon the natural gas production industry. It does employ a lobbyist and the members are required to pay dues; however, the board members are not compensated in any way for their services, nor are they given any type of expense allowance.

The City of Rio Vista is a rural community with a population of approximately 3,200 people. The local economy is primarily related to agriculture and the gas well industry. There are many businesses located within the City or in near proximity which are connected with the gas well industry. They employ many people who live within the City and have a substantial effect upon our local economy. A copy of a list of such businesses as well as the number of persons employed by some of them, along with the comments of Robert R. Brown, City Administrator, is also enclosed herein.

The Rio Vista Chamber of Commerce has prepared a brochure which contains information about the economic make-up of the community. A copy of the same has also been enclosed along with that portion of the 1980 Census for Rio Vista which lists the persons employed in the City by industry.



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Hopefully, the enclosed information will be helpful to you in rendering a legal opinion as to whether or not Councilman Stephens should be disqualified from voting on City Resolution 85-50.

Very truly yours,


JON A. BLEGEN
City Attorney

JAB:am
Enclosures

RESOLUTION NO. 85-50

RESOLUTION SUPPORTING AB 735 REQUIRING UTILITY COMPANIES TO PURCHASE NATURAL GAS ON AN AVERAGE COST BASIS

WHEREAS, under present California law, utility companies are not required to take into consideration transportation and storage costs when purchasing natural gas; and,

WHEREAS, this has lead to the purchase of out-of-state natural gas at wellhead prices lower than those found in California; and,

WHEREAS, such purchases reduce the amount of California natural gas sold which in turn increases local unemployment and decreases royalties paid to mineral right owners; and,

WHEREAS, when the costs of transportation and storage of out-of-state natural gas are added to the purchase price, the actual cost to the consumer is higher than if the gas had been purchased locally; and,

WHEREAS, Assembly Bill 735 would require the utility companies to take into consideration transportation and storage costs when purchasing natural gas, thus resulting in the actual purchase price being established on an average cost basis:

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Rio Vista that said Council endorses Assembly Bill 735 and urges its passage by the California State Senate.

I, ANITA REINEKE, CITY CLERK OF THE CITY OF RIO VISTA and ex-officio Clerk of the City Council of said City, do hereby certify the above and foregoing to be a full, true and correct copy of a Resolution of said City Council which was regularly introduced, passed and adopted by said City Council at a regular meeting thereof, by the following vote:

AYES: COUNCILMEMBERS: _____

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

ABSTAIN: COUNCILMEMBERS: _____

WITNESS my hand and seal of said City this _____ day of

_____, 1985.

ANITA REINEKE

CITY CLERK

July 18, 1985

Mr. Andy Stephens
Stephens Construction
PO Box 784
Rio Vista, California 94571

Re: Request of Rio Vista City Council

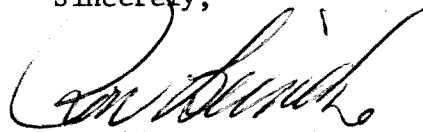
Dear Andy:

On behalf of the oil and gas industry of Northern California I'm asking that you, as a City Councilman, request the City of Rio Vista to endorse AB 735 (Moore) and urge its passage by the State Senate. The measure would require utility companies to purchase natural gas on an average cost basis thus taking into account transportation and gathering costs as well as the actual wellhead cost of the gas.

Currently PG&E is able to purchase out-of-state gas as prices higher than those paid for California produced gas while shutting in the California gas. Obviously this is detrimental to our gas industry, causing unemployment and reducing royalty payments to landowners, not to mention higher utility bills to the consumer.

With AB735 in place California gas wells can compete fairly with imported gas thus creating the stimulus for an active and healthy drilling industry which is so important to the City of Rio Vista.

Sincerely,



Ronald D. Leineke

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AYES: COUNCILMEMBERS: _____

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

ABSTAIN: COUNCILMEMBERS: _____

WITNESS my hand and seal of said City this _____ day of

_____, 1985.

ANITA REINEKE CITY CLERK