

Memorandum

To : File No. T-88-367

Date : December 14, 1990

Kathy Donovan
Legal Division

From : **FAIR POLITICAL PRACTICES COMMISSION**

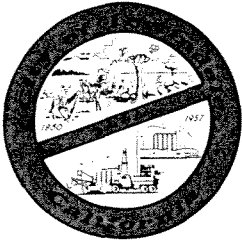
Subject: Telephone advice to Pat Miranda, Irwindale City Councilmember

On September 12, 1988, I received a telephone call from Pat Miranda, a member of the Irwindale City Council, concerning a potential conflict of interest. I advised Mr. Miranda that he was not required to disqualify himself from participating in the decision.

Mr. Miranda owns commercial real property in Irwindale. He has leased his property to Irwindale Associates, who is subleasing the property to Foodmaker, Inc. Foodmaker plans to build a Jack in the Box fast food restaurant at that location.

Meanwhile, the city has been dealing with the owner of another restaurant, the Rapsallion, about sharing the costs of construction of that restaurant and about the sale of a parcel of city-owned land to the restaurant owner. Mr. Miranda has been advised by the city attorney that he should disqualify himself from participating in the decisions concerning the Rapsallion. The city attorney is concerned about a conflict of interest due to Mr. Miranda's ownership of real property on which a Jack in the Box will be located.

Based on the fact that Mr. Miranda's real property is more than 2,500 feet away from the Rapsallion (it is one and one-half miles away), and the fact that the Rapsallion is a fancier, sit-down restaurant which would not compete directly with Jack in the Box for customers, I advised Mr. Miranda that he can participate in decisions affecting the Rapsallion. (See Regulation 18702.3(b).)



CITY OF IRWINDALE

5050 NORTH IRWINDALE AVENUE · IRWINDALE, CALIFORNIA 91706
(818) 962-3381

September 13, 1988

Kathryn E. Donovan, Counsel
Legal Division
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Ms. Donovan:

As per our phone conversation Monday, September 12, 1988, I am sending you what information I remember. I owned Pudgy's Burgers and Tacos at the southeast corner of Arrow Hwy. and Irwindale Avenue, Irwindale, California, 91706. No inside seating; outside wood tables and benches; food to go.

About three years ago a large restaurant (Rapsallion) was proposed at the northeast corner of the 210 Freeway and Irwindale Avenue--on Camino de La Cantera (about one and a half miles north of Pudgy's).

I called F.P.P.C. and the gentlemen that I talked to said if it was a like business that it would be best if I abstained on voting. The example he gave was a big Holiday Inn vs. a small hotel or motel (like business). Our City Attorney, Mr. Charles Martin, also advised me to abstain.

The last day I operated Pudgy's was June 6, 1987. I leased the property to Irwindale Associates. Pudgy's building was knocked down, and now a commercial vacant lot is left.

The City bought the land and put most of the funds to build the Rapsallion. The owner, John Leonudakis, seems to have 20 years to pay and a possible 10 year option. The first 3 years seems to be at \$80,000.00 per year and looks like .09% per year after.

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At the time the City bought the land for RapsCALLION, the City bought another parcel of land next to the RapsCALLION property for possible office space. The City gave the owner of the RapsCALLION an option to buy that parcel of land. It may cost about \$300,000.00 to pay for that option.

The owner seems to have the money to pay for the option on that parcel but seems not to have the money for the over cost of construction of the RapsCALLION or possibly disagrees that he owes the over cost.

The City and the owner may have litigation.

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On August 29, 1988 I signed an "Acknowledgment" where Foodmaker, Inc. is mentioned (copy enclosed).

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With the possibility of a Jack in the Box, a like business to the RapsCALLION (which sells food), our City Attorney, Mr. Charles Martin, advised me that it may be best for me to abstain on the RapsCALLION and the option matter. It seems the restaurant (RapsCALLION) and the parcel for office space (option to buy) will be using the same parking lots as part of the agreement.

We have a meeting on September 22, 1988. I would appreciate your opinion before then if possible.

Sincerely,



Pat S. Miranda

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ACKNOWLEDGMENT

Pat S. Miranda and Mercy J. Miranda, Landlords under that particular Master Lease, a memorandum of which was recorded in the Office of the County Recorder of Los Angeles County as Instrument #87-1227096 relating to property located at the southeast corner of Irwindale Avenue and Arrow Highway in Irwindale, California do hereby acknowledge:

- 1. Pursuant to the provision 7 of said Master Lease, a copy of which is attached hereto and incorporated herein:
a. Landlord consents to the sublease of said property by Tenant to:
Foodmaker, Inc.
9330 Balboa Avenue
San Diego, CA
as contained in that certain sublease dated 5/9/88 to the extent said sublease is consistent with the Master Lease.
b. Agrees to the non-disturbance clause with regard to Foodmaker Inc., as set forth in paragraph 7 of said Master Lease.

Dated: August 29, 1988

Handwritten signature of Pat S. Miranda over a horizontal line, with the printed name 'Pat S. Miranda' below it.

Handwritten signature of Mercy J. Miranda over a horizontal line, with the printed name 'Mercy J. Miranda' below it.

GENERAL ACKNOWLEDGMENT

NO. 201

State of California
County of Los Angeles } SS.

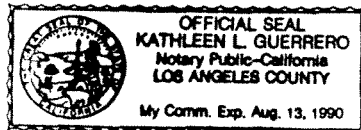
On this the 6 day of September 1988, before me,

Kathleen L. Guerrero

the undersigned Notary Public, personally appeared

Pat S. Miranda and Mercy J. Miranda

X personally known to me
proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) are subscribed to the
within instrument, and acknowledged that they executed it.
WITNESS my hand and official seal.



Handwritten signature of Kathleen L. Guerrero over a horizontal line, with the printed name 'Kathleen L. Guerrero' and 'Notary's Signature' below it.

insurance but also for paying the cost of all premiums incurred in connection therewith.

(6) TENANT TO COMPLY WITH ALL LAWS.

Tenant shall not use or permit any other persons to use the Premises or any part thereof for any purpose injuring the reputation thereof or for any improper or offensive use or to constitute a nuisance; and Tenant shall, at all times during the Lease term, conform to and cause all persons using or occupying any part of the Premises to comply with all public laws, ordinances and regulations from time to time applicable thereto and to all operations thereon.

(7) ASSIGNMENT AND SUBLETTING.

(A) Tenant (if not in default) shall have the right to assign this Lease without consent of the Landlord. Tenant shall also have the right to sublet to any subtenants without the consent of Landlord for a period not extending beyond the term hereof. Landlord shall, at Tenant's request, accompanied by a true and correct copy of any assignment document or sublease, execute and deliver to any assignee or subtenant a nondisturbance agreement which shall assure such assignee or subtenant that, so long as such assignee or subtenant is not in default under the assignment or the sublease, the quiet possession of such assignee or subtenant will not be disturbed.

(B) In the event any sublease is entered into by Tenant and thereafter this Lease is terminated by Landlord, any subtenant shall, have the right to remain in possession of that portion of the Premises covered by such sublease for the term and at the rental set forth therein; provided such subtenant shall: (i) Pay to Landlord or his representative any rental becoming due under said sublease after any such termination; (ii) Within ten (10) days after receiving notice in writing from Landlord of the termination of this Lease, execute and deliver to Landlord hereunder a written instrument recognizing Landlord hereunder as Landlord under such sublease and agreeing to perform to Landlord. Upon delivery of such written instrument by such subtenant, Landlord hereunder shall thereby become and be deemed the successor in interest to the sublessor under such sublease.

(8) IMPROVEMENTS TO BE CONSTRUCTED BY TENANT/USE.

Tenant shall have the right to use the Premises for any lawful purpose other than an activity constituting a nuisance or an activity primarily involving the sale of sexually oriented material. Tenant acknowledges that it has entered into this Lease for the purpose of constructing or causing to be constructed on the Premises the following described improvements (which shall be the property of Tenant), together with the usual and necessary appurtenant on-site and off-site improvements required to service the same with street access, parking and utilities: a combination of market and/or drug and/or home improvement and/or other anchor tenants and/or retail shops and/or financial institution branch offices or the equivalent and/or offices, and/or fast-food services. ~~of the general configuration indicated on Exhibit "A" attached hereto and, by this reference, made a part hereof.~~ Tenant shall have the right, at its cost and expense, to construct, alter, add to, subtract from and raze any improvements on the Premises. Any improvements constructed by Tenant on the Premises shall be located entirely within the boundaries of the Premises, i.e. no such improvements shall straddle the boundary lines of the Premises. Tenant shall have the right, but not the obligation, to remove all or a portion of the structural and non-structural improvements currently existing on the Premises.



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Sincerely,



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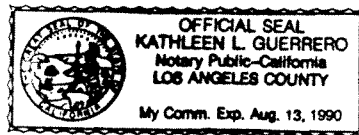
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 proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) are subscribed to the
within instrument, and acknowledged that they executed it.
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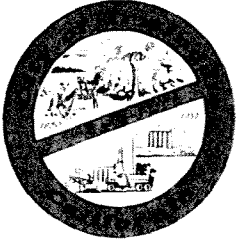
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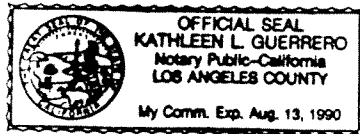
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