



California  
Fair Political  
Practices Commission

**SUPERSEDED**  
by 18702.1(a)(4)

September 23, 1991

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San Bernardino, CA 92412

Re: Your Request for Advice  
Our File No. A-91-398

Dear Ms. Battersby:

This is in response to your request for follow up advice with respect to the Battersby Advice Letter, No. I-91-034, which was issued by this office on March 20, 1991. Both the first Battersby Advice Letter and your most recent letter are seeking advice on behalf of Yucaipa City Councilmember Edward Henderson concerning his responsibilities under the conflict-of-interest provisions of the Political Reform Act.<sup>1</sup>

QUESTIONS

1. May Councilmember Henderson participate in a decision to place on the ballot a proposed new mobile home rent control ordinance which would amend the existing ordinance?

2. May Councilmember Henderson participate in decisions implementing the city's mobile home rent control ordinance?

CONCLUSIONS

1. If the proposed mobile home rent control ordinance will foreseeably affect the fair market value of Councilmember Henderson's mobile home by \$250 or more, the councilmember may not participate in the decisions, unless the decision will affect a significant segment of the population of Yucaipa in the same

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

manner as it will affect the councilmember. This standard would apply to all decisions that are interrelated with the decision to place the proposed mobile home rent control ordinance on the ballot.

2. Generally, the councilmember may participate in implementation decisions provided the decisions will not result in a reopening of, or in any way affect the decisions from which the councilmember was disqualified, and the councilmember has no independent conflict of interest with respect to the decision.

#### FACTS

The facts are substantially the same as in your first letter. The Yucaipa City Council will be considering placing a new mobile home rent control ordinance on the ballot. The existing interim rent control ordinance was described as follows in the first letter:

Under the new ordinance, rents will be "rolled back" to those in effect on December 31, 1988, plus any increases imposed between that date and the effective date of the ordinance which do not exceed 66.67% of the increase in the Consumer Price Index between that date and the effective date of the ordinance. Rents may automatically be increased once every twelve months by 66.67% of the annual change in the Consumer Price Index. Additional increases are available by administrative application and hearing.

Under the new ordinance rents also may be increased in an unregulated amount when ownership of a mobilehome is transferred or a mobilehome is removed from a mobilehome park. This is known as "vacancy decontrol."

Your most recent letter requests advice concerning decisions regarding an amendment of the existing rent control ordinance that is being proposed by initiative. The city council will be asked to place the measure on the ballot. The new ordinance provides the following with respect to mobile homes in parks with more than 10 spaces:

1. Impose registration obligations on mobile home park owners.

2. Impose an assessment on mobile home owners of three dollars per month.

3. Set a base rent on each space equivalent to the rent charged on December 31, 1986 and limit space rent increases to 3% annually.



4. Create a commission to oversee the ordinance consisting of the city council and to provide administrative procedures for grievances and proposed rent increases.

Councilmember Henderson has a joint tenancy interest, with a right of survivorship, in a mobilehome which is located in a mobilehome park in the City of Yucaipa. The councilmember holds this interest with his aunt. The mobilehome served as his aunt's residence until she became ill approximately two years ago.

You have provided the following additional or modified facts in your letter of August 14, 1991.

1. You have provided a copy of the ordinance and other background material on Yucaipa.

2. According to proposed Ordinance No. 63, the total number of dwelling units in the city is 13,483, which includes 4,104 mobile home units in mobile home parks which constitutes 30% of the dwelling units in the city. You have not provided figures on the number of persons owning mobile homes in the jurisdiction. However, a 1991 survey showed that 87.5% of the person's surveyed owned their mobile home and were currently paying mortgages.

#### ANALYSIS

##### Conflicts of Interest

As was discussed in the Battersby Advice Letter, supra, Councilmember Henderson owns an interest in a mobile home. Councilmember Henderson and his aunt own the mobile home as joint tenants. Thus, Councilmember Henderson will be required to disqualify himself from any decision of the Yucaipa City Council which could foreseeably result in the value of the councilmember's mobile home increasing or decreasing by \$250 or more.<sup>2</sup> (Section 87100; Section 87103; Regulation 18702.1(a)(4).)

It appears likely that in the city's housing market, the relative fair market value of a mobile home will be increased substantially by any ordinance which will limit space rent increases to 3%. Moreover, the assessment on park residents, while not imposed on the councilmember himself, will also have some effect on the resale value of the mobile home. We cannot determine the magnitude of the financial effect on the councilmember's asset that will be caused by the rent control ordinance. We must leave this factual determination to you and the councilmember.

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<sup>2</sup> Since it appears the decision will have a material financial effect on the councilmember's mobile home, we have not proceeded to analyze the question of conflict of interest with respect to the rental of the space at which the mobile home is located.

Public Generally

However, even if there will be a reasonably foreseeable material financial effect on the councilmember's economic interests, the councilmember may participate in the decision if the effect on his interests is not distinguishable from the effect on the public generally. (Section 87103.) For the "public generally" exception to apply, a decision must affect the councilmember's economic interests in substantially the same manner as it would affect a significant segment of the population of Yucaipa. (Regulation 18703.)

The ordinance will do the following:

1. Impose registration obligations on mobile home park owners.
2. Impose an assessment on mobile home owners of three dollars per month.
3. Set a base rent on each space equivalent to the rent charged on December 31, 1986 and limit space rent increases to 3% annually.
4. Create a commission to oversee the ordinance consisting of the city council and would provide administrative procedures for grievances and proposed rent increases.

It does not appear that any of the provisions of the ordinance will affect the value of the councilmember's mobilehome in a manner that is different than the effect on other mobile home owners. (Warner Advice Letter, No. A-82-105; Morgan Advice Letter, No. A-81-12-507.) Generally, absent unusual effects, rent control ordinances are considered to affect persons subject to the ordinance in a substantially similar manner. (See, Sibley Advice Letter, No. A-84-180.) For example, in the Picquet Advice Letter (No. A-87-233), which concerned the modification of the mobile home rent control ordinance,<sup>3</sup> we advised:

In this instance, it would appear that all of the owners of coaches which are located in the mobile home parks in San Luis Obispo which are not condominium owned would be affected in substantially the same manner. This would be approximately 1280 households in a total of 12 parks. This would seem to be a large enough and diverse enough segment of the public to be

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<sup>3</sup> In the same letter we advised that where a decision concerned decontrol of rents in parks with certain percentages of long-term leases and the official had a long-term lease on his space, the effect on the official was distinguishable from the effect on the rest of the mobile home owners.



considered to be significant. [Citations omitted.] Consequently, Mayor Dunin's disqualification would not be required as to decisions affecting the value of the coaches of all of these households in a similar manner.

Moreover, in November of 1978, in In re Ferraro (4 FPPC Ops. 62), the Commission found that the "public generally" exception applied to a decision on a Los Angeles rent control ordinance and its effect on councilmembers who owned three or fewer rental units. The ordinance required that residential rents be rolled back to the rent charged on May 31, 1978, limited rent increases, and provided for decontrol of rent control if the rental unit was voluntarily vacated. The Commission stated:

In order to be considered a significant segment of the public, we think that a group must be large in numbers and heterogeneous in quality. The class of persons owning three or fewer units meets both these standards and therefore constitutes a significant segment of the general public....The proposed rent control ordinance will affect all owners of the three or fewer rental units in much the same manner.

The Ferraro ordinance was substantially the same as the ordinance before the Yucaipa City Council. Moreover, in Ferraro the Commission found that those persons owning three or fewer rental units would be affected in substantially the same manner by the ordinance. We believe Ferraro compels the conclusion that Councilmember Henderson's interest in a single mobile home will be affected in substantially the same manner as other mobile home owners in Yucaipa.

According to your facts, the total number of dwelling units in the city is 13,483, which includes 4,104 mobile home units in mobile home parks which constitutes 30% of the dwelling units in the city. (Section 1.A. Ordinance No. 63.) However, some aspects of your facts appear to decrease the segment of persons similarly affected from the 30% described above. First, the proposed ordinance expressly limits its application to mobile homes in parks of 10 spaces or more. In the Picquet Advice Letter we stated that a provision of a rent control ordinance that expressly applied to only a narrow subset of mobile home owners did not affect the official in the same manner as the rest of the mobile home owners in the jurisdiction.

Moreover, it is not clear to what extent the numbers set forth in the existing ordinance correspond to the number of persons owning mobile homes in the jurisdiction, in contrast to those units that are located in the jurisdiction. In the mobile home survey prepared by Connerly and Associates, Inc., a random sample showed that 87.5% of the person's surveyed owned their mobile home and were currently paying mortgages. If we assume



that the other mobile homes that are rented are also owned by persons in the jurisdiction, this would suggest the 30% figure is a close approximation to the number of persons owning mobile homes.<sup>4</sup>

Consequently, we conclude that if: (1) each aspect of the rent control ordinance will apply equally to all mobile home owners in parks with 10 or more spaces, which are substantially all the mobile home parks, and (2) the number of persons owning mobile homes subject to the new ordinance is a significant segment of the population of Yucaipa, it would appear that the "public generally" exception would apply and Councilmember Henderson may participate in the vote to place the initiative on the ballot.<sup>5</sup> However, since we do not have precise numbers on persons in Yucaipa who own mobile homes in mobile home parks with 10 or more spaces, we have based this conclusion on factual assumptions which may be inaccurate. If the assumptions in this letter are incorrect or based on inaccurate facts, please contact this office for further advice.<sup>6</sup>

#### Other Decisions

If the "public generally" exception does not apply to the decision to place the initiative on the ballot, other issues concerning implementation of the ordinance may be separable from the decision for which the councilmember is disqualified. Since we do not have the facts concerning implementation decisions before us, please be aware that the remainder of this letter is intended only to provide informal guidance with respect to those decisions.<sup>7</sup> Please contact us for further advice concerning such decisions as they become more concrete.

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<sup>4</sup> Of course, if a person owned a substantial number of mobile homes and leased them, this might decrease the percentage of mobile homeowners.

<sup>5</sup> The prohibition on participation in a governmental decision is applicable even where the public official is not the final decisionmaker on the question before him. In this case it appears that it is the voters, rather than the city council, who will decide whether or not the new ordinance is enacted. However, the proposed action on the part of the city council is a necessary prerequisite for the enactment of the ordinance and is far from ministerial. (Skousen Advice Letter, No. A-88-162.)

<sup>6</sup> This letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.)

<sup>7</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)



Generally, every governmental decision must be analyzed independently with respect to the foreseeability and the materiality of a financial effect on an official's economic interest. (In re Owen, supra.) For example, procedural decisions on the periods of time for appeals of board decisions, etc. will not affect the existence of the rent control ordinance and do not appear to have any other financial effect on the councilmember's interests. Consequently, in many cases the councilmember may participate in such implementation issues.<sup>8</sup>

However, under some circumstances a series of decisions may be too interrelated to be considered separately. For example, if the resolution of one decision will effectively determine the result of the other decision, the councilmember must disqualify as to both. This would be true, for example, where the councilmember is precluded from voting for or against the ordinance, but by participating in the legal action to defend the council's decision could effectively reverse the decision for which he was disqualified.

The councilmember must also disqualify himself from participating in all decisions which are not legally separable from the decision in which he has a conflict of interest. This would be the case, for example, if there were different results in the two decisions and a legal challenge would successfully compel the city council to arrive at a consistent result. (Nord Advice Letter, No. A-82-038; See also, Miller Advice Letter, No. A-82-119.)

Where the decisions are separable, each decision may be analyzed separately to determine if the councilmember has a conflict of interest. The following procedure should be used:

(1) The decisions for which the councilmember has a disqualifying financial interest should be segregated from the other decisions.

(2) The decisions for which the councilmember is disqualified should be considered first, and a final decision reached by the city council without his involvement.

(3) Once a decision has been made, the councilmember may participate in the deliberations on the other decisions, so long as those decisions will not result in a reopening of, or in any way affect, the decisions from which the councilmember was disqualified, and the councilmember has no independent conflict of interest with respect to the decision. (Huffaker Advice Letter, No. A-86-343.)

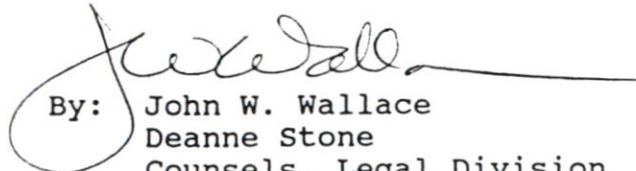
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<sup>8</sup> This might not be the case where the councilmember had his mobile home in a park with an application before the board.

If you have any further questions regarding this matter,  
please feel free to contact me at (916) 322-5901.<sup>9</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: John W. Wallace  
Deanne Stone  
Counsels, Legal Division

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<sup>9</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.