



FAIR POLITICAL PRACTICES COMMISSION

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October 4, 2011

Neal E. Costanzo
Costanzo and Associates
575 E. Locust Avenue, Suite 115
Fresno, CA 93720

**Re: Your Request for a Formal Opinion
Our File No. O-11-178**

Dear Mr. Costanzo:

I am in receipt of your follow up letter to your original correspondence dated September 20, 2011. Your latest letter corrects my staff's miscategorization of your prior letter as a request for advice. We quite often receive requests for advice where the terms "opinion" and "advice" are used interchangeably by requestors. My apologies for the confusion with your original letter. Your letter dated September 29, 2011, reaffirms that you request a formal Commission opinion and we will treat it as such.

Any person may request the Commission to issue an opinion with respect to his or her duties under the Political Reform Act ("the Act").¹ (Section 83114.) The Executive Director shall determine whether to grant or deny opinion requests. (Regulation 18320(d).) Among the various criteria upon which denial of an opinion request may be based are the following:

"(1) The question raised is covered by Commission regulations.

"(2) The question raises no substantial question of interpretation and, therefore, requires only a routine reply more appropriately made by staff."

It appears that the main issue raised in your letter is whether two of your council members voted on past decisions in which they had conflicts of interest. Conflict-of-interest issues are covered in great detail by several Commission regulations, and the Commission has been giving advice regarding conflicts of interest through formal written advice for many years.

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.

Our regulations and advice letters (in a searchable database) are available to the public at our web site: <http://www.fppc.ca.gov>.

There is no justification in your facts or in your questions that would elevate these traditional, though fact-dependent, conflict-of interest questions to the status of a Commission opinion. While it is true that Commission staff advice would be declined in this case because staff does not generally advise on past conduct, this in itself would not be a basis to justify a Commission opinion. For these reasons, I am denying your request for an opinion.

Pursuant to Regulation 18321, you have the right to seek a review of this denial at the next Commission meeting following the issuance of this letter. Since the legal notice period for the October meeting has passed, you would need to request a review of the denial at the November Commission meeting. Your request must be received no later than October 24, 2011 to allow time for processing for the November meeting. If a majority of the Commission decides to grant your request, this denial will be rescinded and an opinion will issue as provided in Regulations 18322 and 18324.

If you have any questions, please contact John W. Wallace, Assistant General Counsel, at (916) 322-5660.

Sincerely,



Zackery P. Morazzini
General Counsel and
Acting Executive Director