

November 4, 2003

SDEC Formal Advice Letter No. FA03-10 (Supplement)

Advice Provided to:

Bill Baber
Office of Mayor Dick Murphy
202 "C" Street, 11th Floor
San Diego, CA 92101

Re: Request for Supplemental Advice Regarding Disqualification from Municipal Decisions
Involving Residential Rental Property

Dear Mr. Baber:

This advisory opinion is provided in response to your request for additional advice regarding whether Mayor Murphy may participate in the proposed "Good Cause Termination of Tenancy" ordinance given his ownership of residential rental properties. This is a follow-up to advice provided to you in San Diego Ethics Commission Formal Advice Letter FA03-10. This supplemental letter provides additional information regarding the application of the "public generally" exception, in light of the additional facts you recently provided.

QUESTION

Is the "public generally" exception applicable to Mayor Murphy's residential real property interests, such that he may participate in a municipal decision regarding the proposed "Good Cause Termination of Tenancy" ordinance?

SHORT ANSWER

The "public generally" exception is applicable because more than 5,000 property owners will be affected by the proposed ordinance, and because the proposed ordinance will affect the Mayor in substantially the same manner as the other residential rental property owners in the City of San Diego.

BACKGROUND

This supplemental advisory opinion focuses on the “public generally” exception outlined in our previously issued advice letter (FA03-10). You have provided the following new information:

The Office of the City Treasurer reports that, in the immediate past year, tax bills were forwarded to 75,249 owners of residential rental properties in the City of San Diego. In addition, you have represented that Mayor Murphy will be affected by the proposed ordinance in substantially the same manner as the other owners of residential rental properties in the City.

ANALYSIS AND CONCLUSION

Our advice in FA03-10 includes a detailed conflict of interest analysis applicable to the situation posed in your original request. You have requested supplemental advice in light of the additional facts you provided. Therefore, we will not repeat the original analysis, but instead will focus on the application of the “public generally” exception.

Under the “public generally” exception, a City Official may participate in a municipal decision if the financial effect of the decision on the City Official’s economic interests is indistinguishable from the public generally. Cal. Code Regs. tit. 2, § 18707. In order for the exception to apply, a “significant segment” of the jurisdiction must be affected by the municipal decision in substantially the same manner as the City Official. With respect to residential real property, a “significant segment” is defined as 10 percent or 5,000 of the City’s property owners or homeowners, if a City Official owns three or fewer residential property units¹. Cal. Code Regs. tit. 2, § 18707.9(a).

According to the information you provided, more than 75,000 owners of residential rental properties in the City of San Diego will be affected by the proposed ordinance in substantially the same manner as Mayor Murphy. Accordingly, the “public generally” exception is applicable and Mayor Murphy may lawfully participate in the municipal decision concerning the proposed “Good Cause Termination of Tenancy” ordinance.

CITY OF SAN DIEGO ETHICS COMMISSION

By
Stacey Fulhorst
Investigator

SF/s

¹ Your original request for advice indicates that the Mayor owns two rental properties. An official’s principal residence does not count as a “residential property unit” for purposes of section 18707.9(a). If the Mayor owns more than three residential property units, the provisions of section 18707.9(b) would apply instead.