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March 25, 2005

Terrence D. Gossett
Californians for Property Rights
Box 282
Moss Beach, CA 94038

Re: Incompatibility of Office

Dear Mr. Gossett:

Your inquiry as to whether an elected member of a special district may also serve on the MidCoast Community Council was referred to our office for response. In short, the doctrine of incompatibility of office is inapplicable to members of the MidCoast Community Council because Council membership is not a public office.

The application of the common law doctrine of incompatible public offices involves a two-step process; first, to determine whether the positions in question are public offices; and second, if they are, to determine whether the offices are incompatible. The Attorney General's Office has consistently construed the doctrine of incompatibility of offices as having no application to positions which were not public offices. (See 57 Ops.Cal.Atty.Gen. 583 (1974, membership on Committee of Bar Examiners not an office); and 58 Ops.Cal.Atty.Gen. 109, 111 (1975, members of city personnel board not officers).) A public office requires the vesting in an individual of a portion of the sovereign powers of the state. *Parker v. Riley* (1941) 18 Cal.2d 83. (allowing state legislators to be members of the California Commission on Interstate Cooperation). The Court of Appeal stated:

The positions here created do not measure up to so high a standard. They involve merely the interchange of information, the assembling of data, and the formulation of proposals to be placed before the legislature. Such tasks do not require the exercise of a part of the sovereign power of the state.

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Here, the Members of the Mid-Coast Community Council do not have any sovereign power, but merely act in an advisory capacity to the Board of Supervisors. The fact that membership on the Commission is by election rather than by appointment does not make the position a "public office."

Very truly yours,



THOMAS F. CASEY III, COUNTY COUNSEL

cc: Members, Board of Supervisors
John Maltbie, County Manager
Marcia Raines, Director of Environmental Services Agency