

State of California



Fair Political Practices Commission

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Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

January 25, 1985

Robert B. Yee
1440 Broadway, Suite 810
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-84-323

Dear Mr. Yee:

Thank you for your request for advice on behalf of Tony Leong concerning his duties under the conflict of interest provisions of the Political Reform Act.^{1/} This advice is based on the facts provided in your letter.

FACTS

Dr. Leong is an employee of the Berkeley Department of Health and Human Services. Specifically, Dr. Leong is a Program Supervisor for the Family, Youth and Children's Program of the Mental Health Division of the Department of Health and Human Services. Dr. Leong's position of Program Supervisor is described in the City job announcement as having "extensive management, administrative and supervisory responsibilities, including authority for making and recommending policy decisions." Responsibilities include "program planning, implementation, development and evaluation; determining operations, activities, and organization of program ... preparing reports, proposals and budget requests ... working with other community resources and agencies to develop an effective and responsive program."

Dr. Leong is also the Executive Director of Asians for Job Opportunities in Berkeley (AJOB), a nonprofit community agency which receives funding from the City of Berkeley, among other

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

sources, for counseling, advocacy, job placement, job development, English as a second language, and other services for Asians. Dr. Leong receives a salary from AJOB in excess of \$100 per month. As Executive Director, he prepares proposals for funding, handles personnel matters, and oversees the budget of the community agency.

AJOB submits annual funding proposals to the City of Berkeley. The City Health and Human Services Department reviews proposals for certain types of funds allocated to community agencies such as AJOB. Specifically, the Department reviews proposals for funds under the Joint Training and Partnership Act and Community Services Block Grant programs.

When a community agency submits a proposal for funds, employees of the Health and Human Services Department with expertise in the area covered by the proposal review the proposal. After the review, the City Manager recommends to the City Council a decision on the allocation of grant funds to the community agency. If the City Council makes the allocation, Health and Human Services Department employees negotiate with the representatives of the funded agency to develop the final program and prepare and execute a contract. The Department staff also reviews and approves invoices for payment and conducts an annual performance evaluation.

As Executive Director of AJOB, Dr. Leong prepares the AJOB proposals for funds, advocates these proposals before the City Council, City Manager, and other City employees, negotiates and signs the contracts, and submits AJOB's invoices to the City for payment.

As a Program Supervisor in the Health and Human Services Department, Dr. Leong does not review proposals for funding under the Joint Training and Partnership Act or the Community Services Block Grant program. Another unit in the Health and Human Services Department conducts the review. However, you have stated that a person in Dr. Leong's position might review grant proposals for programs of the type provided by AJOB, although Dr. Leong does not currently review, and has not been asked to review, any of those proposals.

Dr. Leong is involved in determining City policies and priorities for mental health problems for youth, which may include issues related to job training for youth, one of the issues addressed in programs provided by AJOB.

AJOB also receives Community Development Block Grant funds. These funds are administered by the Planning and

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Community Development Department, not the Health and Human Services Department. Dr. Leong does not have any professional contact or interaction with City staff who review Community Development Block Grant proposals or administer the Community Development Block Grant program. Dr. Leong has taken the same actions with respect to preparing AJOB's grant application and obtaining Community Development Block Grant funds as are outlined for Joint Training and Partnership Act and Community Services Block Grant funds.

AJOB also applies for funds which are not directly administered by the City, although the City has certain duties in the application procedure for these funds. For example, several months ago AJOB submitted a grant proposal for state mental health funds to provide mental health counseling services to the Asian adult immigrant population. Although these funds are not administered by the City, the City is required to sign off on applications submitted by community agencies. Dr. Leong prepared and signed AJOB's application and communicated directly with his supervisor to obtain his approval of AJOB's application.

The City has also applied for the state mental health funds, which it proposes to use to operate Health and Human Services Department programs. As Program Supervisor of the Family, Youth and Children's unit, Dr. Leong helped to prepare the City's application and will be responsible for administering these funds if they are received.

QUESTIONS

Does Dr. Leong have a conflict of interest with respect to grant funds administered by the City of Berkeley when the grant proposals are processed by the Health and Human Services Department? This question concerns Joint Training and Partnership Act and Community Services Block Grant funds.

Does Dr. Leong have a conflict of interest with respect to grant funds administered by the City of Berkeley when the grant proposals are processed by the Planning and Community Development Department? This question concerns Community Development Block Grant funds.

Does Dr. Leong have a conflict of interest with respect to grants administered by state agencies, but for which the City must approve the proposal or take some other action regarding the proposal?

DISCUSSION

Section 87100 prohibits a public official from making or participating in a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 provides that an official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other interests, any source of income aggregating \$250 or more received by or promised to the public official within 12 months prior to the time when the decision is made.

Dr. Leong receives a salary in excess of \$100 per month from AJOB; therefore AJOB is a source of income in excess of \$250 to Dr. Leong.

The Commission, by regulation, 2 Cal. Adm. Code Section 18702, has defined several ways in which a decision can have a material financial effect on a source of income. A decision is considered to have a "material" effect on a nonprofit organization if the decision's effect will be "significant." (2 Cal. Adm. Code Section 18702(b)(3)(D).) A determination as to whether an effect is "significant" can only be made in the context of a specific situation, after considering all the facts. A decision whether to make a grant to a nonprofit corporation is likely to be the type of decision which would have a significant effect on the nonprofit corporation. As stated before, whether a decision regarding a grant would have a significant effect on AJOB depends on the specific facts of the decision. However, it appears that, in most instances, Dr. Leong must refrain from making, participating in, or using his official position to influence, decisions regarding grants for AJOB.^{2/}

In addition, under 2 Cal. Adm. Code Section 18702(b)(3)(B), a decision has a material financial effect on an official's source of income when "there is a nexus between a governmental decision and the purpose for which the official receives income...." This regulation, in effect, prevents Dr. Leong from accomplishing as a City employee what he is paid to do as Executive Director of AJOB.

^{2/} Commission regulation 2 Cal. Adm. Code Section 18700 defines making, participating in, and using one's official position to influence a governmental decision (copy enclosed).

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Since part of Dr. Leong's duties as Executive Director of AJOB is to prepare grant proposals and advocate the funding of those proposals before the City, there would be a nexus between Dr. Leong's position as Executive Director of AJOB and any actions Dr. Leong would take as a City employee which could foreseeably further the allocation of grant funds to AJOB. Accordingly, Dr. Leong, as an employee of the City, is required to refrain from making, participating in, or using his official position to influence, decisions which could foreseeably affect grant allocations to AJOB.

Having outlined the general restrictions on Dr. Leong's participation in decisions affecting AJOB, I shall now apply these general principles to the specific facts presented.

With regard to your first question, which concerns grant funds allocated pursuant to the Joint Training and Partnership Act and Community Block Services Grant programs and administered by the Health and Human Services Department, Dr. Leong must refrain from participating in the review or approval process for any grant proposals submitted by AJOB or submitted by other agencies competing with AJOB for those funds. Dr. Leong must also refrain from participating in the negotiation or administration of contracts between the City and AJOB in connection with those grant funds, on behalf of either the City or AJOB. You have stated that Dr. Leong's current responsibilities as Program Supervisor do not include review approval, negotiation, or administration of these contracts; however, I have included this information so that Dr. Leong would be aware of his responsibilities under the Political Reform Act in the event of a change in his duties as Program Supervisor.

As Program Supervisor, Dr. Leong also participates in establishing policies and priorities for certain mental health problems which could include issues related to programs provided by AJOB. With respect to each of these decisions, Dr. Leong should consider whether it is reasonably foreseeable that the policy or priority decision will materially affect the allocation of grant funds to AJOB. For example, Dr. Leong must refrain from participating in any decision to discontinue City programs under which AJOB currently receives grant funds, or to lower the funding priority of those programs to the extent that it is likely that no funds, or a significantly reduced amount of funds, would be available.

Your second question concerns Community Development Block Grant funds allocated to AJOB by the Planning and Community Development Department. Dr. Leong, in his position with the

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Health and Human Services Department, has no involvement in this grant application review and approval process; therefore, Dr. Leong has no conflict of interest with respect to these grant proposals.

Your third question concerns grants from the state or other sources. Although the City does not administer these funds the City must approve or otherwise act on the proposals. Dr. Leong must refrain from participating in the City's actions on any grant proposals submitted by AJOB, and he must refrain from representing AJOB to the Department of Health and Human Services on these grant proposals. He must also refrain from participating in the City's actions on, or representing AJOB with regard to, any grant proposals which could foreseeably affect the allocation of grant funds to AJOB, such as proposals by other community agencies to provide similar services in the same area when there is a substantial likelihood that only one of these agencies will receive funding.

You have stated that if the City receives state mental health funds for its Family, Youth and Children's program, Dr. Leong will administer those funds. It is not clear whether the programs proposed by the City could foreseeably affect AJOB's ability to receive funding for or to provide services. However, Dr. Leong must examine each decision regarding the administration of these City programs, and must refrain from participating in decisions which could foreseeably have a significant effect on AJOB's funding or services.

My advice is confined to the provisions of the Political Reform Act. You should contact the City Attorney's Office concerning the possible application of Section 1090, which is outside the Fair Political Practices Commission's jurisdiction. If you have any further questions regarding the Political Reform Act, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure

LAW OFFICE OF
ROBERT B. YEE

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832-5500

December 17, 1984

Barbara Milman
General Counsel
Fair Political Practices Commission
1100 K Street Building
Sacramento, California 95814

Re: Conflict of Interest Involving City Employee who
Serves as Executive Director of a Community Agency
that Receives City Funds

Dear Ms. Milman:

This office represents Tony Leong, Jr., the Executive Director of Asians for Job Opportunities in Berkeley (AJOB), in a dispute with the City of Berkeley regarding allegations of my client's conflict of interest. Upon the recommendation of the Berkeley City Attorney, this letter requests advice with regard to the official duties of my client as a City employee.

He is employed as a Program Supervisor in the Mental Health Division of Berkeley's Department of Health and Human Services. At the same time, he is employed as the Executive Director of a community agency. Questions have arisen concerning the activities in which Dr. Leong can engage. While I realize that you do not give advice on past events, this letter describes past events for illustrative purposes only, as they are typical of the situations which have arisen and which may arise in the future.

Dr. Tony Leong has been working for the Mental Health Division of the City of Berkeley since April, 1979. He was originally hired on an hourly basis and in January, 1983, converted to a part-time career status with the City. In April, 1984, Dr. Leong was hired as Program Supervisor for the Family, Youth and Children's program in the City's Mental Health Division. That position is a full-time career position which is described in the City job announcement as having "extensive management, administrative and supervisory responsibilities, including authority for making and recommending policy decisions." Responsibilities include "program planning, implementation, development and evaluation; determining operations, activities and organization of program;...preparing reports, proposals and budget requests;...working with other community resources and agencies to develop an effective and responsive program. (see also declaration of Tony Leong, Jr., and 11-13-84 letter of Floyd Wylie, attached).

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Dr. Leong is also the Executive Director of AJOB. He works part-time after hours and receives a salary in excess of \$100.00 monthly. As Executive Director he prepares proposals for funding, handles personnel matters and oversees the budget of the community agency. He has been the Executive Director of AJOB since its establishment in December, 1974.

Among its funding sources, AJOB receives money from the City of Berkeley for counseling, advocacy, job placement, job development, English as a second language, and other services for Asians. AJOB submits annual funding proposals to the City of Berkeley. Proposals for certain types of funds (such as Joint Training and Partnership Act [JPTA] and Community Services Block Grant [CSBG]) are reviewed by the Health and Human Services Department. Individual proposals are reviewed by City staff members in the Department who have expertise in the particular area covered by the proposal. After review, the City Manager recommends an allocation of available grant funds to the City Council. After the Council takes action, department employees negotiate with representatives of AJOB and other funded agencies to develop the final program and prepare and execute a contract. Department staff reviews and approves invoices for payment and conducts an annual performance evaluation.

Dr. Leong's official responsibilities with the City are not directly involved with funding. The applications for grant funds are handled by another unit in the Department of Health and Human Services. Nevertheless, it is alleged that Dr. Leong's position is of a policy-making nature in that he is involved in determining City policies and priorities for mental health problems for Youth which may include issues related to job training for youth. Although a person in his position might review a grant application for job training funds for youth, he has not been asked to review such proposals or any other funding proposals.

In previous years, Dr. Leong has prepared the AJOB proposals for funds. He has advocated those proposals before the City Council, City Manager and other City employees. He negotiated the terms of the contract with City staff, signed the contracts on behalf of AJOB and submitted AJOB's invoices to the City for payment.

AJOB also receives Community Development Block Grant funds. These funds are administered by the Planning & Community Development Department, not the Health and Human

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Services Department. Dr. Leong does not have any professional contact or interaction with City staff who review CDBG proposals or administer the CDBG program. Dr. Leong has taken the same actions with respect to preparing AJOB's grant application and obtaining CDBG funds as are outlined for JTPA and CSBG funds.

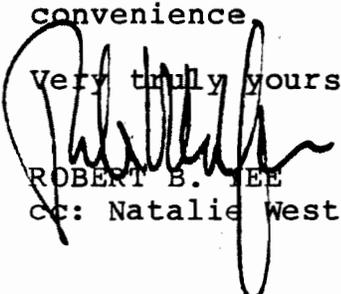
AJOB also applied for funds which are not directly administered by the City, but for which the City has certain authority in a decision-making process concerning these funds. For example, several months ago the City submitted a grant proposal for state mental health funds. As supervisor of the Family, Youth and Children's unit, Dr. Leong will be responsible for administering these funds if they are received. He worked with the Chief of the Mental Health Division and the Mental Health Advisory Board to prepare the City's application for grant funds. At the same time, AJOB applied for the same funds to provide mental health counseling services to the Asian adult immigrant population. Although these funds are not administered by the City, the City is required to sign off on applications submitted by community agencies. Dr. Leong prepared and signed AJOB's application and communicated directly with his supervisor, Dr. Floyd Wylie, to obtain his approval of AJOB's application.

Based on the facts outlined above, I would appreciate your advice setting forth guidelines or standards of conduct which Dr. Leong may use to avoid conflicts of interest in these three situations:

- (1) Funds administered by the City of Berkeley:
 - A. Grants processed by and through the Department of Health and Human Services.
 - B. Grants processed by and through the Planning and Community Development Department.
- (2) Grants funded from sources outside the City in which the City approves or takes some other action regarding the application.

As the City is presently holding up funds granted to AJOB pending the resolution of this conflict of interest issue, we would appreciate your response at your earliest convenience.

Very truly yours,



ROBERT B. LEE

cc: Natalie West, Berkeley City Attorney