

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

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

April 5, 1985

Melvyn W. Price
Supervising Deputy County Counsel
700 H Street, Suite 2650
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-85-076

Dear Mr. Price:

Thank you for your letter requesting us to review your conclusions concerning the duties of a member of the Sacramento County Board of Supervisors under the conflict of interest provisions of the Political Reform Act in view of his employment as a title company representative. I have enclosed a copy of an advice letter to Thomas Haas, Fairfield City Attorney (our File No. A-84-037), which analyzes a conflict of interest question that is very similar to the question you have posed. I believe the enclosed letter confirms your analysis for the member of the Sacramento County Board of Supervisors except with regard to the application of the "nexus" test, an issue that your letter does not address.

You have not requested advice with respect to a specific decision pending before the Sacramento County Board of Supervisors, but if, after reviewing the enclosed advice letter, you have any questions concerning a specific decision, please contact me at (916) 322-5901.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure



COUNTY OF SACRAMENTO

OFFICE OF THE COUNTY COUNSEL

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March 22, 1985

L. B. Elam
County Counsel

Fred G. Williams
Assistant County Counsel

Barbara Milman
Chief Counsel
Fair Political Practices Commission
1100 "K" Street Building
Post Office Box 807
Sacramento, California 95814

Re: Request for Conflict of Interest Opinion

Dear Ms. Milman:

This is a letter response to a conflict of interest question addressed by a member of the Sacramento County Board of Supervisors with regard to his salaried employment as a title company representative. Would you please indicate your agreement or disagreement with the conclusions reached in our letter opinion. Additionally, if you have any modifications, please advise.

Facts

The relevant facts are as follows:

He is assuming a public relations position with a local title company. His function will be to encourage persons involved in land sales transactions to select that title company employer as the escrow agent and title insurer. He will not receive any commissions from, nor have ownership interest in, the title company. Rather, he will be compensated on the basis of straight salary.

The function of the title company is 1) to search and guarantee the record title by issuing insurance policies; and 2) to handle escrows. Currently, there are eleven different title companies doing business within the Sacramento area.

The Board of Supervisors of Sacramento County is routinely required to make decisions which materially affect the financial interests of persons residing and doing business within Sacramento County (e.g., decisions regarding land use matters). Consequently, title companies and individuals and corporations who use the services of title companies, will have occasion to appear before the Board. More importantly, the title company employer, and individuals whom you have encouraged to do business with the title company employer, will have occasion to appear before the Board.

Questions

The following questions are posed:

1. Must the Supervisor disqualify himself from participating in a decision by the Board which would have a material financial effect on a particular applicant (but not on the title company employer) if, during the preceding twelve months, he encouraged the applicant to use the escrow/title insurance services of the title company?

2. Must he disqualify himself from participating in a decision by the Board which would have a material financial effect on a particular applicant (but not on the title company employer) if, during the preceding twelve months, the applicant used the escrow/title insurance services of the title company without the Supervisor's encouragement?

3. Must he disqualify himself from participating in a decision by the Board which would have a material financial effect on his title company employer?

Analysis

Pertinent sections of the Government Code include:

87100. "No public official at any level of state or local government shall make, participate in the making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

87103. "An official has a financial interest in a decision within the meaning of §87100 if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally, on . . .

"(c) Any source of income . . . aggregating Two Hundred Fifty Dollars (\$250) or more in value received by or promised to

the public official within twelve months prior to the time when the decision is made."

Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision.

First, it must be reasonably foreseeable that the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in §87103. Third, the anticipated financial effect must be material. And, fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

As a result of the Supervisors employment with the title company, said company is a source of income. Consequently, if the title company employer is an applicant on a matter where the decision will materially affect its financial interest, he will be required to disqualify himself from participating in the matter.

Regarding individuals who use the services of the title company, the question is whether or not said individuals are a source of income to the officer as a result of their dealings with the title company. Legal counsel for the Fair Political Practices Commission has, in fact, resolved this issue. By concluding that customers of a business are not a source of income to employees of that business. That is, the customer of a business is not a source of income to an employee whose income is unrelated in any way to the customer's patronage of the employer. See FPPC Opinion No. A-82-054 (wherein it was determined that persons or entities who were persuaded to do business with the travel agency employer of an official were not a source of income of said official).

Of course, if facts in a particular situation indicate that the governmental decision will affect not only the applicant who uses the services of the title company, but will also materially affect the title company employer, disqualification would be required.

CONCLUSION

The Supervisor is required to disqualify himself from participating in governmental decisions which would have a material financial effect upon his source of income. A title company employer is a source of income. However, those entities or individuals who use the services of the title company employer

Barbara Milman

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(either as a result of his public relations services or independently) are not sources of income to him.

Very truly yours,

L. B. ELAM
County Counsel

By *Melvyn W. Price*
MELVYN W. PRICE
Supervising Deputy

MWP:sd

State of California



Fair Political Practices Commission

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March 27, 1985

L. B. Elam
Sacramento County Counsel
700 H Street, Suite 2650
Sacramento, CA 95814

Re: A-85-076

Dear Mr. Elam:

Your letter requesting advice under the Political Reform Act has been referred to Robert Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Barbara A. Milman
General Counsel

BAM:plh