



California Fair Political Practices Commission

January 14, 1986

David E. Whittington
County Counsel
El Dorado County
County Office Center
330 Fair Lane
Placerville, CA 95667

Re: Your Request for Advice
Our File No. A-85-185

Dear Mr. Whittington:

This letter is sent in response to your request for advice dated August 14, 1985. Thank you very much for agreeing to an extension of time while we considered our response to your question. You asked whether the financial disclosure and disqualification provisions of the Political Reform Act,^{1/} as amended by SB 1427 (Ch. 727, 1984 Stats.), apply to a county grand jury.

DISCUSSION

The intent of the recent amendments to the Political Reform Act in SB 1427 was to remove the exemption for judicial agencies from the financial disclosure and disqualification provisions of the Act.^{2/} Judicial agencies are now required to adopt conflict of interest codes. These codes should require personal financial disclosure by those members or employees of the agencies (excluding judges) who make or participate in decisions which may foreseeably affect private financial

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

2/ This exemption did not apply to judges who file Statements of Economic Interests pursuant to Section 87200, et seq.

interests. Under the new scheme, the code reviewing bodies for judicial agencies are:

"Code reviewing body" means all of the following:

* * *

(e) The Supreme Court or its designee, with respect to the Conflict of Interest Code of the members of the Judicial Council, Commission on Judicial Performance, and Board of Governors of the State Bar of California.

(f) The Board of Governors of the State Bar of California with respect to the Conflict of Interest Code of the State Bar of California.

(g) The Supreme Court, the Court of Appeal, the Superior Court, the Municipal Court, with respect to the Conflict of Interest Code of any agency of the judicial branch of government subject to the immediate administrative supervision of that court.

(h) The Judicial Council of California, with respect to the Conflict of Interest Code of any state agency within the judicial branch of government not included under subdivisions (e), (f), and (g).

Section 82011.

Grand juries were not specifically mentioned in the legislation. However, it is our understanding based on case law that grand juries are clearly considered to be judicial agencies.^{3/} People v. Superior Court of Santa Barbara County, 13 Cal. 3d 430 (1975). In addition, it is clear that a grand jury is subject to the immediate supervision of the superior court of the county in which the jury sits within the meaning of Section 82011(g).

In addition to presenting criminal indictments, grand juries are empowered to examine the operations of local governments and to make reports and recommendations. See generally, Penal Code Section 925 et seq. In addition, grand

^{3/} Furthermore, it is clear that the county grand jury is a local government agency within the meaning of Section 82041. The previous exclusion for judicial branch agencies has now been removed. Consequently, it is not subject to any exclusion and is, therefore, covered.

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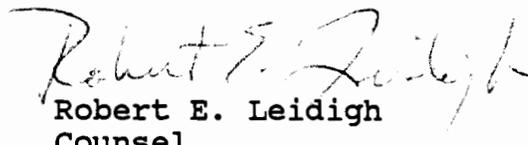
juries may contract for the services of experts. Penal Code Section 926. The charge of the grand jury is broad, and, in any given year and county, the grand jury by necessity will focus its attention on certain specific matters. Although the perceived effect of grand jury reports and recommendations seems to be mixed, it is clear that the statutes confer governmental powers on the grand juries. It is our conclusion that grand juries are agencies subject to the Political Reform Act. We also think that it is reasonably foreseeable that grand jury reports and recommendations concerning government agencies and decisions on contracts could affect private financial interests. These investigative and contracting powers are clearly not merely advisory functions. See Commission of Cal. State Gov. Org. & Econ. v. Fair Political Practices Commission, 75 Cal. App. 3d 716 (1977).

However, we also acknowledge the limited term of the typical grand juror and the necessarily limited scope of a particular grand jury's activities. The Commission determined at its January 7, 1986, meeting that it wishes to consider the question of grand jury disclosure further and will accept testimony from the public at its February 4, 1986, meeting, to be held in San Francisco in the State Bar of California Board Room, 555 Franklin Street. In the interim, it is the Commission's advice that grand jurors need not file Statements of Economic Interests until further Commission advice on this point is forthcoming.

However, it should be made clear to all grand jurors that there is an obligation to disqualify in the event of a conflict of interest pursuant to Sections 87100 and 87103.

Please feel free to contact this office if we can be of further assistance.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:nwm

cc: Commissioners of the FPPC
All County Counsels
Judicial Council
Scott Thorpe, Attorney General's Office
Bruce Olson, Ph.D.

DAVID E. WHITTINGTON
COUNTY COUNSEL

WILLIAM C. NEASHAM II
CHIEF ASSISTANT COUNTY COUNSEL

WILLIAM M. WRIGHT
GWYNNE T. PRATT
DEPUTY COUNTY COUNSEL

EDWARD K. MILLER
COLLECTION OFFICER

EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL

COUNTY OFFICE CENTER
330 FAIR LANE
PLACERVILLE, CALIFORNIA 95667
(916) 626-2234

F P F C

AUG 16 11 29 AM '85
August 14, 1985

Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Attention: Kathy Donovan

Re: Conflicts of Interest

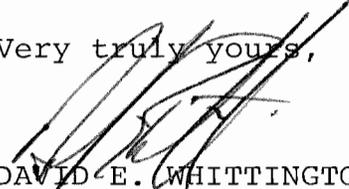
Dear Ms. Donovan:

We request your opinion on the following question:

Do the changes enacted by Chapter 727 of the Statutes of 1984 or does any other law make members of a county grand jury subject to the conflict-of-interest provisions of the Political Reform Act of 1974?

Thank you in advance for your attention to this matter.

Very truly yours,


DAVID E. WHITTINGTON
County Counsel

DEW:jb

m e m o r a n d u m

To : Commissioners Lee, Lemons
Montgomery and Roden

Date : January 27, 1986

From : **FAIR POLITICAL PRACTICES COMMISSION**
Robert E. Leidigh, Counsel, Legal Division

Subject : Grand Jury Disclosure Requirements

At the January meeting, we discussed briefly the proposed advice letter drafted by Diane Fishburn to David Whittington, County Counsel of El Dorado County, regarding disclosure requirements for grand jurors. You wanted more time to consider the ramifications of the proposal, contained in the letter, that disclosure requirements would be determined by each superior court, as code reviewing body, tailored to the nature and duties of its grand jury. I was directed to modify the letter to advise that, while disqualification applies, disclosure requirements for grand jurors would be held in abeyance pending further discussion by the Commission. I revised the letter and it was sent out to all County Counsels and to other interested parties. A copy was previously sent to each of you, another copy is attached hereto for your convenience.

Essentially, the issue to be resolved is whether a statewide, uniform disclosure category and disclosure form should be adopted (perhaps with the assistance of the Administrative Office of the Courts) or whether the solution proposed in Diane's original draft letter should be adopted. That proposal would allow for maximum flexibility and leave these decisions at the local level.

REL:plh
Attachment