California
Fair Political
Practices Commission

November 14, 1985

David J. Oster
Authority Counsel
San Francisco State Building Authority
P. O. Box 646
San Francisco, CA 94101

Re: Your Request for Advice;
Our File No. A-85-229

Dear Mr. Oster:

You have written on behalf of the San Francisco State Building Authority member Steven A. Diaz to request our advice as to whether he has disclosure or disqualification requirements under the Political Reform Act (the "Act")[1/] arising from the following facts as presented in your letter.

FACTS

The State Building Authority is a joint exercise of powers entity, organized and operating pursuant to the California Government Code and pursuant to an agreement...the Authority was created for the specific purpose of financing the acquisition of land and the design and construction of the San Francisco State Building, and leasing the Building to the State of California. A lease agreement entitled the "San Francisco State Building Lease" was entered into between the Authority and the State as of September 1, 1983. The Conflict of Interest Code for the San Francisco State Building Authority...was approved by the Fair Political Practices Commission as the Code reviewing body.

Mr. Diaz has recently requested an opinion as to whether or not there would be a conflict of interest in regard to an Authority member's purchase of an interest in real property

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

428 J Street, Suite 800 • P.O. Box 807 • Sacramento CA 95804-0807 • (916) 322-5660

in Sacramento (which would not be within two miles of any land owned or used by the Authority) in which the State of California is a tenant. Mr. Diaz has advised that the prospective ownership interest may or may not exceed 10%, and that the pro rata share of annual rent from the State of California or related agency may or may not exceed $10,000.

ANALYSIS

If Mr. Diaz acquires a 10% or greater ownership interest in income-producing property which is operated as a business entity sources of income to that business entity are in turn a source of income to him on a pro rata basis (Section 82030(a)) and may be required to be disclosed pursuant to Sections 87207(b) and 87302(b). Thus, if the State of California is or becomes a tenant of Mr. Diaz's building and he owns 10% or more, the State would be a source of income to him on a pro rata basis. If the State is a pro rata source of income of $10,000 or more, Mr. Diaz will need to disclose the State of California on Schedule H of his Form 730. Furthermore, if there are any other tenants of the building whose pro rata income to him is $10,000 or more, he must also disclose them on Schedule H <u>if</u> they are doing business, etc., in San Francisco, as described in his disclosure category in the Authority's Conflict of Interest Code.

Mr. Diaz is not required to disclose his interest in the real property on Schedule B, because it is located outside the jurisdiction of the Authority. Likewise, he need not disclose his investment in the building nor the overall income he receives from the building (as opposed to his pro rata share of income from tenants), because it is located outside the jurisdiction.[2/]

With respect to disqualification issues, when a source of income to the business entity is a source of pro rata income of $250 or more to a 10% or greater owner, disqualification <u>may</u> be required. However, where the source of income is the State, we have held that an effect upon the State government is not distinguishable from an effect upon the public generally. Consequently, Mr. Diaz would not be required to disqualify himself from decisions of the Authority affecting the State of

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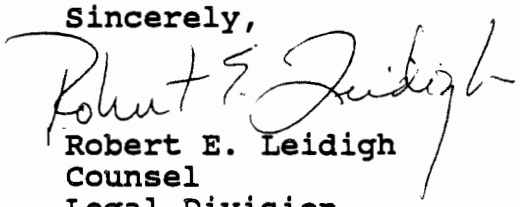
2/ However, if the business entity is headquartered in San Francisco (perhaps a partnership or corporation) it is "doing business" in the jurisdiction and both the investment in the business and income from the business who require reporting.

California. However, he cannot in any way use his official position as a member of the Authority to influence any State decisions relative to his business entity, such as whether or not to rent space in his Sacramento office building.

I trust this letter has adequately responded to Mr. Diaz's questions. Should you or he have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:nwm

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SAN FRANCISCO STATE BUILDING AUTHORITY

(415) 771-8800 939 ELLIS STREET • SAN FRANCISCO 94109
ADDRESS MAIL TO POST OFFICE BOX 646 • SAN FRANCISCO, CALIFORNIA 94101

October 30, 1985

FAIR POLITICAL PRACTICES COMMISSION
P. O. Box 807
Sacramento, CA 95804

Attention: Barbara Millman
General Counsel

RE: Request for Written Advice Letter

Gentlemen:

I am Counsel to the San Francisco State Building Authority, and am writing to request your advice on a matter raised by one of the members of the Authority's Governing Board, Mr. Steven A. Diaz.

The State Building Authority is a joint exercise of powers entity, organized and operating pursuant to the California Government Code and pursuant to an agreement entitled "Joint Exercise of Powers Agreement for the San Francisco State Building By and Between the State of California and the Redevelopment Agency of the City and County of San Francisco", dated as of December 23, 1982. The Authority was created for the specific purpose of financing the acquisition of land and the design and construction of the San Francisco State Building, and leasing the Building to the State of California. A lease agreement entitled the "San Francsico State Building Lease" was entered into between the Authority and the State as of September 1, 1983. The Conflict of Interest Code for the San Francisco State Building Authority, a copy of which is enclosed, was approved by the Fair Political Practices Commission as the Code reviewing body.

Mr. Diaz has recently requested an opinion as to whether or not there would be a conflict of interest in regard to an Authority member's purchase of an interest in real property in Sacramento (which would not be within two miles of any land owned or used by the Authority) in which the State of California is a tenant, as more fully set forth in his enclosed October 22, 1985 letter. In supplement to that letter, Mr. Diaz has advised that the prospective ownership interest may or may not exceed 10%, and that the pro-rata share of annual rent from the State of California or related agency may or may not exceed $10,000. He has further advised that he seeks an opinion which addresses both the disclosure and disqualification requirements applicable to the facts presented.

If you need further information in order to respond to this request for advice, please do not hesitate to call me at (415) 771-8800.

Thank you for your consideration of this matter.

Very truly yours,

DAVID J. OSTER
Authority Counsel

Enclosures

cc: Steven A. Diaz, Esq.

CONFLICT OF INTEREST CODE FOR THE SAN FRANCISCO STATE BUILDING AUTHORITY

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the San Francisco State Building Authority.

Pursuant to Section 4(A) of the standard Code, designated employees shall file statements of economic interests with the Authority. Upon receipt of the statements of the Authority Board, the Authority shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

Appendix A

Designated Employee	Disclosure Category
Authority Board Members and Alternates	1
Authority Counsel	1
Development Coordinator	1
State Architect	1
Deputy State Architect	1
Chief of Construction Services	1
Supervising Architect	1
Director, Department of General Services	1
Deputy Director, Department of General Services	1
Chief, Office of Facilities Planning and Development	1
State Project Coordinator	1
State Treasurer	*
Consultants 1/	1

* No disclosure obligations are established by this Code for the State Treasurer, who is specified in Government Code Section 87200. See 2 Cal. Adm. Code Section 18730(b)(3).

1/ Consultants should be included in the list of designated employees and should disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

With respect to consultants, the President of the Authority may determine in writing that a particular consultant, although a "designated person", is hired to perform a range of duties that is limited in scope and, thus, is not required to comply with the disclosure requirements described in this Section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of the disclosure requirements. The President shall forward a copy of this determination to the Fair Political Practices Commission. Nothing herein excuses any consultant from any other provisions of this Conflict of Interest Code.

Appendix B

General Provisions

When a designated employee is required to disclose investments, business positions and sources of income, he or she need only disclose sources of income from, investments in, or business positions in, business entities which do business in the City and County of San Francisco, plan to do business in the City and County of San Francisco, or have done business in the City and County of San Francisco within the past two years. In addition to other activities, a business entity is doing business within the City and County of San Francisco if it owns real property within that area.

When a designated employee is required to disclose interests in real property, he or she need only disclose real property which is located in whole or in part within, or not more than two miles outside, the boundaries of the area bounded by Franklin Street, Golden Gate Avenue, Van Ness Avenue and McAllister Street, in the City and County of San Francisco, or within two miles of any land owned or used by the San Francisco State Building Authority.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category, as indicated in Appendix A.

Disclosure Categories

Category 1

Designated employees in this category must, in the manner described above, report:

Sources of income from, and investments in, business entities of the type which contract with the Authority.

All interests in real property.

His or her status as a director, officer, partner, trustee, employee or holder of any position of management in any business entity or non-profit corporation of the type which contract with the Authority.

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OF COUNSEL

October 22, 1985

REDEVELOPMENT AGENCY
CITY & COUNTY OF SAN FRANCISCO
LEGAL DIVISION

OCT 23 1985

David Oster, Esq.
San Francisco State Building Authority
939 Ellis Street
San Francisco, Ca. 94109

Re: Legal Opinion on Conflict of Interest

Dear Mr. Oster:

By this letter I request your opinion as to whether there would exist a conflict of interest for a member of the governing board of the San Francisco State Building Authority by virtue of an ownership interest, held individually or as a general partner, in commercial property in Sacramento, California, in which property the State of California or any related agency is at the time of purchase or later becomes a tenant.

Your attention to this matter is appreciated.

Very truly yours,

Steven A. Diaz