



California Fair Political Practices Commission

May 9, 1986

Marjorie Baxter
Assistant City Attorney
City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063

Re: Your Request for Informal
Assistance; Our File
No. I-86-131

Dear Ms. Baxter:

You have written requesting our general guidance as to the interpretation and application of Government Code Section 87103.5. Because your request is not made on behalf of an identified requestor, we will treat it as a request for Informal Assistance under regulation 2 Cal. Adm. Code Section 18329 (copy enclosed).

You have posed the following set of facts:

FACTS

A Simi Valley Planning Commissioner owns an office supply business located at three separate locations in Simi Valley. He sells retail goods to a significant segment of the general public within the City.

Government Code §87103.5 states that if retail customers of a business entity constitute a significant segment of the public generally, and if the amount of income received from a customer by the business entity is not distinguishable from the amount of income received from its other retail customers, that customer is not a source of income to the business entity owner.

QUESTION

What guidelines do you recommend to interpret Government Code Section 87103.5 in order to determine what constitutes income which distinguishes one customer from another.

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ANALYSIS

The Political Reform Act (the "Act")^{1/} prohibits a public official from making, participating in making, or using his or her official position to influence the making of any governmental decision in which he or she has a financial interest. Section 87100. Section 87103 provides as follows:

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 the official or a member of his or her immediate family or on:

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

* * *

In the case of an official who owns a business entity, income from the business' customers is attributed to the official only if the official owns 10% or more of the business and then it is attributed only on a pro rata basis. Section 82030(a). Consequently, if an official owns only 10% of a business, a customer would have to spend \$2,500 or more to become a source of income. However, a sole proprietor business will reach the \$250 threshold at \$250 worth of business from the customer.

Thus, if the effect of a decision upon a customer who is a source of income to an official will be both material and

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

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distinguishable from the effect upon the public generally, disqualification will be required.

Government Code Section 87103.5 was added to the Act to address a particular concern. The concern was that a retail shop owner in a small town, at whose shop nearly everyone buys \$250 or more in goods in a year, would be virtually unable to serve on the city council or planning commission because almost everyone having an item before these bodies would be a source of income within the meaning of Section 87103(c). Under 2 Cal. Adm. Code Section 18702.1, disqualification would be required as to these customers' matters unless the "public generally" exception was applicable. Section 87103 and 2 Cal. Adm. Code Section 18703. Section 87103.5 was added to alleviate this concern by allowing participation so long as the affected customer was a member of the general public and the level of income provided to the shop owner was comparable to that provided by the other members of the general public. The exception was intended to be narrow so as to address the specific, small-town situation. Generally, it would not apply in diverse metropolitan areas, because seldom will a significant segment of the public within the jurisdiction be customers of a public official's business.

With that purpose in mind, we proceed to the discussion of what guidelines might be applied to the facts of your situation. The first of these is whether your client owns 10% or more of the business entity in question. Under Section 82030(a) sources of income to a business entity are sources of income (on a pro rata - i.e. proportional - basis) to any owner of 10% or more of that business entity. Thus, a 100% owner is attributed all of the gross payments from any given customer or client, while a 20% owner would be attributed one-fifth.

The second guideline is whether or not the business in question is retail in nature. The statute applies only in retail situations.

The third guideline is that the business must have sufficient retail customers of sufficient diversity to constitute a significant segment of the general public. For example, certain specialty retail shops will probably never have customers constituting a significant segment of the general public, even though they are retail businesses and even though they are the only such business in town. Again, in your client's specific situation, a retail stationery store selling to many individuals representing a cross-section of the populace would satisfy the requirement; whereas an office supply store selling to a much narrower sector would not. In each instance, it is really a factual question. However, in a

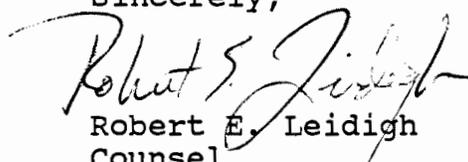
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metropolitan setting such as Simi Valley, which is not an isolated marketplace, it is not clear, without more facts, that a significant segment of the public is shopping at these stores.

The fourth guideline is that the members of the group of retail customers who are potentially a significant segment of the public must each spend "substantially the same" amount of money in the store during any given 12-month period. Assuming that this is the case, the last guideline relates to the specific customer (whose pro rata income to the business is \$250 or more during the preceding 12 months) who will be affected materially by, or who is the subject of, the decision in question. See, sections 87100 and 87103 and 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2. Section 87103.5 will exempt the official from disqualification where it would otherwise be required by Sections 87100 and 87103(c), if the customer's pro rata income to the official is not distinguishable from the amount of income received from the other retail customers which comprise a significant segment of the public in the official's jurisdiction. Dollar for dollar exactitude is not required. However, it is clear that if the group of retail customers being considered to be a significant segment of the general public has made expenditures annually with the official's business which are not substantially the same in amount as the customer in question, disqualification would be required. Again, a factual determination will be necessary before we can provide specific advice on this point. Stated conversely, if the affected customer has spent substantially more in the last 12 months at the official's business than the significant segment of the public, disqualification will be required.

I trust that the foregoing guidelines have been of assistance to you in understanding the facts which must be ascertained to complete the analysis. If you and your client desire more definitive advice, please provide more specific facts. We have enclosed a copy of our regulation 2 Cal. Adm. Code Section 18329. Should you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:sm
Enclosure

CITY OF SIMI VALLEY

2929 TAPO CANYON ROAD, SIMI VALLEY, CALIFORNIA 93063
(805) 583-6700

F P P C
APR 22 8 19 AM '86

April 16, 1986

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Dear Sirs:

A Simi Valley Planning Commissioner owns an office supply business located at three separate locations in Simi Valley. He sells retail goods to a significant segment of the general public within the City.

Government Code §87103.5 states that if retail customers of a business entity constitute a significant segment of the public generally, and if the amount of income received from a customer by the business entity is not distinguishable from the amount of income received from its other retail customers, that customer is not a source of income to the business entity owner.

What guidelines do you recommend to interpret Government Code Section 87103.5 in order to determine what constitutes income which distinguishes one customer from another?

We would appreciate an opinion as to this matter and any other information which you could supply to enable us to correctly advise our Planning Commissioner regarding conflict of interest code applications.

Very truly yours,


Marjorie Baxter
Assistant City Attorney
City of Simi Valley

dm

ELTON GALLEGLY, Mayor
GREG STRATTON, Mayor Pro Tem
ANN H. ROCK, Council Member
VICKY HOWARD, Council Member
GLEN W. McADOO, Council Member





California Fair Political Practices Commission

April 22, 1986

Marjorie Baxter
Assistant City Attorney
2929 Tapo Canyon Road
Simi Valley, CA 93063

Re: 86-131

Dear Ms. Baxter:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me 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,

A handwritten signature in cursive script, appearing to read "Robert E. Leidigh".

Robert E. Leidigh
Counsel
Legal Division

REL:plh