



California
Fair Political
Practices Commission

October 21, 1986

Paul H. Morgan
City Attorney,
City of Westminster
660 Newport Center Drive
Newport Beach, CA 92660

Re: Your Request for Informal
Assistance
Our File No. I-86-276

Dear Mr. Morgan:

You have asked for advice concerning the conflict of interest provisions of the Political Reform Act.^{1/} Your letter states only a general question concerning a candidate for mayor and does not mention any specific decision currently pending. Therefore, we consider your letter a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). In the future, we will be happy to provide formal written advice with respect to a specific decision if the candidate is elected. Please refer to Regulation 18329(b) to determine the information we require in order to issue formal written advice.

Additionally, we cannot provide advice regarding Section 1090.^{2/} The Commission's advice-giving function is limited to

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Section 1090 provides:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

questions under the Political Reform Act. Since the candidate is the agent for an insurance company which apparently has a contract with the City of Westminster, you should contact your local district attorney or the Attorney General's office regarding interpretation of Section 1090. This is particularly important in this candidate's case since he does appear to have a contractual relationship with the City.

FACTS

A candidate for Mayor of Westminster is the agent of record for a Colonial Life and Accident Insurance ("Colonial") policy sold by payroll deduction to Westminster City employees.

QUESTION

Under the Political Reform Act, may the candidate participate in governmental decisions involving the insurance company? Under what other circumstances related to the candidate's insurance business would he be required to disqualify himself?

CONCLUSION

The Political Reform Act does not bar the candidate from participating in a decision unless it is reasonably foreseeable that the decision would have a material financial effect on the insurance company, an insurance agency which employs the candidate, or a city employee known to be the source of \$250 or more in commission income during the preceding 12 months. The candidate must also disqualify himself (1) if his income or assets will be affected by \$250 or more by a decision, or (2) if his employer or a source of income of \$250 or more during the preceding 12 months appears before him (unless one of the exemptions discussed below applies).

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision 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 immediate family or on, among other things:

- (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.

Section 87103(c).

Regulation 18704.3 (copy enclosed) specifies the sources of commission income to brokers, agents and salespersons. Subdivision (c)(1) provides that the sources of commission income for an insurance broker or agent are:

- (A) The insurance company providing the policy;
- (B) The person purchasing the policy; and
- (C) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.

Under the regulation, Colonial is considered a source of income to the candidate. Presumably, he receives \$250 or more in commission income from this source in a 12-month period. Therefore, if a particular decision would have a foreseeable, material financial effect on Colonial, the candidate would be required to disqualify himself from participating in the decision. Disqualification would be required even if the candidate would not personally benefit from the transaction.

Regulation 18702.2 (copy enclosed) contains monetary guidelines for determining whether the effect of a decision will be considered material. Applying these guidelines to Colonial, which is listed on the National Association of Securities Dealers National Market List, a \$150,000 increase or decrease in the gross revenues of the business or the value of its assets during a fiscal year is considered material. Regulation 18702.2(d). A decision which results in the business incurring or avoiding expenses or reducing existing expenses by \$50,000 or more for a fiscal year would also be considered material under Regulation 18702.2(d).

Under Regulation 18704.3(c)(1)(B), the person purchasing a policy is also a source of commission income for an insurance broker or agent. If the candidate does not receive a commission of \$250 a year or more as a result of coverage provided to any individual city employee, he need not analyze the effect of governmental decisions on individual city employees prior to participating. However, if the commission

received equals or exceeds \$250 within 12 months prior to the time the decision is to be made, the candidate must disqualify himself if it is reasonably foreseeable that a particular decision will have a material financial effect, distinguishable from its effect on the public generally, on the city employee who is the source of this income.

It is important to note that the candidate would be required to disqualify himself only if he knew or had reason to know that he had such a financial interest in a decision. If he did not know or have reason to know that a particular city employee was the source of \$250 in income within 12 months prior to the time of the decision, he would not be required to disqualify himself.

Under Regulation 18704.3(c)(1)(C), the brokerage firm or agency through which the broker or agent conducts business is also a source of commission income for an insurance broker or agent. If the candidate is employed by such a firm or agency, he must also analyze the effect of governmental decisions on that source of income prior to participating. Presumably, the candidate would receive \$250 or more in income from this source in a 12-month period. Therefore, if a particular decision would have a foreseeable, material financial effect on the brokerage firm or agency, the candidate would be required to disqualify himself from participating in the decision.

As noted above, Regulation 18702.2 (copy enclosed) contains monetary guidelines for determining whether the effect of a decision will be considered material. If the insurance brokerage firm or agency is a small business, a \$10,000 increase or decrease in the gross revenues of the business for a fiscal year is considered material. Regulation 18702.2(g). You should carefully study Regulation 18702.2 to determine the appropriate standard for the insurance brokerage firm or agency.

The candidate must also disqualify himself if it is reasonably foreseeable that a particular decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family. Section 87103. If it is reasonably foreseeable that the personal expenses, income, assets or liabilities of the official or his immediate family will be increased or decreased by at least \$250 by a particular decision, the effect of the decision is material and the official must disqualify himself. Regulation 18702.1(a)(4) (copy enclosed). Thus, if any particular decision, including decisions involving Colonial, an insurance agency which employs the candidate, or a city employee, might foreseeably increase the candidate's income by \$250 or more, he must disqualify himself.

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Finally, the candidate should consider Regulation 18702.1(a)(1) and (2), in which the Commission has established further guidelines for disqualification. Under Regulation 18702.1(a)(1) a public official may not participate in a decision if a person or business entity which has been a source of income of \$250 or more in the preceding 12 months appears before the official in connection with a particular decision. Under Regulation 18702.1(a)(2) an official may not participate if a business entity which employs him appears before him in connection with a decision. Under these provisions, the candidate must disqualify himself if an insurance agency which employs him appears before him in connection with a decision. He must also disqualify himself if Colonial or a city employee who provided him with \$250 or more in commission income within the preceding 12 months appears before him in connection with a decision. A person or business entity "appear" before a public official when that person or entity, either personally or by an agent, initiates the proceeding in which the decision will be made by filing an application, claim, appeal or similar request, or is a named party in a proceeding such as a contract.

The disqualification requirements contained in Regulation 18702.1(a)(1) and (2) apply unless one of the exemptions listed in Regulation 18702.1(c) applies. The exemptions that may be available to the candidate in some cases are contained in Regulation 18702.1(c)(1) and (3). The former applies if the effect of the decision on the official, his family member, his source of income or his employer "will not be distinguishable from its effect on the public generally." The latter applies if "the decision will have no financial effect on the person or business entity who appears before the official."

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,



Diane M. Griffiths
General Counsel

DMG:plh
Enclosures

Law Offices
Paul H. Morgan

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September 10, 1986

Fair Political Practices Commission
1100 "K" Street
Sacramento, California 95814

Attention: Conflict of Interest Division

Gentlemen:

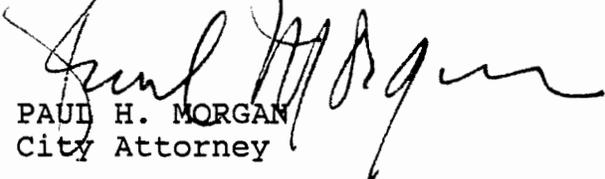
A candidate for Mayor has asked for an opinion as to whether or not there will be a conflict of interest if he is elected to the office, in that he presently is the agent of record for Colonial Life & Accident Insurance Company sold on payroll deduction in the City of Westminster. Enclosed is a copy of a letter addressed to him from his carrier on the subject.

Your prompt response would be greatly appreciated, since it may have a bearing on his candidacy.

Thank you for your courtesy and cooperation.

Very truly yours,

CITY OF WESTMINSTER


PAUL H. MORGAN
City Attorney

PHM/np

Enclosure



COLONIAL

LIFE & ACCIDENT INSURANCE COMPANY

F P C
SEP 16 3 15 AM '86

JOHN STEIGNER
VICE-PRESIDENT - FIELD RELATIONS

August 20, 1986

TO: Jules Kerker
FROM: John Steigner
Re: The City of Westminster

Dear Jules:

I am writing with regard to our conversation on the City of Westminster. It is my understanding that you are running for the Office of Mayor in the City of Westminster and you are also the agent of record for Colonial coverage sold on payroll deduction in the City of Westminster. In answer to your question with regard to the possible conflict of interest, I would say that from Colonial's standpoint we would not be concerned if you were elected mayor and were our agent of record for the payroll deduction coverage. We do suggest that you check with the officials of the City of Westminster to see if there is any City ordinance or written City policy with regard to an elected official representing a particular company.

If we can be of any help to you or answer any questions, please let me know.

Best wishes,


JS:lpk