



# California Fair Political Practices Commission

November 10, 1986

Afton Crooks  
University of California  
Board of Regents  
349 University Hall  
Berkeley, CA 94720

Re: Your Request for Advice  
Our File No. A-86-289

Dear Ms. Crooks:

This is in response to your October 3, 1986 letter concerning the conflict of interest code for the University of California.

## QUESTIONS

You have asked several questions relating to the requirement that business positions be disclosed on statements of economic interests. You have asked whether the conflict of interest code for the University of California should be amended to require such disclosure. Specifically, you have asked what the legal authority is for requiring the disclosure of business positions and for advice as to which disclosure categories should be changed.

## CONCLUSION

The University of California's conflict of interest code should be amended to require the disclosure of business positions. The discussion below describes the legal authority for this requirement and proposed amendments to the code.

## ANALYSIS

Government Code Section 87100<sup>1/</sup> provides that no public official at any level of state or local government shall make,

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<sup>1/</sup> 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.

participate in making, or attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision if the decision will have a material financial effect on, among other things, "any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management." (Section 87103(d), emphasis added.)

Section 83112 provides that the Commission may adopt regulations to implement and to further the purposes of the Political Reform Act. Section 3 of Regulation 18730 (the standard code) provides that designated employees shall disclose those kinds of interests made reportable by the employee's disclosure category. Disclosure categories are those kinds of interests (such as business entities in which the official is a director, officer, etc.), which an employee can foreseeably affect through the conduct of his or her office. Those economic interests, as described in the disclosure categories, shall be disclosed on the designated employee's statement of economic interests.

Accordingly, since a business entity in which an official is a director, officer, partner, trustee, employee or holds any other management position is an economic interest which may prompt disqualification if materially affected by a designated employee's conduct in office, it is appropriate that such business positions be disclosed. Section 87309(a) requires each conflict of interest code to provide "reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented."

Section 7, subsection D of Regulation 18730 (the standard code) (see, your page 4) already describes the manner to report business positions. It provides that when business positions are required to be reported, a designated employee shall list (1) the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, (2) a description of the business activity in which the business entity is engaged, and (3) the designated employee's position with the business entity.

The only necessary corrections to your code would be to the disclosure categories themselves. The disclosure category for principal investigators, Category 27, currently requires the disclosure of business positions. The remaining disclosure categories that require disclosure of investments or income can

Afton Crooks  
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easily be corrected by adding the phrase "and Business Positions" between the words "Investments ... in Business Entities." Since the need to disqualify depends on the effect of a particular decision on the business entity, it would not be necessary to amend the disclosure categories requiring real property disclosure.

You have further asked us to review a draft of the University's revised conflict of interest code. Your Insert A contains amendments to Commission Regulation 18730. Any amendments to that regulation must go through the proper rulemaking process as mandated by the Administrative Procedure Act. It would not be appropriate to make these changes to your code. Therefore, the language in Insert A should not be amended into your code.

The Commission may be considering proposed amendments to Section 18730 at its February meeting. Some of the proposed amendments are included in your Insert A. We will consider your thoughtful suggestions in drafting those amendments.

As to the amendments proposed in the definition of a gift (Insert B), we see no problem with that proposal. Please note, however, that the California Administrative Code reference should be to "2 Cal. Adm. Code Section 18726, et seq."

I hope this answers all of your questions. If this agency can be of any further assistance, please feel free to call (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Robert E. Leidigh  
Staff Counsel, Legal Division

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Senior Vice President—  
Administration

October 3, 1986

Mr. Robert Leidigh  
Fair Political Practices Commission  
P. O. Box 807  
428 J Street, Suite 800  
Sacramento, CA 95814

Dear Bob:

Enclosed is a draft revision of the University of California Conflict of Interest Code booklet for 1987. For ease of your review all proposed additions are shown by underlining and deletions by crossing-out.

We are proposing some changes to the standard terms of the Code itself. See insert at the top of page 5.

We are suggesting a change to the definitions section on page 23 to refer to the expanded information available on gifts.

Appendix A will be sent to you as soon as we have completed our proposed changes to the list of Designated Official positions. This should be about October 29.

We would like your advice on whether or not we should make any changes to the disclosure categories in regard to required reporting on business positions. As I wrote you on August 29, 1986, a question was raised how designated officials should know whether or not they should report business positions on financial disclosure statements, particularly in relation to their disclosure categories. Reviewing Regulation 18730, Section 6 of the standard Code (page 3 of our book), the State Manual of Instructions, the State forms (including their abbreviated instructions), and the law itself has not clarified the issue for me, since they are not consistent, or clear as to intent. Therefore, I would like your advice as to when such reporting must take place, what part of the law it is based on, and how these requirements would or would not cause a change to the disclosure categories listed in our enclosed Code book on pages 20 and 21. If you conclude that some or all of the disclosure categories must be changed, would you please answer the following questions. Which ones should be changed? What should be the revised language for those categories dealing with investments in business entities and income? What should be the revised language for those disclosure categories dealing with real estate only? In addition, will any other parts of our Code require

revision? By raising these questions, I hope that the State forms, the State Manual of Instructions, and the University's Code book can be brought into consistency, and can provide information and instructions in an understandable manner.

The University's public hearing on our revised Code is November 17. Therefore I would appreciate receiving your reactions to our proposed changes, and your advice on our questions about business positions by November 7.

Please let me know if I can answer any questions you have on these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Afton".

Afton E. Crooks

Attachments

cc: Managing University Counsel Morrison w/attachments

August 29, 1986

MEMO ON CONFLICT OF INTEREST CODE UPDATE FOR FALL 1986

The question was raised by Brian Hill, U.C. Daily Cal, how designated officials know they should report Business Positions on annual statements.

The basic requirement is found in the Code, Section 6 (p. 3 our Code) or Reg. 18730 p. 6. But in our book—Appendix B, you'd never know it was required. This should be changed.

Question: Should it be in the Disclosure Categories?

i.e. #3 Investments in business entities and income from and business positions in sources located within the State of California.

Question: Should it also be in Introduction?

Question: Should we add Business Positions to our Definition of Terms?

The Manual of Instructions, Schedule G states "You must report the name of any business entity for which you are a director, officer, partner, trustee, employee or hold a position of management." It is not qualified to mean in relation to your disclosure category, although the example does seem to do so.

Form 730, Schedule G states "Before completing this schedule, refer to your disclosure category to determine what type of disclosure applies to you."

Called above to Bob Leidigh's attention. He will check into Manual of Instructions and Forms.

We will make changes when we resubmit Code this fall. Our keys are correct as they are.

Afton E. Crooks

cc: D. Douglas  
J. Davis  
R. Leidigh



# California Fair Political Practices Commission

October 14, 1986

Afton Crooks  
University Coordinator  
University of California  
349 University Hall  
Berkeley, CA 94720

Re: 86-289

Dear Ms. Crooks:

Your letter requesting advice under the Political Reform Act was received on October 9, 1986 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 more information is needed, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jeanette E. Turvill".

Jeanette E. Turvill  
Legal Assistant  
Legal Division

JET:plh

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