



California Fair Political Practices Commission

December 31, 1986

Ralph O. Hill
68 Washington Street
P.O. Box 1293
San Juan Bautista, CA 94045

Re: Your Request for Informal
Assistance
Our File No. I-86-336

Dear Mr. Hill:

You have requested advice concerning your duties under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

You are running for City Council in the City of San Juan Bautista. Your wife has been appointed to the position of City Treasurer of San Juan Bautista. She will serve the remainder of the unexpired term of the previous treasurer, who resigned from office. You have asked whether you have a conflict of interest under the Political Reform Act if you are elected to the City Council and your wife is the City Treasurer.

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

Your letter states only a general question; it does not seek advice concerning a specific decision pending before the City Council. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

The Political Reform Act does not prohibit you from serving on the City Council if your wife is City Treasurer. However, you would be required to disqualify yourself from participating in any decision to discipline your spouse, or to set a salary for your spouse which is different from salaries paid to other officials of the city in a similar position.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence any 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, and therefore must disqualify himself from participating in that decision, if the decision would have a reasonably foreseeable material financial effect on the official or a member of his immediate family, or on any of the following interests:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
- (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.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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(a)-(e).

Therefore, under the Political Reform Act, you are not prohibited from serving as a member of the San Juan Bautista City Council when your wife is City Treasurer. However, you may be required to disqualify yourself from participating in certain governmental decisions.

Generally, the Political Reform Act prohibits public officials from making decisions affecting their private financial interests. Pursuant to Section 82030, "income" is defined to exclude salary from a government agency. Therefore, your wife's position as City Treasurer would not usually create a conflict of interest situation for you.

Regulation 18702.1(a)(4) (copy enclosed) prohibits a public official from participating in any decision which would foreseeably increase or decrease the personal expenses, income, assets or liabilities of the official or his immediate family by at least \$250. However, that regulation also provides:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

* * *

(2) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position;

Regulation 18702.1(c)(2).

Therefore, a decision to increase the salaries of all elected officials in the City of San Juan Bautista would not create a conflict of interest situation for you, even if it would increase your wife's income by \$250 or more. Similarly, a decision which affects the City Treasurer's budget, but does

Ralph O. Hill
December 29, 1986
Page 4

not change your wife's salary as City Treasurer, would not require your disqualification. However, a decision on discipline of your wife, or a decision to increase or decrease only her salary, as opposed to the salaries of all elected city officials, by \$250 or more per year, would require your disqualification. (See Advice Letter to Lance Olson, No. A-85-242, copy enclosed.)

This advice is limited to interpretation of the Political Reform Act. You should consult the City Attorney concerning Government Code Section 1090, which prohibits public official's from making contracts in which they have a financial interest.

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

Sincerely,

DIANE M. GRIFFITHS
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

KED:sm
Enclosure

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
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DEC 15 9 41 AM '86

RALPH O. HILL
68 WASHINGTON STREET
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SAN JUAN BAUTISTA, CALIFORNIA 94045

DEAR KATHRYN E. DONOVAN
COUNSEL LEGAL DIVISION

I am running for City Council of San Juan Bautista and the idea of conflict has entered the picture since I tied for the third seat.

My wife is the city's bookkeeper as a hired employee and since has been appointed as City Treasurer to finish out the elected term of the previous elected City Treasurer, who choose to resign the position.

I am aware of the fact that I can not vote on anything pertaining to my wifes salary as an individual. I also plan to abstain from any issues that pertain to anything that I may be directly able to gain from.

Enclosed are a couple of newspaper clippings that may explain better than I am able to on the conflict interest.

I would appreciate any help in this matter that you can give me, as my run off election is January 6, 1987, as you can see time is of the essence in this matter.

Thank you for your prompt responce to this matter.

Sincerely,


Ralph O. Hill

Attachments (2)

education and participation project. Slate mailers should not be allowed to use misleading information. SCLCGLA strongly encourages more strict regulations of slate mailings.

LARRY FRANK: L.A. Jobs with Peace Initiative Campaign. Had the endorsement of the California Democratic Party County Central Committee. In the last three weeks of the campaign, there were five separate mailers that went out against them. Every campaign is responsible for listing a campaign ID number and treasurer next to every expenditure on their literature. Yet, with slate mailers there seem to be ways to get around that obligation.

DANIEL LOWENSTEIN: Professor of Law at UCLA. Slate mailers are a very valuable part of the political process. There are two major advantages to slate mailers as a medium of campaign communication: (1) They are very cost effective; the cost of mail is shared by many different campaigns; and (2) they are uniquely suited for a very valuable type of communication: to voters who are inattentive and don't have the time to study the ballot. As communication, it can be desirable, but like any other communication it can be deceptive. The problem is not with the medium of communication, which is very valuable, but with its abuse.

There are three kinds of disclosure: (1) The kind that appears on the face of the slate; (2) campaign reports that are filed; and (3) disclosures by the press. With regard to the disclosure on the face of the slate, the Commission should examine the extra disclaimers made by slate mailer organizations and consider adding some of those disclaimers to requirements. However, it is important to remember that the available space is limited. The second type of disclosure, in campaign reports, was once permitted by the PRA and should now be required. Commissioner Montgomery asked if slate mailer organizations should report as committees. Mr. Lowenstein said for technical reasons that the slate mailer organizations should not be regarded as political committees, but he does believe they should file reports containing all the information that committees are required to report. He would not suggest that the Commission follow the F.E.C. requirements, however. The reports should include a list of all candidates and measure endorsed. Regarding the third type of disclosure, disclosure by the press, Mr. Lowenstein stated that newspapers need to be more active in publicizing political campaigns. Improved financial reporting will help the press get information.

Commissioner Montgomery suggested that the size of the type used for the disclaimer must be increased to be readable. He also suggested that the disclaimer should include a statement that the mailer is an unofficial publication, that the President, Governor, etc. were not involved in its production, and that the candidates are not necessarily endorsing each other. Mr. Lowenstein replied that the disclaimer will be as small as the law permits, but suggested that the type size might be increased from 6-point type to 8-point type. Commissioner Montgomery suggested that the disclaimer be in the same size type as the other information on the mailer. Mr. Lowenstein said that slate mailer organizations will try to use as little space as possible for the disclaimer because space is valuable and they don't receive any money for that space; a disclaimer in type as large as the largest type on the slate would be unreasonable.

Commissioner Lemons suggested a clear disclaimer that the mailer is produced by an organization that is not an official party, but is a profit-making entity. Mr. Lowenstein stated that he considered the disclaimer that candidates are not endorsing one another to be the most important. However, he would not support a disclaimer which states that candidates may not have been contacted or may not be informed of their placement on the mailer. He suggested that the Commission continue to require the asterisk by the names of paying candidates.

Senator Royce stated that slate mailer organizations are making in-kind contributions to candidates who are listed for free. Mr. Lowenstein replied that the decision to list candidates is made without coordination or consultation between BAD Campaigns and the candidates. Therefore, free listing is not an in-kind contribution. Under federal law, the slate mailer organizations are making an independent expenditure.

JOSEPH REMCHO: Attorney at Law. Mr. Remcho stated that he was "appearing on my own hook," not on behalf of his client, Republic Media Group. Mr. Remcho feels that the problems articulated regarding slate mailers result from over-regulation rather than under-regulation. If the political parties were not prohibited from endorsing candidates in the primaries, much of the problems would not occur [because the parties would put out their own slates]. Mr. Remcho agreed with the idea that a disclaimer should appear on slate mailers to make it clear that it should not be implied that anyone candidate appearing on a slate mailer endorses any other candidate or measure also appearing on the same slate mailer. Furthermore, he feels that there

should be a requirement for such a disclaimer to be of substantial size because that is the only way to force the market place to devote space to a "reasonable" disclaimer. He said that he would have no problem with a requirement for 10-point type; that is reasonable. Mr. Remcho described his client, Republic Media Group, as a couple of businessmen who got together and worked hard to put together a slate mailer.

DAN CARASSO: Mr. Carasso stated that he is a private investigator by profession who has been a volunteer for many years in the body politic. He stated that he is dedicated to preserving our democratic system. He was particularly concerned about a slate mailing that purported to be "nonpartisan", but which he believed really was partisan. He felt that there was very serious wrong doing here and that there is a need for a special prosecutor.

GARY LIPTON: Mr. Lipton has served as an unpaid campaign manager in a local school board election held during 1985. He stated that he was not being paid to appear before the Commission, just as he was not paid as a campaign manager. He had worked in the campaign of Elizabeth Ginzberg, who was endorsed by the Los Angeles Times. Her opponent was David Armor. He stated that Mr. Armor spent \$20,000 to appear on a slate mailer published by BAD Campaigns slate mailer claimed to be presenting its slate as the "Democratic Team", for the Primary Election. In the General Election, Mr. Armor again appeared in a BAD Campaigns slate mailer which labeled itself as a "Voter Guide for Democrats." Mr. Lipton proposed several solutions for the Commission's consideration:

1. A disclaimer that the slate mailer is unofficial and is not put out by any party.
2. A disclaimer that the slate mailer is a paid political advertisement published by a private firm.
3. The amount which each candidate or committee has paid should be listed.
4. It should be made illegal to engage in deception with respect to party endorsements.

PATRICIA HOFFMAN: Santa Monicans for Renters' Rights; member of the Santa Monica City Council. Her group used slate mailers; so did their opponents. The opponents used the following tactic which she believes were intended to confuse the voters: portraying themselves as Democrats when they were not; using slogans similar to the slogans used by

Santa Monicans for Renters' Rights; using same format for slate mailers produced by the renters' rights group so that mailers would look alike.

Ms. Hoffman offered several suggestions for regulating slate mailers. She suggested that when a mailer refers to a political party, the political party of candidates endorsed in the mailer should be stated in the mailer. She would like "look-alike" mailers prohibited. She thinks the size of disclaimers should be increased. She suggested that when pictures or quotes are used, they should be dated and accompanied by a disclaimer that no endorsement is implied. She would like to require slate mailer organizations to file campaign reports. Finally, she suggested stiff penalties for violations.

KELLY OLSON: Santa Monicans for Renters' Rights. His group's opponents used handouts and door hangers which confused voters by using a name very similar to his group's name. He suggested that the name of political groups should be protected in a manner similar to copyright. He also suggested disclaimers on handouts and door hangers as well as on mailers. He believes the disclaimers should be in at least 9-point type.

MICHAEL DAVIS: Candidate for Assembly. He appeared on the Republic Media Group slate, but was not successful. He made four suggestions: (1) Slate mailer organizations should be required to make public disclosure like other political committees. This disclosure should include who is involved in selecting candidates for the slate. (2) Slate mailer organizations should use some type of objective criteria for selecting candidates for placement on slates. Placement should be made available to all candidates. (3) Improve enforcement of existing disclaimers. Voters look to slates as guides. The slates are distributed in the final days of the election campaign, making enforcement difficult. (4) Prohibit inclusion of candidates on a slate who have not consented to appear on the slate. It is unfair that some candidates get a free ride.

RICHARD HODGIN: Northeast Democratic Club; Chair of Peace with Justice Commission. He was involved in Proposition V Campaign in Los Angeles. BAD Campaigns sent out two mailers featuring Cranston. The first was authorized by Cranston and did not mention Proposition V. He was told the second was not authorized by Cranston. The second mailer arrived the day before the election and opposed Proposition V in two places. Both mailers included the same quote by Cranston; however, the quotation marks used are different, presumably because Cranston authorized the first mailer, but not the second.

EDWARD DUNCAN: Interested voter. He uses certain slate mailers to eliminate candidates. He says slate mailers exemplify "politics for profit" and "freedom of misinformation." He suggests asterisks by names of paying candidates and measures should be required and slate mailer organizations should be required to get candidate approval. He also suggested that copies of all mailers should be sent to one point and kept on file.

4. Adjourned open session into closed session at 1:30 p.m. to discuss enforcement cases, personnel matters, and pending potential litigation (Government Code Sections 83110, 11126(a), (d) and (q)).
5. Reconvened into open session at 2:45 p.m. Chairman Larson announced approval of the administrative law judge's decision in the John Sutton case.
6. MINUTES: A motion to approve the minutes of November 11, 1986, was made by Mr. Lee and seconded by Mr. Larson. The motion carried.
7. EXECUTIVE DIRECTOR'S REPORT: Mr. Baugher notified the Commissioners of the change of location of the Long Beach Commission Meeting scheduled for January 13. The meeting will take place at the Hyatt Edgewater, Courtyard Room, 6400 East Pacific Coast Highway, Long Beach. Mr. Baugher discussed upcoming training seminars and workshops and notified the Commission that the FPPC cannot afford a toll-free telephone number. (We can accept collect calls.)
8. LEGISLATIVE MATTERS: General Counsel Diane Griffiths briefed the Commissioners on some non-controversial legislative matters. A motion to approve the legislative proposals was made by Commissioner Lemons and seconded by Commissioner Montgomery. The motion carried.
9. REGULATIONS: Kathy Donovan gave the Commissioners a summary of the local audit selection regulation and discussed the revised draft regulation. Bob Leidigh gave the Commissioners a summary of the standard conflict of interest code regulation. These Regulations will be noticed for the February Commission meeting.
10. CONFLICT OF INTEREST CODE: A motion to approve the conflict of interest code for the Office of the State Treasurer was made by Mr. Montgomery and seconded by Mr. Lemons. The motion carried.

Minutes of Meeting
December 9, 1986
Page 10

11. ADVICE LETTERS: A motion carried to approve the advice letters.
12. Chairman Larson adjourned the meeting at 3:10 p.m. The next scheduled Commission meeting is January 13 in Long Beach.

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Sincerely,


Ralph D. Hill

Attachments (2)

Newspaper clippings not included with this letter. Mr. Hill sent ~~the~~ the clippings with his original letter in mid- to late November. That letter never arrived (see wrong zip code above). This letter is a copy of the original, but he had no copies of the clippings to send.



California Fair Political Practices Commission

December 19, 1986

Ralph O. Hill
68 Washington Street
P.O. Box 1293
San Juan Bautista, CA 94045

Re: 86-336

Dear Mr. Hill:

Your letter requesting advice under the Political Reform Act was received on December 15, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, 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. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh