



California Fair Political Practices Commission

February 17, 1987

James R. Christiansen
1607 Chapala Street
Santa Barbara, CA 93101-2911

Re: Your Request for Informal
Assistance
Our File No. I-87-018

Dear Mr. Christiansen:

You have requested advice on behalf of Mr. Kenneth L. Verkler, a member of the Solvang City Council, concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter states only a general question and does not concern a specific decision pending before the Solvang City Council; therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

FACTS

The Santa Ynez Valley Hardware and Garden Store is the only general purpose hardware store in Solvang and for miles around. Mr. Verkler is the general manager of that store, and intends to purchase all outstanding shares in the corporation which owns the store.

QUESTIONS

1. As owner of the Santa Ynez Valley Hardware and Garden Store, when must Mr. Verkler disclose the names of the store's customers on his statement of economic interests?

^{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/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. As owner of the store, when must Mr. Verkler disqualify himself from participating in a decision which could foreseeably affect one of his customers?

CONCLUSIONS

1. As owner of the store, Mr. Verkler must disclose on his statement of economic interests the name of any customer whose payments to the store total \$10,000 or more in any calendar year.

2. As owner of the store, Mr. Verkler must disqualify himself from participating in a decision if it would:

(a) Affect a customer who has provided at least \$250 in gross receipts to the store and who has provided an amount of income to the store that is distinguishable from the amount of income received from most other retail customers; and

(b) Affect that customer in a manner that is foreseeable, material and distinguishable from its effect on the public generally.

ANALYSIS

Disclosure

Your first question concerns the disclosure requirements of the Act. As a member of the city council, Mr. Verkler is required to disclose, among other things, his sources of income. (Sections 87203 and 87204.) With certain exceptions, income includes salary, wages, all other payments received, and a pro rata share of the income received by any business entity in which the official owns a 10-percent or greater interest. (Section 82030.) The general rule for a 100-percent owner is that all customers who are sources of income to the store are considered sources of income to the store owner.

When an official is required to disclose his pro rata share of income to a business entity, the official's statement of economic interests must contain:

(1) The name, address, and a general description of the business activity of the business entity; and

(2) The name of every person from whom the business entity received payments if the official's pro rata share of the gross receipts from such person was equal to or greater than \$10,000 during the calendar year. (Section 87207(b).)

Therefore, Mr. Verkler is required to disclose on Schedule H-2 of Form 721 the name of each customer whose gross payments to the hardware store were equal to or greater than \$10,000 during the calendar year.

You should note that Mr. Verkler also is required to disclose his investment in the corporation which owns the hardware store on Schedule A of Form 721. His interest in the hardware store should be disclosed on Schedule C-2. In addition, he must disclose the corporation/hardware store as a source of income on Schedule D of Form 721 if his pro rata share of the gross income received by the corporation or hardware store is \$250 or more in a calendar year. (Section 87207(a).)

Disqualification

Your second question concerns the disqualification requirements of the Act. Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An 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, among other things, any source of income aggregating \$250 or more provided to, received by, or promised to the official within 12 months prior to the time when the decision is made. (Section 87103(c).)

Accordingly, Section 87103(c) states the general rule that Mr. Verkler may be required to disqualify himself from a decision which could affect any person who has provided income of \$250 or more to him during the 12 months preceding the decision. As discussed above, customers of Mr. Verkler's hardware store are considered sources of income to him based on his pro rata share of the gross receipts of the business. Since he will be the sole owner of the business, any person who provided a total of \$250 or more in gross receipts to the store during the 12 months preceding a decision will be considered a source of income of \$250 or more to Mr. Verkler. Accordingly, Mr. Verkler could be required to disqualify himself from any decision which affects one of his customers who has purchased \$250 or more from his store in the preceding 12 months.

There is an exception to this general rule, however, and it applies to Mr. Verkler's situation. Section 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 for purposes of Section 87103(c). Section 87103.5 was intended to address the concern that in a small town, a retail store owner who is a public official could be unable to participate in virtually all governmental decisions if the general rule applies. If almost everyone in town buys at least \$250 in merchandise at the public official's store, then nearly the entire town would be a source of income of \$250 or more to the official, and the official would be unable to participate in most decisions before his agency. Section 87103.5 was intended to alleviate this concern by allowing the official's participation so long as the affected customer is a member of the general public and the level of income provided to the store owner is comparable to that provided by other members of the general public. (See Baxter Advice Letter (No. I-86-013), copy enclosed.)

We conclude it is appropriate to apply Section 87103.5 in Mr. Verkler's case. He owns 100 percent of a retail business in a small city. His store is the only general hardware store in the city and for miles around, and it is the type of business that sells to a significant segment of the public. Pursuant to Section 87103.5, Mr. Verkler may participate in a decision affecting one of his retail customers so long as the income his store receives from that customer is substantially the same as the amount of income the store receives from its other retail customers. However, if a decision would affect a customer who provides considerably more income to Mr. Verkler's store than other retail customers, Section 87103.5 would not exempt Mr. Verkler from the disqualification requirements of the Act.

For example, you have informed us that certain of Mr. Verkler's retail customers do a large volume of business with his store. These customers include some ranchers, hotels and possibly some developers. These customers receive a discount because of the large quantities they purchase from the hardware store. It appears that the amount of income Mr. Verkler's store receives from these customers is distinguishable from the amount of income the store receives from the other retail customers. Therefore, Section 87103.5 would not exempt Mr. Verkler from the disqualification requirements of the Act with respect to these large volume customers.

You have suggested a method for ensuring Mr. Verkler's compliance with the disqualification provisions of the Act when the city council is faced with a decision which would affect one of Mr. Verkler's customers. With certain modification, your proposal is workable. For instance, it should take into account Section 87103.5. In addition, it should inform Mr. Verkler of his duty to disqualify himself from decisions which could indirectly affect a customer. Certain city council decisions will affect more than the applicants. Mr. Verkler would be required to disqualify himself from participating in such a decision when a customer who is considered a source of income would be foreseeably and materially affected by the decision, in a manner that is distinguishable from the effect on the public generally. Therefore, your proposal should be modified as follows:

1. The city staff will prepare in advance a list of those applicants who are expected to appear on the next city council agenda and a description of the subject matter of the decisions pending before the city council.

2. Mr. Verkler will give that list to his bookkeeper prior to the meeting and the bookkeeper will review with due diligence the store's income for the last 12 months. If the store received gross payments of \$250 or more from any person on that list, and if the amount of income the store received from that person was distinguishable from the amount of income it received from its other retail customers, the bookkeeper will inform Mr. Verkler.

3. Mr. Verkler will disqualify himself from participating in any decision in which a reported customer is an applicant or a named party, or which would otherwise foreseeably and materially affect a reported customer in a manner that is distinguishable from its effect on the public generally. (See Regulations 18702, 18702.1, 18702.2 and 18703, copies enclosed.)

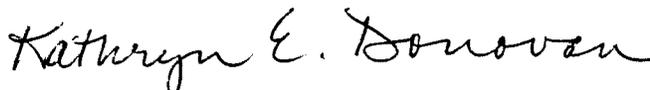
As you stated in your letter, Mr. Verkler is required to disqualify himself from participating in a decision only if he knows or has reason to know that he has a financial interest in the decision. The procedure described above would be evidence of Mr. Verkler's good faith effort to comply with the disqualification requirements of the Act. We caution, however, that he cannot transfer his duties under the Act to his bookkeeper. If Mr. Verkler has reason to believe that a decision would foreseeably and materially affect a customer who does a relatively large volume of business with his store, and the effect on that customer would be distinguishable from the effect on the public generally, then Mr. Verkler must refrain from participating in the decision.

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

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures