



California Fair Political Practices Commission

February 17, 1987

Ralph H. Prince
City Attorney
300 North D Street
San Bernardino, CA 92418

Re: Your Request for Informal
Assistance
Our File No. I-87-027

Dear Mr. Prince:

You have requested our advice concerning your authority to act as civil prosecutor for violations of the Political Reform Act (the "Act").^{1/} Your letter states only a general question; therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).

QUESTION

Section 91001.5 empowers the elected city attorney of any charter city to act as the civil prosecutor with respect to violations of the Act occurring within the city. How does this statute affect the confidential attorney-client relationship between the elected city attorney and city officials?

CONCLUSION

The Rules of Professional Conduct of the State Bar of California and Business and Professions Code Section 6068(e) establish the confidential nature of the attorney-client relationship between the elected city attorney and city officials. Section 91001.5 does not affect the confidential nature of that relationship.

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

ANALYSIS

Section 91001.5 provides:

In any case in which a district attorney could act as the civil or criminal prosecutor under the provisions of this title, the elected city attorney of any charter city may act as the civil or criminal prosecutor with respect to any violations of this title occurring within the city.

Section 91001 lists the various officials who are responsible for enforcement of the Act. It provides that district attorneys are the criminal and civil prosecutors with respect to local agencies. Section 91001.5 provides that in addition to the district attorney, the elected city attorney of a charter city may act as the civil or criminal prosecutor with respect to violations of the Act occurring within the city.^{2/}

In our telephone conversation, you stated that your question was prompted by the recent State Bar disciplinary action against former Los Angeles City Attorney Ira Reiner (In re Reiner (August 22, 1986) No. LA 83-1382 and LA 84-1414). In that case, the State Bar ordered the public reproof of an elected city attorney for, among other things, using confidential information, obtained from a city official during the course of the attorney-client relationship, to prosecute that same official for alleged violations of the conflict of interest laws. You expressed concern that you could face the same ethical problems as a result of your conflicting responsibilities as prosecutor, pursuant to Section 91001.5, and as legal advisor to city officials, pursuant to the city charter.

We agree with your conclusion that Section 91001.5 expands your authority beyond that specified in the city charter. However, Section 91001.5 is permissive, not mandatory. Therefore, it does not follow that Section 91001.5 changes the confidential nature of advice you have provided to city officials in your role as legal advisor pursuant to the city

^{2/} As originally enacted, Section 91001 provided that each city attorney was the civil prosecutor with respect to the city and its agencies. This was changed in 1976 due to ethical concerns raised by many appointed city attorneys. (See, Beardsley Advice Letter (No. A-84-166), copy enclosed.)

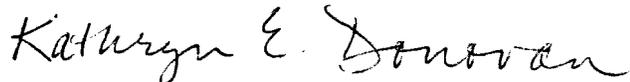
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charter. We recognize that the Rules of Professional Conduct and Business and Professions Code Section 6068(e) affect your ability to act simultaneously as legal advisor and civil prosecutor concerning the Act. However, we believe the State Bar is the appropriate authority to answer questions regarding any potential ethical dilemma for elected city attorneys.

Please contact me at (916) 322-5901 if we can be of any assistance to you in working with the State Bar to resolve these problems.

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh



CITY OF SAN BERNARDINO

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300 NORTH "D" STREET, SAN BERNARDINO, CALIFORNIA 92418

RALPH H. PRINCE
CITY ATTORNEY

January 12, 1987

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Mr. John G. McLean
Counsel, Legal Division
California Fair Political
Practices Commission
428 "J" Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Re: Political Reform Act

Dear Mr. McLean:

I request an opinion concerning the authority of an elected city attorney of a charter city to act as a civil prosecutor with respect to violations of the Political Reform Act of 1974.

Government Code Section 91001.5 provides as follows:

"In any case in which a district attorney could act as the civil or criminal prosecutor under the provisions of this title, the elected city attorney of any charter city may act as the civil or criminal prosecutor with respect to any violations of this title occurring within the city."

Government Code Section 91001.5, effective in 1976, appears to empower the elected city attorney of any charter city to act as the civil prosecutor with respect to violations of Title 9 of the Government Code occurring within the city. The issue raised is whether Government Code Section 91001.5 preempts the field.

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Title 9 of the Government Code, the Political Reform Act of 1974, approved by the electorate effective January 7, 1975, is comprehensive legislation which occupies the field of political reform matters. Section 81013 does permit the Legislature to impose "additional requirements on any person . . .". Section 91001.5 may impose such an additional requirement on elected city attorneys of charter cities.

Please advise whether the State Legislature intended by the enactment of Government Code Section 91001.5 to empower elected City Attorneys of charter cities to act as the civil prosecutor with respect to violations of Title 9.

Your assistance will again be much appreciated.

Sincerely yours,



RALPH H. PRINCE
City Attorney

RHP:pmm



California Fair Political Practices Commission

January 21, 1987

Ralph H. Prince
San Bernardino City Attorney
300 North "D" Street
San Bernardino, CA 92418

Re: 87-027

Dear Mr. Prince:

Your letter requesting advice under the Political Reform Act was received on January 16, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. 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