



California Fair Political Practices Commission

May 15, 1987

Ronald S. Erickson
Deputy County Counsel
463 Second Street
Yuba City, CA 95991

Re: Your Request for Informal Assistance
Our File No. I-87-119

Dear Mr. Erickson:

You have requested guidance regarding the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your question concerns application of the conflict of interest laws to a member of the California Highway Patrol. The county counsel's office is not the authorized representative of the California Highway Patrol; therefore, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

Does a conflict of interest exist if a Highway Patrol officer teaches or has an ownership interest in a school which provides first offender drinking driver classes pursuant to court referral?

CONCLUSION

There is no conflict of interest under the Act if a Highway Patrol officer teaches or has an ownership interest in a school which provides first offender drinking driver classes pursuant to court referral. We reach no conclusion as to the application of laws such as Sections 1090 and 19990, which may place restrictions on the activities of the Highway Patrol officer.

^{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.

^{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).)

FACTS

A Highway Patrol officer proposes to establish or participate in establishing a school which would provide first offender drinking driver classes in Sutter County pursuant to court referral. In order for such a school to be placed on a court's referral list, it must be approved by the county mental health advisory board and the board of supervisors.

The Highway Patrol officer has informed you that in the course of his duties for the California Highway Patrol, he arrests drunk drivers.

ANALYSIS

Government Code Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he has a financial interest. An official has a financial interest in a governmental 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:

(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).

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A "public official" is any member, officer, employee or consultant of a state or local government agency. (Section 82048.) The Highway Patrol officer is an employee of a state agency. Therefore, he is considered a "public official" for purposes of the Act.

In the situation you have presented, the Highway Patrol officer would have an investment interest in the school which provides first offender drinking driver classes, would receive income for teaching at the school, and/or would be a director, officer, partner or employee of the school. Thus, the Highway Patrol officer would be required to disqualify himself from participating in any governmental decision which foreseeably and materially affects the proposed school.

You have stated that the Highway Patrol officer arrests drunk drivers. We note that the Highway Patrol officer does not refer convicted drunk drivers to rehabilitation programs, nor does he determine guilt. That determination, as well as referrals, are made by the courts. Accordingly, the Highway Patrol officer has no power to use his official position to directly benefit the proposed school. It is possible, however, that the Highway Patrol officer could indirectly benefit the proposed school by making drunk driver arrests. Thus, we must determine whether the Highway Patrol officer's decision to arrest a drunk driver is a governmental decision within the meaning of Sections 87100 and 87103.

When a public official has a financial interest in a governmental decision, the official is required to disqualify himself from participating in the decision. The procedure for disqualifying a Highway Patrol officer from participating in a drunk driving arrest, which would require contact to be made with another officer to make the arrest, would be very cumbersome. We note that the conflict of interest code for the California Highway Patrol does not include the officers who make arrests on the highways as "designated employees." Thus, that agency has determined that officers do not participate in decisions which may foreseeably have a material effect on financial interests. (See Section 87302.) We conclude, therefore, that an arrest is generally not the type of governmental decision which is subject to the conflict of interest provisions of the Act. We think the concerns stated in your letter are best addressed by the Highway Patrol's statement of incompatible activities adopted pursuant to Section 19990 rather than the conflict of interest provisions of the Act.

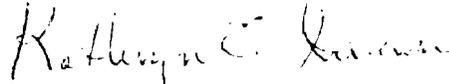
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Accordingly, we conclude that there is no conflict of interest under the Act if a Highway Patrol officer teaches or has an ownership interest in a school which provides first offender drinking driver classes pursuant to court referral. However, we express no opinion as to the applicability of Sections 1090 and 19990, which may restrict the officer's activities. Those provisions are not part of the Act. Therefore, we cannot provide advice as to their application.

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

Sincerely,

Diane M. Griffiths,
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

KED:km
Enclosure

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SUTTER
463 SECOND STREET
YUBA CITY, CALIFORNIA 95991
PHONE 741-7110

DARRELL W. LARSEN
County Counsel

RONALD S. ERICKSON
JAMES SCANLON
PAUL M. STARKEY
Deputy County Counsel

April 14, 1987

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Fair Political Practices
Commission
Legal Division
P. O. Box 807
Sacramento, CA 95804

RE: REQUEST FOR AN OPINION/CONFLICT OF INTEREST

Gentlemen:

The purpose of this letter is to request guidance with regard to a conflict of interest question which has been presented to this office, based on the following facts:

A member of the California Highway Patrol proposes to establish or to participate in establishing a school which would provide first offender drinking driver classes in the community. If such school is approved it would be placed on a court referral list for convicted drunk drivers who are required to participate in such a program. In order for the school to be placed on the court's referral list, it must be approved by the County Mental Health Advisory Board and the Board of Supervisors.

The Highway Patrolman states that in the course of his duties for the Highway Patrol he arrests drunk drivers. The issue has been presented as to whether participating in a drinking driver school under such circumstances would conflict with his Highway Patrol duties.

Specifically, I believe, our questions are two:

1. Does a conflict of interest exist if a Highway Patrolman, who arrests drunk drivers, has an ownership interest in a school which provides first offender drinking driver classes pursuant to court referral?
2. Provided such school is owned by a third party, can the Highway Patrolman teach drinking driver classes for monetary remuneration?

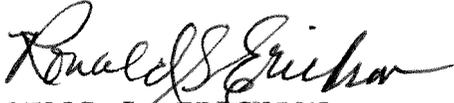
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Because of the county approvals involved in establishing this school, the County would like an opinion as to whether a conflict of interest exists prior to giving consideration to the school's application.

Thank you for your consideration in this matter.

Very truly yours,

DARRELL W. LARSEN
SUTTER COUNTY COUNSEL

A handwritten signature in cursive script, appearing to read "Ronald S. Erickson".

RONALD S. ERICKSON
DEPUTY COUNTY COUNSEL

RSE:js



California Fair Political Practices Commission

April 20, 1987

Ronald S. Erickson
Deputy County Counsel
Sutter County
463 Second Street
Yuba City, CA 95991

Re: 87-119

Dear Mr. Erickson:

Your letter requesting advice under the Political Reform Act was received on April 17, 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 if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh