



California Fair Political Practices Commission

June 19, 1987

Jim Gilbertie
CAT Publishing Company
P.O. Box 2197
Redding, CA 96099

Re: Your Request for Advice
Our File No. A-87-149

Dear Mr. Gilbertie:

You have written with regard to your telephone call to me of May 28, 1987. Your written characterization of our conversation contains several inaccuracies which need to be noted.^{1/} In addition, during the course of our conversation, you did not inform me of the correspondence being exchanged between yourself and the administration of the Shasta-Tehama-Trinity Joint Community College District (the "district").^{2/}

QUESTION

Under the provisions of the Act, may you, as a college instructor, use in your classroom a textbook of your choice, even though it is published by your company and you will receive royalties?

^{1/} My discussion with you related only to the provisions of the Political Reform Act (the "Act"), not to "state laws" generally, as you have stated. The Act may be found at 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/} You have since sent a written communication to the district, which you did not enclose with your letter to this office. The district's attorney, Mr. Ralph D. Stern has forwarded a copy to me. Your letter to the district regarding our telephone conversation also contains inaccuracies.

Jim Gilbertie
June 19, 1987
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CONCLUSION

Under Regulation 18705(a), a college instructor's decision to assign a textbook to students in his class is not a governmental decision within the meaning of Section 87100 and does not require disqualification under the Act or any conflict of interest code adopted pursuant to the Act.

FACTS

You are an instructor of Shasta Community College. You and your spouse are owners of CAT Publishing Company. CAT stands for "co-authored textbooks." Your firm offers instructors the opportunity to modify "core" textbooks and thereby become co-authors. You have done this yourself and have assigned your text for your class, which will result in your receiving "royalties" from its sale to your students.

ANALYSIS

The Act generally prohibits a public official from making, participating in making, or using his or her official position to influence the making of a governmental decision in which he or she has a financial interest. (Section 87100.)

An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect upon the official or a member of his or her immediate family which is distinguishable from the effect upon the public generally. (Section 87103.)

An effect of a decision upon the official is material if it will increase or decrease his or her income or assets by \$250 or more. (Regulation 18702.1(a)(4).) Thus, if the assignment of a particular textbook would result in royalties of that magnitude, disqualification would ordinarily be required.

However, the Commission has adopted a regulation which provides that teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, do not come within the Act's disqualification provisions. (Regulation 18705(a), copy enclosed.). Therefore, under the Act, a teacher is permitted to assign his or her own textbook for his or her classes, even though he or she will earn \$250 or more in royalties from the sale of the textbook.

A conflict of interest code adopted pursuant to the Act may not exceed the prohibitions of the Act. (See Alperin Opinion, 3 FPPC Ops. 77 (Aug. 8, 1976, No. 76-084), copy enclosed.)

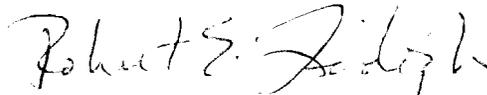
Jim Gilbertie
June 19, 1987
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However, a government agency is not prohibited from adopting restrictions which go beyond those contained in the Act, so long as it does so under its own authority and so long as those requirements do not prevent a person from complying with the Act. (Section 81013; Alperin Opinion, supra; and Miller Opinion, 2 FPPC Ops. 91 (July 6, 1976, No. 75-125), copy enclosed.) Thus, the Act does not prevent the district from adopting its own rules governing procedures for assigning textbooks; however, the district may not base those requirements on the Act or any conflict of interest code adopted pursuant to the Act.

I trust this has adequately responded to your question. If you have further questions regarding this matter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
cc: Ralph D. Stern
Enclosures

87-149

CAT
PUBLISHING COMPANY

JUN 2 5 14 AM '87

THE CO-AUTHORED TEXTBOOK

May 28, 1987

Bob Leidigh
Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, CA 95804

Re: our telephone conversation of 5-28-87

Dear Bob:

I am currently a full time economic instructor at Shasta College in Redding, California. My wife, Leslie, and I also own CAT Publishing Co. which publishes college text books nationwide.

In June of 1986 CAT Publishing bought the rights to an economic text, *Explorations in Economics*, and have promoted this text nationwide.

In April of 1987 I placed my book order for *Explorations* with the approval of the division director and the Vice President for Instructions. On May 19, 1987, I received the attached letter.

During our telephone conversation of 5-28-87 you stated that using this text in my classroom, even though it was published by my publishing company, was not a violation of any state laws.

You promised to send a copy of Title 2 of the California Administrations Code Reg., Section #18705. I would greatly appreciate it, if at the same time, you would send a signed statement from your office reiterating that there is no conflict in this situation.

Thank you for your time and consideration.

Sincerely,



Jim Gilbertie

JG/kn

cc: George C. Kutas
Assistant Superintendent/
Vice President for Instruction
Shasta College

Attachment



Shasta College

FOUNDED 1948

KENNETH B. CERRETA
District Superintendent-President

May 19, 1987

CERTIFIED MAIL

CONFIDENTIAL

BOARD OF TRUSTEES

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Mr. Harold J. Lucas, Red Bluff
Mr. Thomas J. Ludden, Weaverville
Charles D. Miller, M.D., Redding
Mr. Rolland S. Robinson, Cottonwood

Mr. James Gilbertie
7802 Placer Street
Redding, CA 96001

Dear Mr. Gilbertie:

The District has further reviewed your proposed use of the Willis & Primack book, published by CAT Publishing Company, as a text for your economics classes.

Based on information which came to light in our meeting on April 28, 1987, the District believes that you are in violation of the Political Reform Act of 1974 and this District's Conflict of Interest Code, a copy of which is attached. This conflict arises from the interest you and your wife have in CAT Publishing Company. Accordingly, the approval to use the Willis & Primack book as a text is rescinded and the Bookstore will be directed not to make any purchases from CAT Publishing Company.

You are directed to submit a request for approval, in accordance with District procedures, for appropriate replacement texts for your two courses by May 29, 1987.

Sincerely,

George C. Kutras
Assistant Superintendent/
Vice President for Instruction

dr

cc: Dr. Douglas Soccio
Dr. Donald Spellman
Attachment



WHITMORE, KAY & STEVENS

ATTORNEYS AT LAW
490 CALIFORNIA AVENUE
SUITE 300
PALO ALTO, CALIFORNIA 94306

JUN 3 8 30 AM '87

RICHARD S. WHITMORE
WILLIAM F. KAY
M. CAROL STEVENS
RALPH D. STERN
LINDA A. TRIPOLI
JANICE E. JOHNSON
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ROBERT B. EWING
NADINE R. HANSEN
ROY J. CHASTAIN

TELEPHONE:
(415) 327-2672
(714) 634-1982

REFER TO OUR FILE NUMBER:

June 8, 1987

Mr. Robert Leidigh
Fair Political Practices Commission
428 "J" Street, Suite 800
P. O. Box 807
Sacramento, California 95804-0807

Re: Letter from Shasta College Instructor James Gilbertie

Dear Mr. Leidigh:

This firm represents the Shasta-Tehama-Trinity Joint Community College District in personnel and labor relations matters. You will recall that last week we discussed Mr. James Gilbertie's May 28, 1987 letter to you.

Mr. Gilbertie, you will recall, assigned his students a textbook published by CAT Publishing Company which is owned by Mr. Gilbertie and his wife. It is our understanding that CAT purchased the rights to the out-of-print text from another publisher. Also, at the time the request for approval of the book was submitted to the administration, there was no disclosure of Mr. Gilbertie's interest in CAT.

You should also be aware that instructors at Shasta College must obtain the approval of textbook selections from the Division Director and the Vice President. In addition, the College has a purchasing policy which provides:

"No purchase will be made from an employee of the college, nor from a member of the immediate household of the employee."

I understand that Section 18705 of Title 2 of the California Administrative Code exempts "teaching decisions" from the conflict and disclosure requirements of the Political Reform Act. However, it would appear that the recommendation of a textbook, if it is done solely for monetary gain, may not necessarily be a teaching decision. The issue would appear to be one of motive.

Robert Leidigh
Re: John Gilbertie Letter
June 8, 1987

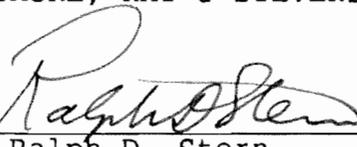
Page 2

I have enclosed copies of a memorandum from Mr. Gilbertie describing his telephone conversation with you as well as an advertisement to other teachers from CAT Publishing. I would appreciate receiving a copy of your opinion when it is prepared. Please let me know if I can provide any additional information.

Sincerely,

WHITMORE, KAY & STEVENS

By



Ralph D. Stern

RDS/jck

AKC

5901

RECEIVED
JUN - 2 1987

SHASTA COLLEGE

SHASTA COLLEGE
Assistant Superintendent

CONFIDENTIAL MEMORANDUM

JUNE 2, 1987

TO: GEORGE KUTRAS, ASSISTANT SUPERINTENDENT AND
VICE PRESIDENT FOR INSTRUCTION

FROM: JIM GILBERTIE 
ECONOMICS INSTRUCTOR

RE CERTIFIED MAIL OF 5/19/87

I am happy to inform you and the District that I am not in violation of the Political Reform Act of 1974. This conclusion was reached after talking to Bob Leidigh of the Legal Division of the "Fair Political Practices Commission." He stated that the California Administrative Code, Title 2, Reg. 18705 clearly exempts college instructors from any conflict of interest in the selection of the books used in their classroom. He is in the process of sending me a formal, written opinion but stated that this case is so obvious, that the administration of Shasta College should act immediately and rescind the position taken in the 5/19/87 certified letter. His telephone number is 916/322-6444 if you need to confirm this. I am also including a section from the Political Reform Act of 1974 for your information:

When a public official suspects that he or she may have a conflict of interest, the attorney for the official's agency should be consulted. The official can also ask the Legal Division of the Fair Political Practices Commission for advice. . . . If the Commission advises an official that disqualification is not necessary, the official is protected against legal or administrative action arising from conflict of interest charges.

In your letter of 5/19/87 you also said I was in conflict with the District's Conflict of Interest Code. There are two basic problems with this assertion. One, the section of the Board Policy you note refers specifically to material reproduced by the college. Two, the college Board may not pass policy that is in conflict with State law, namely regulation 18705.

I trust your letter of 5/19/87 was an honest mistake on the District's part and will be remedied immediately. Please respond in writing by 6/5/87 as summer school starts on 6/15/87.

JG/sy

cc: Ken Cerreta
Doug Soccio

R. Starn