



California Fair Political Practices Commission

July 27, 1988

Arlene A. Nishimura
State Council on Developmental
Disabilities
1507 - 21st Street, Room 320
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-88-234

Dear Ms. Nishimura:

This is in response to your request for advice under the conflict of interest disclosure provisions of the Political Reform Act.^{1/}

QUESTION

Who is required to file a statement of economic interests with the State Council on Developmental Disabilities, the primary member or his or her designated representative or alternate?

CONCLUSION

Both the primary member, with the exception of the Superintendent of Public Instruction, and the designated representative or alternate must file statements of economic interests as members of the State Council on Developmental Disabilities.

FACTS

The State Council on Developmental Disabilities is comprised of the Secretary of the Health and Welfare Agency, the Director of Developmental Services, the Director of Rehabilitation and the Superintendent of Public Instruction (referred to as primary members in this letter). Often a

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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primary member does not attend meetings but rather sends a designated alternate or representative to the meeting. The primary member designates the deputy director or other high-ranking official of the primary member's agency as his or her representative. The alternate or representative has full voting privileges and decision-making authority.

ANALYSIS

Conflict of interest codes must be promulgated by all state agencies. They must designate those positions within the agency which make or participate in the making of decisions which may have a foreseeable material financial effect on any financial interest. For each designated position, the code must describe the types of financial interests made reportable.

The conflict of interest code for the State Council on Developmental Disabilities requires its council members to disclose business entities in which they have an investment and sources of income if the business entities or sources of income receive public funding and have as at least ten percent (10%) of their clientele, developmentally disabled persons. They also must disclose all business entities in which they have an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the agency to provide equipment, leased space, materials, supplies or services, including consulting services, to or on behalf of the agency.

The alternates or representatives, when sitting as members of the council, are making or participating in the making of decisions and should be filing statements of economic interests. The designated alternates or representatives vote on matters and participate in discussions representing their own opinions and not necessarily the opinions of the primary members. They do not act as proxies for the primary members by merely complying with the directions of the primary members, but rather formulate their own opinions and vote on matters in accordance with their own beliefs and views on particular matters.

Since the Secretary of Health and Welfare, the Director of Developmental Services and the Director of Rehabilitation are the primary members of the Council and do on occasion attend meetings, they too should file statements of economic interests.

Superintendent of Public Instruction

The Superintendent of Public Instruction does not file statements of economic interests because a code requires him to

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file. Instead, he is required to file statements of economic interests because the Political Reform Act specifically sets out his filing obligation in Section 87200, et seq. The Political Reform Act provides that positions specifically enumerated in Section 87200 are not designated employees. Therefore, the Superintendent of Public Instruction is not required to file a statement of economic interests with the State Council on Developmental Disabilities.

The person the Superintendent delegates to be his representative is not covered by Section 87200 and does need to file statements as described earlier.

Since it is difficult to know whether the primary member or the representative will attend a particular meeting, you should obtain an assuming office statement for the primary member and his or her representative, if known, at the time of appointment. By obtaining the statements of both the primary member and the designated representative at the time of appointment, you do not have to monitor meetings to determine which member attended. Both the primary member and his or her representative should file annual statements and leaving office statements at the end of their terms.

I hope the above has been helpful to you. If you have any questions or would like to discuss this further, please give me a call at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanette E. Turvill
Legal Assistant
Legal Division

DMG:JET:plh



STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

June 15, 1988

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

Attention: Legal Division

To whom it may concern:

As recommended by Linda Moureaux of your Technical Assistance and Analysis Division, per our telephone conversation of June 14, 1988, the State Council on Developmental Disabilities (Council) requests an "advice letter" on the following situation:

Council members include the Secretary of the Health and Welfare Agency, Director of Developmental Services, Director of Rehabilitation and Superintendent of Public Instruction (Section 4520-4523 of the Welfare & Institutions Code). At present; representatives and/or alternates have been designated:

<u>MEMBER</u>	<u>REPRESENTATIVE</u>	<u>ALTERNATE</u>
Secretary of the Health & Welfare Agency Clifford L. Allenby	Barbara Hooker Assistant Secretary	
Director of Developmental Services Gary D. Macomber		Al Lee Chief Deputy Director
Director of Rehabilitation P. Cecilio Fontanoza	Merrill Jacobs Chief Deputy Director	
Superintendent of Public Instruction Bill Honig	Kathryn Summers Special Education	

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Each of the designated representatives/alternates have voting privileges at Council meetings.

Due to numerous commitments, the Secretary of the Health and Welfare Agency, Director of Rehabilitation and Superintendent of Public Instruction have not attended past Council meetings. It is not known, at this time, when and if these individuals will personally attend future meetings.

Basically, the question is who should file? See enclosed letter dated June 15, 1988, addressed to Ms. Brown, Technical Assistance and Analysis Division.

Your attention to this matter is appreciated. If further information is needed, please do not hesitate to contact me at (916) 322-8481.

Sincerely,



ARLENE A. NISHIMURA
Executive Secretary

AAN:aan

Enclosure

cc: Clifford L. Allenby
James F. Bellotti



STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

June 15, 1988

Betty M. Brown
Legal Documents Examiner
Technical Assistance and Analysis Division
Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Name: CLIFFORD L. ALLENBY
Re: Statement of Economic Interests
Type of Statement: Assuming Office
Date of Statement Due: March 3, 1988

Dear Ms. Brown:

As per my telephone conversation with Linda Moureaux of your staff on June 14, 1988, the following is an explanation as to why Mr. Clifford L. Allenby's Form 730 Assuming Office statement was not filed in a timely manner:

The Secretary of the Health and Welfare Agency (HWA) is, by statute (Section 4520-4523 of the Welfare & Institutions Code), a member of the State Council on Developmental Disabilities (SCDD). Mr. Allenby was appointed as Agency Secretary in 1986. Ms. Barbara Hooker, Assistant HWA Secretary, represents the HWA Secretary with voting privileges at all Council meetings. Prior to Mr. Allenby's assuming office, Ms. Hooker was the HWA Secretary's representative.

On January 12, 1987, I requested Mr. Allenby file a Form 730 as a member of SCDD. Shortly thereafter, I recall receiving a phone call from a member of Mr. Allenby's staff stating that Mr. Allenby did not need to file as Ms. Barbara Hooker was his designated representative. I then called FPPC requesting clarification and spoke to you on January 14, 1987. My notes indicate that you explained: 1) Only representatives file; and 2) Alternates and Directors must both file. Based on this information, I did not pursue Mr. Allenby's Form 730 as Ms. Hooker was his designated representative.

On January 29, 1988, I spoke with Lynn Martin of your staff, and it was explained to me that all members must file a Form 730,



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including the Health and Welfare Secretary. Based on this information, Mr. Allenby's Form 730 was obtained and submitted to FPPC on March 30, 1988. The Form 730 is an "Assuming Office Statement" and an "Annual Statement". Linda Moureaux, of your staff, has confirmed that a copy is on file at FPPC and, in this instant case, acceptable.

Based upon the above scenerio in which conflicting information was received, I am requesting that a waiver of the late fine be granted. To avoid future problems, I have requested FPPC's Legal Division, by separate letter, to provide an "advice letter" to clarify this issue.

Thank you for your assistance and patience. If further information is needed, please do not hesitate to contact me at (916) 322-8481.

Sincerely,



ARLENE A. NISHIMURA
Executive Secretary I

AAN:aan

cc: Clifford L. Allenby
James F. Bellotti
FPPC Legal Division