



California Fair Political Practices Commission

February 24, 1989

Honorable David Malcolm
City Councilmember
City of Chula Vista
276 Fourth Ave.
Chula Vista, CA 92010

Re: Your Request for Informal Assistance
Our File No. I-88-465

Dear Councilmember Malcolm:

Thank you for your patience in awaiting our response to your request for assistance applying the reporting and conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Because you have not asked a question about a specific pending decision of the city council, we are treating your request as one for informal assistance.^{2/}

QUESTION

1. When your company, Suncoast Financial Corporation, receives a referral fee for referring a loan to a bank or other financial institution, who is the source of income for disclosure and disqualification purposes?

2. What is the income threshold for disclosure and disqualification purposes?

CONCLUSION

1. The bank or other financial institution which pays the referral fee is the source of income to your company.

^{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.

^{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. The threshold for reporting income paid to Suncoast from a single source is \$10,000 during a calendar year. However, since you are the sole owner of Suncoast, you must disqualify yourself from governmental decisions which would foreseeably and materially affect the source of \$250 in income to Suncoast within 12 months prior to such decisions.

FACTS

You are sole owner of Suncoast Financial Corporation ("Suncoast"), an approved government mortgagee. At times, people apply to Suncoast for loans that your corporation is unable to accommodate. You have started a new process of referring these loans to other banks and financial institutions. When you refer these loans to other companies, the company that receives the referral sometimes pays a referral fee to Suncoast upon closing of the loan.

ANALYSIS

Income is defined in Section 82030 as a payment received from a source inside the jurisdiction, or doing business within the jurisdiction. A public official who owns 10 percent or more of a business entity must disclose sources of income to the business entity when his or her pro-rata share of the income is at least \$10,000 in a calendar year.^{3/} (Sections 82030, 87203 and 87207.) Moreover, a public official must disqualify himself or herself from participating in governmental decisions which could foreseeably and materially affect a source of income of \$250 or more within the twelve months prior to the time when the decision is made. (Section 87103(c).)

You are a public official by virtue of your position as city councilmember. (Section 82048.) You are also sole owner of Suncoast Financial Corporation. Consequently, you have the duty to disclose all sources providing \$10,000 or more in gross income to Suncoast. In addition, you must disqualify yourself from any decisions of the city council which could foreseeably have a material financial effect on a source of income to Suncoast of \$250 or more within the twelve months prior to such decisions.

^{3/} For example, an official who owns 50 percent of a business entity would disclose all sources of income to the business entity totaling \$20,000 or more in a calendar year (50% x \$10,000). An official who owns 100 percent of a business entity would disclose all sources of income to the business entity totaling \$10,000 or more in a calendar year (100% x \$10,000).

Honorable David Malcolm
February 24, 1989
Page 3

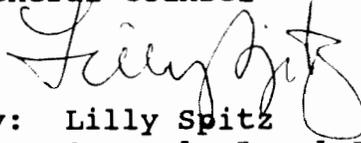
The referral fees you receive from banks, savings and loans and other financial institutions constitute income. The fee is paid by the financial institution to which you referred the borrower. Therefore, the financial institution which pays the fee is the sole source of income for disclosure and disqualification purposes of the Act.

We conclude that you must disqualify yourself from decisions before the city council which could foreseeably have a material financial effect on a financial institution which has paid, or promised to pay, to Suncoast referral fees and any other income aggregating \$250 in the twelve month period prior to the decision. You must also disclose all income from these financial institutions aggregating \$10,000 or more in a calendar year.

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

Sincerely,

Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh



OFFICE OF THE CITY COUNCIL

FPPC

DEC 13 8 28 AM '88

December 8, 1988

California Fair Political
Practices Commission
428 J Street, Suite 800
Sacramento, California 95804-0807

To Whom it May Concern:

This is a request for advice for David Malcolm DBA Suncoast Financial Corporation (Mortgage Lender) an approved government mortgagee. At times people apply for loans that we are unable to accommodate. We have started a new process of referring these loans to other Banks, Savings & Loans and Mortgage Companies etc.

When we refer these loans to other companies the company that receives our referral sometimes pays a referral fee upon the closing of the loan. When Suncoast Financial (owned by David Malcolm) receives this fee, who is the source of income from? The question might seem simple but someone could argue either: A. The company that paid the referral fee. B. The lender who funded the loan if a mortgage banker/broker was used. C. The borrower who obtained the loan.

Since this is not a direct loan made by Suncoast Financial and the fee is a referral fee vs. loan points is the reporting income threshold \$250.00 or \$10,000.00?

Your response on these questions will be greatly appreciated.

Sincerely,

David L. Malcolm
Councilman



OFFICE OF THE CITY COUNCIL

FPPC

Dec 13 8 28 AM '88

December 8, 1988

California Fair Political
Practices Commission
428 J Street, Suite 800
Sacramento, California 95804-0807

To Whom it May Concern:

This is a request for advice for David Malcolm DBA Suncoast Financial Corporation (Mortgage Lender) an approved government mortgagee. At times people apply for loans that we are unable to accommodate. We have started a new process of referring these loans to other Banks, Savings & Loans and Mortgage Companies etc.

When we refer these loans to other companies the company that receives our referral sometimes pays a referral fee upon the closing of the loan. When Suncoast Financial (owned by David Malcolm) receives this fee, who is the source of income from? The question might seem simple but someone could argue either: A. The company that paid the referral fee. B. The lender who funded the loan if a mortgage banker/broker was used. C. The borrower who obtained the loan.

Since this is not a direct loan made by Suncoast Financial and the fee is a referral fee vs. loan points is the reporting income threshold \$250.00 or \$10,000.00?

Your response on these questions will be greatly appreciated.

Sincerely,

David L. Malcolm
Councilman



California Fair Political Practices Commission

December 14, 1988

Honorable David L. Malcolm
Chula Vista Councilmember
276 Fourth Avenue
Chula Vista, CA 92010

Re: 88-465

Dear Mr. Malcolm:

Your letter requesting advice under the Political Reform Act was received on December 13, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, 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 more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. 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,

Katherine E. Donovan
Diane M. Griffiths *for*
General Counsel

DMG:plh