



California Fair Political Practices Commission

June 23, 1989

Thomas Hemphill
City Administrator
City of Fowler
P.O. Box 99
Fowler, CA 93625

Re: Your Request for Informal
Assistance
Our Advice File No. I-89-319

Dear Mr. Hemphill:

This is in response to your request for advice under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter does not contain sufficient facts for us to provide specific advice. Accordingly, we have provided you with general guidance, pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

You have asked us whether the City of Fowler's Recreation Commissioners should be filing statements of economic interests pursuant to the Political Reform Act.

^{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/} We consider your letter to be a request for informal assistance under Regulation 18329(c). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSION

If the recreation commissioners participate in decisions which may affect their economic interests, they should be covered by the city's conflict of interest code. After the city amends its conflict of interest code, the recreation commissioners would begin filing statements of economic interests.

FACTS

The City of Fowler originally adopted its conflict of interest code in 1976 and appears to have amended it in July of 1980. Your February 10, 1989 letter includes the list of positions designated in the code. The recreation commissioners are not among those on the list.

ANALYSIS

Since the conflict of interest code for the City of Fowler does not include the recreation commissioners as designated employees, they do not at present have any filing obligation with the city. The conflict of interest code may need to be amended to include those positions.

Government Code Section 87300 requires that every agency adopt and promulgate a conflict of interest code. Each conflict of interest code must contain a specific enumeration of the positions within the agency which make or participate in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. The types of interests which are reportable are those which may foreseeably be affected by any decision made or participated in by the designated employee. (Section 87302.)

A public official makes a governmental decision when, acting within the authority of his or her office, he or she:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;

- (4) Enters into any contractual agreement on behalf of his or her agency; or
- (5) Determines not to act on any of the above because of his or her financial interests.

Regulation 18700(b).

A public official participates in the making of a governmental decision when, acting within the authority of his or her position, he or she:

- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or
- (2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:
 - (A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or
 - (B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

Regulation 18700(c).

If the recreation commissioners participate in decisions which may affect their economic interests, they should be covered by the code. For instance, if the commissioners decide such things as appropriate insurance carriers for insurance for city parks or land, make recommendations or decisions on purchasing, make recommendations to the city council or planning commission on leases which recommendations are routinely accepted, or make any other similar decisions, then they should be covered by the code.

In your May 18 letter you mentioned a February 10 letter which has gone unanswered. Our records do not show receipt of that letter. It appears that the letter was being sent to us to

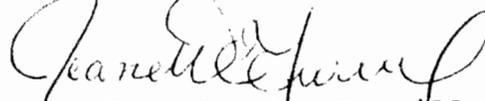
Thomas Hemphill
June 23, 1989
Page Four

get approval on the proposed amendments to the code. The Fair Political Practices Commission is not the proper code reviewing body for your code. Any amendments to your code must be submitted to your city council for approval. (Section 82011(c).)

I hope this has been helpful to you. If I can answer any further questions, please call me at (916) 322-5901.

Very truly yours,

Kathryn E. Donovan
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

JET/jt

CITY OF FOWLER



MAY 22 1989

May 18, 1989

Technical Assistance and
Analysis Division
Fair Political Practices Commission
P. O. Box 907
Sacramento, CA 95804

Gentlemen:

Could you please indicate whether the City of Fowler's Recreation Commissioners should be filling out statements of economic interest pursuant to Fair Political Practices Commission Guidelines?

Also, our letter of February 10, 1989, still has not been answered. We have attached a copy of that letter to today's correspondence in hopes that the older letter could be answered soon.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas Hemphill".

Thomas Hemphill
City Administrator

TH: jn

Attachment

February 10, 1989

MAY 22 1989

Technical Assistance and
Analysis Division
Fair Political Practices Commission
P. O. Box 307
Sacramento, CA 95804

C
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Gentlemen:

It is our understanding that according to Government Code Section 87306, whenever changes occur among those City of Fowler personnel designated to file statements of economic interest, then the City's conflict of interest code is to be changed accordingly.

Therefore, could your agency please review these following proposed changes.

Please note that on October 5, 1976, Resolution 980 was enacted. This adopted the City of Fowler's Conflict of Interest Code which was then approved by the Fair Political Practices Commission on December 16, 1976. City Resolution 1133 was adopted on July 1, 1980. This designated those City officials who are to file financial disclosure statements. Parts I and II of the appendix of that resolution are attached (p. 12 through 14).

Since that time,

- . I have been hired as City Administrator,
- . The position of City Superintendent has been abandoned,
- . Mr. Jeff Viau has been hired as the Director of Public Works,
- . The position of Assistant Building Inspector has been abandoned, and
- . The City's hospital was sold last month to a nonprofit foundation.

Therefore, the following change is proposed for Part I of the Appendix:

<u>Position</u>	<u>Disclosure Category Assigned</u>
<u>FOWLER GENERAL OPERATIONS</u>	
City Clerk	3, 5, 6
City Attorney	All categories
City Administrator	All categories

Technical Assistance and
Analysis Division
February 10, 1989
Page Two

MAY 22 1989

City Treasurer	7
Public Works Director	1, 2, 3, 5, 6
Police Chief	1, 2, 3, 5, 6
Fire Cheif	1, 2, 3, 5, 6
Planning Commission Members	1, 2, 5, 6
Consultants:	
Contract Planning & Zoning Administration	1, 2, 5, 6
Contract Engineering Services (City Engineer)	1, 2, 5, 6

We appreciate your assistance.

Sincerely,

Thomas Hemphill
City Administrator

TH: jn

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California Fair Political Practices Commission

May 24, 1989

Thomas Hemphill
City Administrator
P.O. Box 99
Fowler, CA 93625

Re: Letter No. 89-319

Dear Mr. Hemphill:

Your letter requesting advice under the Political Reform Act was received on May 22, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

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 the 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,

Jeanne Pritchard
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

by jph

JP:plh

89-319

CITY OF FOWLER



MAY 22 1989

May 18, 1989

Technical Assistance and
Analysis Division
Fair Political Practices Commission
P. O. Box 907
Sacramento, CA 95804

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Thomas Hemphill
City Administrator

TH: jn

Attachment

NOT
shown in
log book
5/25/89

February 10,

1989

RECEIVED

Technical Assistance and
Analysis Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

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Technical Assistance and
Analysis Division
February 10, 1989
Page Two

MAY 22 1989

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Fire Chief	1, 2, 3, 5, 6
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Sincerely,

Thomas Hemphill
City Administrator

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