



California Fair Political Practices Commission

July 18, 1989

Honorable Phillip Isenberg
Assemblyman, Tenth District
California Legislature
State Capitol
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-343

Dear Assemblyman Isenberg:

You have requested advice regarding the reporting and conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your request does not concern a specific decision pending before the Legislature, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTIONS

1. How should your investment in a limited partnership which owns a housing development be reported on your annual statement of economic interests?
2. Under what circumstances and in consideration of what kinds of legislation would you have a conflict of interest related to your investment?
3. In what other official activities as a state legislator could you experience a conflict of interest?

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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. You must report your interest in the limited partnership on Schedule A. In addition, if you have a 10% or greater interest in the business entity, you must disclose your pro-rata share of real property and investments owned by the limited partnership on Schedules C-1 and C-2.

2. You may participate in any governmental decision which does not have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on yourself, the limited partnership, and, if you have a 10% or greater interest in the limited partnership, on the real property and any investments in business entities owned by the limited partnership.

3. If you have a conflict of interest in a governmental decision, you should disqualify yourself from making, participating in making, or using your official position to influence the governmental decision.

FACTS

You and your wife have acquired a limited partnership interest in a housing development on property located in Placer County. The investment has a value of between \$10,000 and \$100,000.

ANALYSIS

1. Reporting the Investment on the Annual Statement of Economic Interests.

You report your economic interests on Form 721. You should report your investment in the limited partnership on Schedule A. In addition, if you have a 10% or greater interest in the limited partnership, you must also disclose on Schedule C-1 your pro-rata share of real property owned by the limited partnership. Schedule C-2 should be completed if you have a 10% or greater interest in the limited partnership and the partnership holds investments in other business entities. You would report the total value of the interests owned by you and your wife on these forms. (Sections 82033 and 82034.)

2. General Considerations Regarding Conflict of Interest.

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a

financial interest. The term "public official" includes state legislators.³ (Sections 82048, 82049.)

A public official has a financial interest in a 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 or her immediate family or on, among other things:

(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.

Section 87103(a)-(b).

When an official has an investment in, or receives income from, a business entity it is necessary to consider how governmental decisions would affect the business entity. An official may be disqualified from participating in a decision even though the decision would not affect the value of his or her investment or the amount of income he or she receives.

You have an investment of more than \$1,000 in a housing development, a business entity. (Section 82005.) You may also have an interest in real property worth more than \$1,000 if you have a 10% or greater interest in the business entity.⁴ (Section 82033.) Accordingly, you must disqualify yourself from making, participating in, or attempting to influence any governmental decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on yourself, on the business entity, or (if you own a 10% or greater interest in the business entity) on the real property owned by the business entity. (Section 87103(a)-(b).)

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v.

³ However, the remedies provided in the Act for violations of Section 87100 are not applicable to elected state officers, including state legislators. (Section 87102.)

⁴ An individual's interest in real property includes a pro-rata share of interests in real property of any business entity in which the individual or immediate family owns a 10% or greater interest. (Section 82033.)

Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

Materiality

Regulations 18702-18702.6 (copies enclosed) set forth the guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, then Regulation 18702.1 applies to determine materiality.⁵

If the official's financial interest is indirectly involved in the decision, Regulations 18702.2 through 18702.6 provide guidelines for determining whether the effect of the decision is material. In particular, Regulation 18702.2 provides the financial guidelines to determine whether the effect of the decision is material as to the business entity in which you have a financial interest. Assuming the business entity meets the standards of a small business in Regulation 18702.2(g), the effect of the decision will be deemed material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

⁵ A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g).

If the business entity does not meet the standards of a small business in subdivision (g) of Regulation 18702.2, you should apply the appropriate subdivision based on the financial size of the business entity.

Public Generally

Even if the reasonably foreseeable effect of a decision is material, disqualification is required only if the effect of the decision on the public official's financial interest is distinguishable from the effect on the public generally. (Section 87103.) The effect is deemed distinguishable unless the decision will affect the business entity in substantially the same manner as it will affect all members of the public in the state, or a significant segment of the public. (Regulation 18703, copy enclosed.) For elected state officers such as yourself, an industry, trade or profession constitutes a significant segment of the public. (Regulation 18703(a).)

If a bill affects all members of an industry, trade, or profession in substantially the same manner, the effect will be deemed indistinguishable from the effect on the public generally. In such circumstances, disqualification is not required even if the effect of the decision on the official's financial interest is reasonably foreseeable and material. (Section 87103.) (For legislation requiring disqualification, see Brown Advice Letter, No. A-83-076, copy enclosed.)

3. Potential conflicts of interest in other activities as a state legislator.

As noted above you may not make, participate in making, or in any attempt to influence a governmental decision in which you have a financial interest. (Section 87100, Section 82048.) Regulation 18700 (copy enclosed) defines the terms "making a governmental decision" and "participating in making a governmental decision." A public official makes a governmental decision when, for example, he votes on a matter or appoints a person. A public official participates in making a governmental decision when, for example, he advises or makes recommendations to the decision maker, either directly or without significant intervening substantive review, by presenting a report, analysis, or opinion to influence the decision.

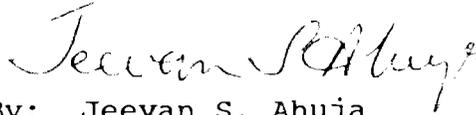
Regulation 18700.1 (copy enclosed) defines the phrase "using an official position to influence a governmental decision" which is before the public officer's agency, or any agency subject to

the budgetary control of his or her agency. The public officer may not contact, appear before, or otherwise attempt to influence any member, officer, employee or consultant of such agency. (Regulation 18700.1.)

The particular facts of each decision you face will be determinative of the disqualification issue. I trust this letter has provided you with sufficient information to make such a determination. If you have any questions about a specific decision, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED:JA:aa

Enclosures



Phillip Isenberg

ASSEMBLYMAN, TENTH DISTRICT

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CHAIRMAN, ASSEMBLY JUDICIARY

CALIFORNIA LEGISLATURE, STATE CAPITOL, SACRAMENTO, CA 95814 (916) 445-1611

COMMITTEES:
ELECTIONS, REAPPORTIONMENT &
CONSTITUTIONAL AMENDMENTS
HEALTH
JUDICIARY
REVENUE & TAXATION
WATER, PARKS & WILDLIFE

May 30, 1989

Ms. Kathy Donovan, Chief
Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Donovan:

My wife, Marilyn, and I have entered into a joint venture to acquire a limited partnership interest in a housing development on property in Placer County. Our investment is between \$10,000 and \$100,000.

The subject property is outside the boundaries of the 10th Assembly District, which I represent.

The purpose of this letter is to request your advice on:

- 1) How to report this investment on my annual statement of economic interest forms;
- 2) Under what circumstances and in consideration of what kinds of legislation would I have a conflict of interest;
- 3) In what other official activities as a state legislator could I experience a conflict of interest?

Thank you for your advice.

Sincerely,

PLI/hh





California Fair Political Practices Commission

June 1, 1989

Assemblyman Phillip Isenberg
California Legislature
State Capitol
Sacramento, CA 95814

Re: Letter No. 89-343

Dear Mr. Isenberg:

Your letter requesting advice under the Political Reform Act was received on June 2, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja 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,

A handwritten signature in cursive script that reads "Scott Hollabauer".

Kathryn E. Donovan
General Counsel

KED:plh