



California Fair Political Practices Commission

July 27, 1989

Janet M. Tremlett
Sr. Deputy City Attorney
City of San Jose
151 West Mission Street
San Jose, CA 95110

Re: Your Request for Informal Assistance
Our File No. I-89-386

Dear Ms. Tremlett:

You have requested informal assistance with respect to the definition of "source of income" for purposes of the disclosure and disqualification provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. If a decision would have a material financial effect on a person or entity which was a source of income of \$250 or more to the child of a public official within 12 months of the decision, is the public official prohibited from participating in the decision?

2. Is the public official required to report the child's income on his or her statement of economic interest?

3. How would the following circumstances affect disclosure or disqualification:

a. The child is over 18 and cannot legally be claimed as a dependent for income tax purposes;

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. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. Section 83114; Regulation 18329(c)(3).)

b. The child is over 18 but can legally be claimed as a dependent for income tax purposes;

c. The child is under 18 but cannot legally be claimed as a dependent for income tax purposes;

d. The child is under 18 and can legally be claimed as a dependent child for income tax purposes.

CONCLUSIONS

1. A public official is not prohibited from participating in a decision because it may have a material financial effect on a person or entity that was a source of income of \$250 or more to the child of the public official.

2. The public official is not required to report the child's income on his or her statement of economic interest.

3. a - d. The answer to questions 1 and 2 does not change regardless of whether the child is under or over 18 or is or is not entitled to be claimed as a dependent child. However, investments or real property interests of a child under the age of 18 who may be claimed as a dependent are attributable to the public official.

FACTS

Your office has received inquiries as to the circumstances under which a source of income to a child of a public official may be deemed a source of income to the public official for purposes of disclosure and disqualification under the Act.

ANALYSIS

Public officials are prohibited from participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Section 87103 defines a financial interest as follows:

(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.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to

official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

As set forth in the last paragraph of Section 87103, an investment or real property interest held by a dependent child of a public official is deemed to be an indirect investment or real property interest of the public official. (See also Sections 82033 and 82034.) A child is considered a "dependent child" for purposes of the Act if the child is under 18 and can be claimed as a dependent child for income tax purposes. If the child is over the age of 18 or may not be claimed as a dependent, an investment or real property interest of the child is not considered an indirect investment or real property interest of the official.

However, it is only investments and real property interests held by the dependent child which are attributable to the official by virtue of the specific language in the Act. (Sections 82033, 82034 and 87103(a) and (b).) Sections 82030 and 87103(c), concerning sources of income to an official, include only income received by the official and the official's community property share of his or her spouse's income. Income received by a child of a public official is not included in Sections 82030 and 87103(c) and is therefore not considered a financial interest of the official even if the child is under 18 and entitled to be claimed as a dependent. Thus, such income does not have to be disclosed by the public official nor is it the basis for disqualification. (See, In re Cory (1976) 2 FPCC 48.; Ware Advice Letter, No. A-86-259, copies enclosed.)

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If you have any questions regarding the above, you may contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures



CITY OF SAN JOSÉ, CALIFORNIA
OFFICE OF THE CITY ATTORNEY

151 WEST MISSION STREET
SAN JOSE, CALIFORNIA 95110
(408) 277-4454

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JOAN R. GALLO
City Attorney

June 27, 1989

Kathryn E. Donovan
General Counsel
Fair Political Practices Division
428 J Street, Suite 800
Sacramento, CA 95814

RE: Request for Informal Advice

Dear Ms. Donovan:

The purpose of this letter is to request informal advice concerning the definition of a "source of income" for the purpose of the disclosure and disqualification provisions of the Political Reform Act.

We have received inquiries as to the circumstances under which a source of income to a child of a public official may be deemed a source of income to the public official. In other words, if a decision would have a material financial effect on a source of more than \$250 of income to a public official's child within 12 months of a decision, is the public official prohibited from participating in the decision under Sections 87100 and 87103 of the California Government Code? Is the public official required to report the income under Section 87207?

How would the following circumstances affect the result?

1. The child is over 18 and cannot legally be claimed as a dependent for income tax purposes;
2. The child is over 18 but can legally be claimed as a dependent for income tax purposes;
3. The child is under 18 but cannot legally be claimed as a dependent for income tax purposes;
4. The child is under 18 and can legally be claimed as a dependent for income tax purposes.

Kathryn E. Donovan
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My understanding from conversations with your staff is that a financial interest (whether a source of income, gift, interest or investment) held by a child is not deemed to be a financial interest of the public official parent unless the child is under 18 and can legally be claimed as a dependent for income tax purposes. Therefore, a source of income to a child over 18 is not deemed a source of income to the public official even though the child may legally be claimed as a dependent for tax purposes. Please confirm that is correct.

Also, it appears from the language of Section 87103 and from FPPC Opinion No. 75-094-A, CORY (4/22/76) that sources of income to a child, (unlike investments and interests) are not attributable to the parent for disqualification purposes, even if the child is under 18 and entitled to be claimed as a dependent.

We would appreciate a response as soon as possible. Please feel free to contact this office if you have questions.

Yours truly,

JOAN R. GALLO
City Attorney

By: 
JANET M. TREMLETT
Sr. Deputy City Attorney

JRG:JMT:glk



California Fair Political Practices Commission

July 6, 1989

Janet M. Tremlett
Sr. Deputy City Attorney
151 West Mission Street
San Jose, CA 95110

Re: Letter No. 89-386

Dear Ms. Tremlett:

Your letter requesting advice under the Political Reform Act was received on June 29, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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 "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh