

# Memorandum

To : Kathryn Donovan, Esq.  
General Counsel  
Fair Political Practices Commission

Date : December 21, 1989

From : Legal Office

Subject : **Conflict of Interest Reporting Opinion**

A conflict of interest reporting issue has been brought to my attention that I am not entirely sure how to deal with. I discussed this issue briefly some time ago with Ms. Blanca Breeze of your Office. She suggested that I may want to write to you to seek your counsel. Therefor, I am doing so on behalf of my Director, Larry G. Meeks, who has the responsibility to adopt and periodically revise, a conflict of interest code for the Office of Statewide Health Planning and Development.

In 1987, the Legislature passed Senate Bill 476 which created in state government the Minority Health Professions Education Foundation. The purpose of this organizational unit of state government was to solicit funds primarily from the private sector, to be used by my Office to make loans and scholarships to minority health professions students. These students, in turn, would have to promise to practice their professions in medically underserved areas. This bill became Chapter 1307, Statutes of 1987. A copy of this bill is attached for your reference. The bill added Article 14 (commencing with Section 69795) to Chapter 2 of Part 42 of the Education Code.

In late 1987 and early 1988, my Office received advice from a number of professional sources on how best to proceed with the Foundation, to be able to maximize the donations that could be forthcoming. As a result of this advice, it became clear to us that the Foundation should be organized not as a body of state government, but rather, as a California nonprofit public benefit corporation. In 1988, we sponsored Senate Bill 2614 (Russell), which passed and became Chapter 1087, Statutes of 1988. This bill (copy attached) amended Education Code Section 69796 to provide that our office "shall establish a nonprofit public benefit corporation, to be known as the Minority Health Professions Education Foundation." The bill eliminated the language that established the Foundation as an organizational subdivision of state government. The corporation has been formed, and has a lawful corporate existence, although the full Board of Trustees has not been appointed, and there has only been one organizational meeting (see attached articles of incorporation).

The primary purpose of the Minority Health Professions Education Foundation did not change, although its organizational status did change (from a state organization to a nonprofit corporation). This primary purpose is to "solicit and receive funds" to be used by my Office for loan/scholarship purposes. The Foundation does have a minor advisory role to play. Education Code Section 69798 provides that the Foundation shall advise in such areas as how the scholarship money should be expended, and such technical details as evaluation criteria and application forms. It is not inconceivable that the Foundation may provide advice on which schools should receive assistance.

While we realize that both the Office and the Foundation will have to develop informal conflict of interest rules dealing with what types of entities we will accept donations from (it might not be wise in all circumstances to accept funds from entities regulated by our Office), the question has arisen as to whether Foundation trustees must file formal conflict of interest disclosure forms, and whether my Office needs to amend its conflict of interest code, accordingly. The trustees will not be state employees, and they will not be serving on an advisory state board or commission, as that term is commonly used. Rather, they are trustees of a bona fide nonprofit public benefit corporation, that will respect all of the rights and responsibilities that such status affords.

Relevant law on this point would appear to be found in your regulations at section 18700. Paraphrasing, this section provides that "members" of "boards and commissions with decision making authority" are subject to the Political Reform Act if they either 1) make final government decisions, 2) compel government decisions, or 3) make "substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency."

Nowhere in Education Code Section 69798 are the trustees given the authority to make "final governmental decisions." Likewise, the section does not clearly provide the opportunity to "compel" action by my Office. The statute does give the Foundation the authority to make "recommendations." The question then becomes whether or not the recommendations are "substantive, as that phrase is used in 2 CCR 18700. Unfortunately, the term is not defined in either the statute or the regulations.

The dictionary provides the expected definition of substantive as "not subordinate; something having substance; material, not imaginary; real or true." While it would be an affront to Foundation members to suggest that a recommendation as to which minority student should get a scholarship is not a "substantive recommendation," I suggest it is not substantive from the perspective of conflict of interest reporting and disclosure. In one sense, it would be difficult to imagine how a Foundation member would benefit financially from a recommendation to support a needy

inner-city young person, and therefor, there should be no need to report. We do not believe the Foundation members will be making "substantive" recommendations for conflict of interest reporting purposes, as their major purpose is fund raising.

As to whether or not any recommendations will be "regularly approved without significant amendment or modification," this is something that we cannot advise on with certainty at the present time. While there is nothing in the statute to compel the Director to accept the recommendations he will inevitably receive, common sense tells us that he will not be routinely rejecting them. We have no reason to believe that any recommendations we receive will not be good ones, and we probably will be following the Foundation's advice unless it is clearly without merit--an unlikely situation.

Lastly, we would ask that you consider the purpose for which the Political Reform Act was enacted, in the first instance. At Government Code Section 81002, the statute provides, in relevant part:

"The people enact this title to accomplish the following purposes:

(a)...

(b)...

(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."

(d)-(f)..."

We would argue that the purpose of the Act as stated by the people was that public officials should not be making decisions on matters where they have a material financial interest. We suggest that in this case, the purpose of the Foundation is to raise charitable contributions and make recommendations as to how the money should be distributed to needy individuals. This is not the type of activity that is likely to benefit Foundation members financially and lead to a conflict. Thus, we do not see a need for Foundation trustees to file conflict of interest disclosure forms.

In summary, we would appreciate advice on the following two questions:

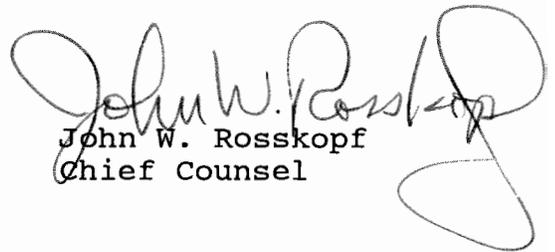
1) Must the Office of Statewide Health Planning and Development amend its Conflict of Interest Code (Title 2, CCR, Division 8, Chapter 14) to include a reporting and disclosure requirement for trustees of the Minority Health Professions Education Foundation?

2) Must the trustees report and disclose pursuant to the

### Political Reform Act?

Our position is that we need not amend our code and the trustees need not report because 1) the Foundation is a bona fide nonprofit public benefit corporation, and is not a state board or commission, and 2) any recommendations made by the Foundation will not be "substantive," as that term should reasonable be interpreted for conflict of interest reporting purposes, and 3) there is no reason the Office must accept any recommendations received by the trustees, even though as a matter of practicality, we (the Office) probably will, since the process of selecting scholarship recipients will be a joint one.

If you need any further information, including information on how the relationship between the Office and the Foundation will be structured, please call me on 322-1212. If you believe the trustees should report, we will advise them to do so and will amend our conflict of interest code accordingly.

  
John W. Roskopf  
Chief Counsel

cc Larry G. Meeks, Director  
Office of Statewide Health Planning  
and Development



# California Fair Political Practices Commission

January 8, 1990

John W. Rosskopf  
Office of Statewide Health  
Planning and Development  
1600 - 9th Street  
Sacramento, CA 95814

Re: Letter No. 89-709

Dear Mr. Rosskopf:

Your letter requesting advice under the Political Reform Act was received on December 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze 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