



California Fair Political Practices Commission

March 20, 1991

Michael Dean, City Attorney
City of Roseville
311 Vernon Street
Roseville, CA 95678

Re: Your Request For Advice
Our File No. I-91-057

Dear Mr. Dean:

This is in reply to your letter requesting advice concerning the conflict of interest disclosure provisions of the Political Reform Act (the "Act").^{1/} Because your question is a general inquiry, we are treating it as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

FACTS

The City of Roseville provides certain employees with a deferred compensation plan. The City contracts with ICMA Retirement Corporation to be the plan administrator. The employee designates the type of fund that his or her money will be invested in, which may include bond funds and stock funds.

^{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).)

QUESTION

Must an employee who is designated in the City's conflict of interest code disclose the deferred compensation plan with ICMA Retirement Corporation as an investment on his or her statement of economic interests Form 730?

CONCLUSION

If a deferred compensation plan contains assets that constitute investments or interests in real property under the Act, they must be disclosed provided: (1) the investment or interest is worth \$1,000 or more, and (2) it is of the type which must be disclosed on the employee's statement of economic interests. The term "investment" does not include a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

ANALYSIS

Under the Act's conflict of interest provisions, state and local officials and employees whose positions have been designated in their agencies' conflict of interest codes are required to file statements of economic interests, Form 730. If required by his or her disclosure category, a filer must disclose, among other things, certain types of investments. (Section 82034.)

Section 82034 defines "investment" as:

...any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official or other filer, or his or her immediate family if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction or does business in the jurisdiction or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset will be deemed an investment unless its fair market value equals or exceeds one thousand dollars (\$1,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940....

Michael Dean
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Section 82034 also defines "investment" to include a pro rata share of investments held by any business entity, mutual fund, or trust in which a filer or a member of his or her immediate family owns directly, indirectly, or beneficially a 10 percent or greater interest.

Commission opinion In re Elmore (1978) 4 FPPC Ops. 8 (copy enclosed) states that a deferred compensation plan may be an "investment" within the meaning of the Act if the employee exercises control over the nature and timing of his deferred compensation plan investment and the financial benefit he receives will depend upon financial success of his investment decision. Thus, for purposes of disclosure of economic interests, investments made through a deferred compensation plan should be treated as if the employee had received the salary and invested that money in the private investment vehicles offered by the plan.

Therefore, an employee whose funds are invested in the types of reportable investments described in Section 82034 must disclose on Schedule A of Form 730 his or her interest in the deferred compensation plan if the value of the employee's interest is \$1,000 or more and the funds are invested in business entities of the type required to be disclosed by the employee's disclosure category.

If you have any questions or need further assistance, please contact me at (916) 322-5662.

Sincerely,

Scott Hallabrin
Acting General Counsel



by: Colleen McGee
Political Reform Consultant
Technical Assistance and
Analysis Division

Enclosures



City of Roseville

Office of the City Attorney

FPFC
Jan 25 10 07 AM '91

Phone 781-0325
311 Vernon Street
Roseville, California
95678

January 22, 1991

Kathryn Donovan
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Advice

Dear Ms Donovan:

The City of Roseville is a charter city which provides certain of its employees with a deferred compensation plan pursuant to Internal Revenue Code §457. The City contracts for this purpose with ICMA Retirement Corporation, an independent, non-profit retirement plan administrator. (Contract attached.)

ICMA/RC allows the individual employees to designate certain funds into which the monies which constitute the deferred compensation are placed for investment purposes until the employees' retirement. No federal income tax is paid at this time. After retirement, the monies are dispersed directly to the employee by ICMA/RC and are taxed by the federal government. Among the funds available in which deferred compensation monies may be invested are bond funds and stock funds which invest in various companies in a manner similar to a mutual fund.

Like a mutual fund, individual employees choosing the stock or bond funds have no idea into which precise company their monies are invested. We presume, however, that some of the companies in which ICMA/RC invests are engaged in business within the City of Roseville. And, of course, ICMA/RC itself does business within the City by reason of its contract.

Please note that ICMA/RC appears to not be a "business entity" for purposes of §87103, because it is not operated for profit. (See definition of business entity, §8205.) Also, the funds invested with ICMA/RC are not owned by the employee until such time as the employee's retirement, but instead remain the property of the City of Roseville pursuant to IRC §457 and the IRS regulations governing that section until dispersed.

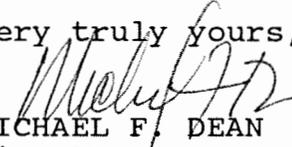
Kathryn Donovan
January 22, 1991

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In light of the foregoing information, must the investment with ICMA/RC itself be disclosed by a designated employee on his annual statement of economic interests? What other disclosure, if any, is required?

We would appreciate your advice regarding the foregoing. Thank you for your cooperation.

Very truly yours,


MICHAEL F. DEAN
City Attorney

MFD/mlc

cc: City Clerk