



FAIR POLITICAL PRACTICES COMMISSION

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October 8, 2009

Valerie T. Ibarra, Deputy Clerk of the Board
Shasta County Board of Supervisors
1450 Court Street, Suite 308B
Redding, CA 96001-1680

**Re: Your Request for Advice
Our File No. I-09-211**

Dear Ms. Ibarra:

This letter is in response to your request for advice on behalf of Shasta County Board of Supervisors regarding the Statement of Economic Interests (Form 700) provisions of the Political Reform Act (the "Act").¹ Because your question seeks general guidance and does not reference any specific proceedings, we are treating your request as one for informal assistance.²

QUESTIONS

If a retired employee assumes an extra-help position that is designated in the agency's conflict-of-interest code, is he or she required to file a Statement of Economic Interests (Form 700) in either of the following situations?

1. The retired employee leaves a position that is designated in the agency's conflict-of-interest code and remains on the personnel roster in a designated, extra-help position for five years without working any hours, and then resigns;

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

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).)

2. The retired employee leaves a position that is designated in the agency's conflict-of-interest code, but works some hours in a designated extra-help position and then resigns.

CONCLUSIONS

1. Yes. Until an individual who serves in a designated position leaves a designated position, he or she has a duty to file a Statement of Economic Interests (Form 700). Within 30 days of leaving office, the individual must file a leaving office Statement of Economic Interests (Form 700). Please refer to the Analysis section for further details.

2. Yes. If an individual spends time working in a designated position, he or she has a duty to file an annual Statements of Economic Interest (Form 700) and, upon resignation from the designated extra-help position, must file a leaving office Statement of Economic Interests (Form 700).

FACTS

As the Deputy Clerk of the Board, you have been authorized to seek advice on behalf of the Shasta County Board of Supervisors. Shasta County maintains a group of "extra-help," on-call, hourly employees that may work up to 1,000 hours in a fiscal year. These positions may be designated in the agency's conflict-of-interest code.

Often, positions such as the retired Administrative Fiscal Chief may remain on the personnel roster as extra-help in the same designated position and never return to work. A few years later, the employee is removed from the personnel roster.

In another circumstance, this retired employee will remain on the personnel roster as an extra-help employee in order to fill in for employees in the same designated position or to assist with annual projects. For example, an Administrative Fiscal Chief remains on the personnel roster as extra-help in the same designated position and annually works less than 1,000 hours in a fiscal year in order to assist in preparing the budget.

ANALYSIS

Duty to File

An express purpose of the Act, as set forth in Section 81002(c), is that the assets and income of public officials, which may be materially affected by their official actions, should be disclosed, and in appropriate circumstances, the public officials should be disqualified from acting, in order that conflicts of interest may be avoided. To that end, the Act requires specified public officials to disclose their economic interests as provided in Sections 87200-87210, and a broader group of public officials to disclose their economic interests as provided in the conflict-of-interest code of the agency that employs them. (Sections 87300-87302.6.)

Upon assuming his or her public office or job, an official first files an assuming office or initial Statement of Economic Interests (Form 700). After that, the individual files an annual statement each year until he or she leaves office permanently, at which time a leaving office statement must be filed. A person has "left office permanently" even if he or she still receives compensation for accrued leave credits. Regulation 18722(b) defines when an individual leaves a position:

"(b)The date that a person permanently leaves office, for the purposes of Government Code sections 87204 and 87302, is the date that the person is no longer authorized to perform the duties of the office, and stops performing those duties, including making, participating in making, or attempting to use his or her official position to influence any governmental decision. For purposes of this subdivision, a person shall not be deemed to have left office permanently because he or she is on a leave of absence or serves as an intermittent employee. However, a person shall be deemed to have left office permanently if the person merely receives compensation for; accrued leave credits."

In both of your questions, the retired employee appears to be authorized to perform duties of behalf of the agency and in fact may provide intermittent work. Therefore we conclude that an employee will not file a leaving office statement.

According to your facts, in order to be on the extra-help roster a retired employee assumes *another* designated position in the agency's code. Regulation 18735 states that when a designated employee transfers from one designated position to another designated position within the same agency, he or she has not assumed or left office. The next Statement of Economic Interests (Form 700) the employee files shall disclose both of the following:

(1) Interests made reportable by the employee's original disclosure category that were held or received at any time during the period from the opening date of the statement to the transfer date.

(2) Interests made reportable by the employee's new disclosure category that were held or received at any time during the period from the date of the transfer through the closing date of the statement.

It is clear that the retired employee that provides intermittent work must continue filing annual statements. Until such time as an employee is no longer authorized to perform duties *and* stops performing duties, the retired employee should file annual statements. This is true even if the employee has not actually performed duties in a calendar year. We suggest that the agency have a policy of reviewing the extra help roster each year so that only those retired employees that are likely to perform duties remain in designated positions. Please note that the post-

governmental restrictions apply once an employee is no longer engaged in the duties of his or her office.³

Duties of the Filing Officer

Section 82027 defines a filing officer as the person or agency which receives and retains original Statements of Economic Interests (Form 700). Each agency must assign a specific individual to perform specified duties under the Act (Regulation 18227). The filing officer's duties include supplying the form to officials, determining whether statements have been filed and conducting reviews of those statements, notifying the filer if proper statements have not been filed, notifying the filer of any errors or omissions on the form, reporting violations of the Act to appropriate agencies, and keeping a log of all statements filed with the agency (Regulation 18115). Until such time as a filer submits his or her leaving office statement, the filing officer must perform his or her duties with respect to these individuals.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

By: Sarah Olson
Political Reform Consultant
Technical Assistance Division

SO:jgl

³ Local governmental officials who leave government service are subject to the Act's one-year ban for local officials in Section 87406.3. Generally, this restriction prohibits certain former local officials from communicating, for compensation, with his or her former agency for the purpose of influencing any legislative or administrative action, or any discretionary act such as the issuing, amending, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property. (Section 87406.3; Regulation 18746.3.)