

February 27, 2014

Khalid T Siddiqui  
8515 Amna Lane  
Orangevale, CA 95662

Re: Your Request for Advice  
**Our File No. A-14-020**

Dear Mr. Siddiqui:

This letter responds to your request for advice regarding Statement of Economic Interest reporting requirements of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Further, the Commission cannot advise on the separate provisions of your agency's incompatible activities policy, which is unrelated to the Act's financial disclosure requirements.

### QUESTIONS

1. Is your position designated under the new Conflict of Interest Code for the Department of General Services (DGS), requiring you to file a Form 700?
2. If you are required to file a Form 700, are you required to report income received from your part time employment on Form 700, Schedule C
3. Are you required to amend your prior years Form 700 to report income you received from your brother's business?

### CONCLUSIONS

1. The new code effective February 20, 2014, does not designate your position (Senior Information System Analyst/Specialist) as one that requires the filing of a Form 700. Therefore, you are not required to file a Form 700 or any of the Form 700 schedules.

---

<sup>1</sup> 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. Because you are not required to file a Form 700, you are not required to report any financial information the Form 700 or any of its schedules.

3. Conflict of Interest Codes are only legally effective when approved by the code reviewing body (in this case the Commission) and processed through the Office of Administrative Law. The strikeout version you submitted appears to be the code approved in 2000, the last year a code was approved by the Commission, and it does not designate your position.

Therefore, since you were not required to file the Form 700 under the prior codes, you are not required to file any amendments to them.

### FACTS

You are a Senior Information System Analyst/Specialist at Enterprise Technology Solution Section of the DGS. Your position is not designated in the current code (covering the 2013 reporting period, due April 2014) or the newly adopted code (which will cover most of the 2014 reporting period, due April 2015).

On weekends and after hours you work part time for a civil engineering consulting company owned by your brother. You stated that you help with setting up computers, installing software, helping with accounting functions, and also assist in maintaining equipment (computers, server and network equipment) and in making computer related purchases. You stated that to the best of your knowledge the company does not perform any work for the DGS.

Your questions pertain to an email you received from your supervisor, which you include with your request for advice. It stated in pertinent part:

“As we spoke of, given you have a second income, your second Income will need to be disclosed as part of the form 700 process, schedule C. I understand you are aware of the possibility of fines up to \$500,000<sup>[2]</sup> by the FPPC (to you personally) for non-disclosure violations, per violation.

You received a subsequent message from your supervisor indicating that you were not required to file a Form 700 for 2013. However, she stated that you would need to file a Form 700 next year (2015) under the new code. Your supervisor explained her belief that the designation in the code for “Senior Information Systems Analyst/Supervisor” was intended to

---

<sup>2</sup> The Act provides for administrative penalties up to \$5,000 per violation. While the Commission can and does impose fines of up to \$5,000, the Commission cannot seek a fine in excess of \$5,000 per violation in an administrative action.

mean Senior Information Systems Analyst or Supervisor. She provided no basis for this assertion.

You have asked whether these statements are an accurate reflection of your responsibilities under the Act.

## ANALYSIS

### Disclosure

Governmental positions subject to disclosure under the Act fall into two separate categories, persons holding positions specified in Section 87200 (including elected state officers and judges) and “designated employees,” those employees designated in their agency’s conflict of interest code.

While it is generally within the discretion of the agency (with approval of the code reviewing body) as to what positions require a person to file disclosure statements under the code, this determination is guided by statutes and California court cases protecting individual rights to privacy. These authorities require agencies to balance the need to expose or minimize possible conflicts of interest on the one hand, and the right of employees to maintain privacy in their personal financial affairs on the other.

These cases have held that disclosure of economic interests should always be narrowly tailored to avoid unwarranted intrusion into the privacy of the individual’s involved. (See, *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259; *County of Nevada v. MacMillen* (1974) 11 Cal.3d 662; *Hays v. Wood* (1979) 25 Cal.3d 770.) For example, in *County of Nevada v. MacMillen*, supra, the court found that the disclosure provisions were constitutional so long as the disclosure requirements applied only to certain specified high-level officials and not to every public official throughout the state. These cases support the principle that there are limits to the disclosure requirements that may be placed upon public officials.

As a safeguard, the Act designates for each agency conflict of interest code, another agency to be the “code reviewing body.” The code reviewing body is charged with reviewing and approving an agency’s conflict-of-interest code. Section 87309 further provides that:

“No Conflict of Interest Code or amendment shall be approved by the code reviewing body or upheld by a court if it:

(a) Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;

(b) Fails to provide to each affected person a clear and specific statement of his duties under the Code; or

*(c) Fails to adequately differentiate between designated employees with different powers and responsibilities.” (Emphasis added.)*

The Commission is the code reviewing body for state agencies such as DGS. (Section 87303.) And, as noted above, must approve a proposed code before it becomes effective.

In your case,

- Your position is not designated in the current code of your agency going back to 2000 and which also applies to calendar year 2013.
- Your agency and the Code Reviewing Body have determined that your position should not be designated in your agency’s newly adopted conflict of interest code which will be effective for 2014 and into the future until amended.<sup>3</sup>
- Finally, as Code Reviewing Body for DGS we have no information that your position is proposed to be added to the code in the future through amendment to the code.

Thus, you have no disclosure responsibilities under the Act.<sup>4</sup>

### **Potential Disqualification**

The Act has two primary conflict of interest provisions that may require disqualification under some circumstances. While you have stated that in your position you do not participate in governmental decisions, the following provisions would apply if you should be asked to take part, even on a one time basis, in any decisionmaking even though you are not designated in the code.

*Section 87100:* The Act’s conflict-of-interest rules prohibit a public official from *making, participating in making, or using his or her official position to influence* a governmental 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, a member of his or her immediate family, or on any of the official’s interests specified in Section 87103 (including investments, real property, business positions, and sources of gifts and income).

---

<sup>3</sup> We note that the your position (Senior Information System Analyst/Specialist) is distinct and separate from the position of Senior Information System Analyst/Supervisor according to the California Department of Human Resources and is subject to a separate and distinct class code and job description. Senior Information System Analyst/Supervisor is included in the new DGS code, your position is not.

<sup>4</sup> DGS legal division staff, in several meetings with the FPPC, has acknowledged that state employees cannot be required to file a Form 700 unless designated in a conflict of interest code that has been approved by the FPPC and noticed through the Office of Administrative Law (which requires public notice of proposed revisions in advance of the code becoming effective). The Form 700 is a form created under FPPC statutes that cannot be used in any manner inconsistent with the Act’s requirements.

Note that the Act does not limit your ability to have outside sources of income; and you are not prohibited from receiving any gifts or investing in any businesses. However, the Act would require you to disqualify yourself in the event that a decision were to come before you that will financially affect your source of income or any other financial interest you may have, such as a source of gift, real property interest, or investment in a business entity.

Additionally, please note that you are not subject to disqualification from a decision based upon an economic interest in your brother as a source of gifts because the term “gift” as defined by the Act, does not include payments from “an individual’s spouse, child, parent, grandparent, grandchild, *brother*, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person . . .” (Section 82028(b)(3), emphasis added.)

*Section 1090:* Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) However, the consequence of having an interest in a contract under Section 1090 for most employees (other than members of boards and commissions) is to abstain from any participation in the contract decisions, similar to the rule for Section 87100.

*Gifts:* Because your position is not designated, you are not prohibited from receiving gifts from any source. However, you may not participate in any decision that would financially affect any person from whom you have received a gift(s) totaling \$440 or more within the 12-month period prior to the decision.<sup>5</sup>

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl

---

<sup>5</sup> Gifts received from your brother do not meet the Act’s definition of “gift” and would not have to be reported or prohibited under any circumstances.