

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • 1100 K STREET BUILDING, SACRAMENTO, 95814

October 4, 1976

76-10-210

Mr. Quin Denvir
Deputy Director, Legal Affairs
Department of Health
714 P Street
Sacramento, CA 95814

Dear Mr. Denvir:

The chairman has asked me to respond to your letter of September 23, 1976, requesting an opinion concerning the Department of Health's contemplated contract with a private law firm for consulting services. Because your request does not raise a substantial question of interpretation under the Political Reform Act, and because of your stated need for an immediate response, the Commission will not issue a formal opinion in this matter. I trust, however, that the following informal advice, will resolve your question.

The first matter for consideration is whether Mr. Joseph (and conceivably some other members of his firm) would, by virtue of his contemplated contractual relationship with your department become a "public official" within the meaning of the Political Reform Act. Public official means "every member, officer, employee or consultant of a state or local government agency." Gov. Code Section 82048. Mr. Joseph clearly is not a member, officer or employee of your department. However, he conceivably could become, for the period of time of the contractual relationship, a "consultant" within the meaning of the statute.

The Commission has further defined "consultant" by a regulation, 2 Cal. Adm. Code Section 18700(a)(2), which provides:

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

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(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Based on the facts you have provided to us, it appears likely that Mr. Joseph will engage only in the types of activities described in subsections (A) and (B) of the cited regulation. If this is the case, he would not be a consultant, and, hence, not a "public official."

Even if Mr. Joseph were a consultant and thereby restrained from making or participating in decisions in which he has a financial interest, Gov. Code Section 87100, we believe that he will not be disabled from performing his duties with respect to the MIO contract. "Financial Interest" is defined in Gov. Code Section 87103 as:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

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Mr. Joseph's law firm is a source of income to him (and in all probability he has an investment in the firm).-- However, in view of the fact that the firm's client, California Dental Service (CDS), is not a party to the MIO contract (nor apparently are any other clients of Mr. Joseph's firm), it is not "reasonably foreseeable" that any governmental decisions made or participated in by Mr. Joseph will have any material financial effect on the firm. In sum, we do not believe that the relationship described in your letter between CDS and the firm precludes Mr. Joseph from assuming the duties on behalf of the Department of Health which you describe.

This analysis is limited to an interpretation of the Political Reform Act. We do not have jurisdiction and, therefore, make no observations concerning the applicability of any other statutes to the situation presented.

Thank you for writing. If we can be of further assistance in this matter please call on Ken Goshorn of our Conflicts of Interest Division at (916) 322-6444.

Sincerely,


Michael Bennett
Executive Director

MB: KWG: plh

^{*/} The facts do not reveal whether Mr. Joseph has a ten percent or greater interest in his law firm. If he does, CDS undoubtedly would be a source of income to him. Gov. Code Section 82030. We do not think, however, that our conclusions herein would be altered by this fact.

DEPARTMENT OF HEALTH

714 P STREET
SACRAMENTO, CALIFORNIA 95814
322-2784



September 23, 1976

Mr. Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
Suite 522
925 J Street
Sacramento, California 95814

76210

Dear Mr. Lowenstein:

The Department of Health hereby requests an opinion from the Fair Political Practices Commission on whether the facts described below would constitute a violation of the Fair Political Practices Act or any other statute.

At the present time, the Department of Health is considering employing Mr. Allan Joseph and his law firm of Pettit, Evers, and Martin, 600 Montgomery Street, San Francisco. The proposed employment would be on a contract consulting basis and would be solely concerned with the MIO contract, a contract between the Department of Health and a fiscal intermediary whereby the Department contracts generally for the processing and paying of claims by Medi-Cal providers. Although the exact extent of the involvement cannot be specified at this time, it is anticipated that Mr. Joseph would assist the Department and Mr. Greg Thompson of the Health and Welfare Agency in two related matters. First, a number of amendments will be sought to the existing MIO contract, including several patterned after Federal procurement provisions. Second, the Department will be arranging over the next 18 months for the fiscal intermediary contract to be put out for competitive bid, and the invitation for bid will be expected to have numerous contract specifications, again patterned after Federal procurement rules.

The Department is considering the employment of Mr. Joseph because of his expertise in the area of government contracts, particularly in Federal procurement contracts. Mr. Joseph and his firm would serve as attorney consultants to the Department and would be expected to advise the Department on these matters. He would have no decision-making authority as such.

In response to the Department's inquiry as to any facts which might create a potential for conflict of interest, Mr. Joseph

September 23, 1976

has informed us that he has been retained to provide legal counsel for the California Dental Service (CDS) with respect to a Board of Control claim which CDS has filed against the Department of Health. The claim relates to a CDS claim that the Department pay additional amounts to CDS for dental services which have been rendered to Vietnamese refugees under the current Medi-Cal dental services contract between CDS and the Department. CDS alleges that Vietnamese refugees do not qualify for services under the existing contract and that the State is obligated to negotiate a separate and new rate for these individuals. To date, Mr. Joseph has only advised CDS counsel, and his name does not appear on the Board of Control claim. We do not know at this time what additional participation Mr. Joseph will have with regard to the Board of Control claim or whether he will be participating in any future litigation regarding the claim, if such is necessary. We have been informed by Mr. Joseph that the attorney/client relationship described above is the only connection that Mr. Joseph or his firm has with CDS and that neither Mr. Joseph nor his firm has any financial interest in CDS. Mr. Joseph has advised us that if retained by the State, neither he nor his firm will accept further employment from CDS on any matter other than the Board of Control claim discussed above.

At present, CDS has a contract with the Department of Health whereby it provides dental care to Medi-Cal recipients at a per capita rate. CDS has no connection with the MIO contract. If employed by the State, Mr. Joseph's work would have nothing to do with the present CDS Board of Control claim.

We would appreciate the Commission's opinion as to whether the above-described facts would constitute any violation of the Fair Political Practices Act or any other statute. Because time is of the essence in this matter, we see no need for a formal opinion and would be satisfied with whatever format the Commission feels advisable. If any further information is necessary, we would be glad to provide it.

Sincerely,



QUIN DENVIR
Deputy Director
Legal Affairs