



California Fair Political Practices Commission

November 6, 1990

Patsy Haley
City Clerk,
City of Escalon
P.O. Box 248
Escalon, CA 95320-0248

Re: Request for Informal Assistance
Our File No. I-90-599

Dear Ms. Haley:

This is in response to your September 14, 1990, letter requesting advice concerning the conflict of interest provisions of the Political Reform Act ("Act").¹ Your request is one for general assistance. Accordingly, we are treating it as a request for informal assistance.^{2/}

You have asked the Fair Political Practices Commission (the "Commission") to review Escalon's proposed conflict of interest code prior to your city council's approval.

A conflict of interest code is a document which lists the positions within the agency that are in decision making capacities and further provides disclosure categories which describe the types of information to be reported by the employees designated in the code. The categories are designed to require a designated employee's disclosure of the economic interests which can be affected by decisions the designated employee makes in his or her official capacity.

You would not designate in the code your city council members (city council members are already covered under Section 87200 and have city-wide jurisdiction), nor would you designate other city

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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

employees who are required to file under Section 87200 and have full disclosure.

Section 87302 requires that a conflict of interest code enumerate the positions designated, other than those specified in Section 87200, which involve making or participating in making decisions which may foreseeably have a material effect on a financial interest. Each such designated employee is required to file statements at specified times and disclose certain interests.

Pursuant to Section 82011, the code reviewing body for a single city agency is its city council. Single county agencies report to their board of supervisors. All multi-county jurisdictional agencies fall under the authority of the Commission.

The City of Escalon is proposing an amendment to its conflict of interest code. You have written to the Commission for assistance and any advice or suggestions as to the accuracy of your proposed amendments. As the Commission is not your agency's code reviewing body, we are unable to assist you specifically in the preparation of your conflict of interest code. However, we are able to provide general assistance in relation to areas of your code which require correction and provide suggestions to their solutions.

We have had an opportunity to review your city's conflict of interest code and have the following to offer to assist you in updating your code.

1) We suggest that you use Regulation 18730 as the body of your conflict of interest code. Pages 1 - 3 of your code can be deleted in its entirety. This information is set out in Regulation 18730 and is unnecessary here. Incorporating Regulation 18730 by reference into the body of your agency's code means that all changes to the Political Reform Act and to Regulation 18730 will automatically be part of your code. The code will always be up to date and in compliance with the law. All that would be required of you is to keep your appendix of designated positions and accompanying disclosure categories current to reflect organizational changes within your agency.

To incorporate the standardized code, we suggest that you use the model language we have prepared. The last paragraph of the incorporation page should provide for the place of filing of the statements of economic interests. The place of filing usually is with the city clerk for the conflict of interest code for the city, as well as for any agency within the city. Enclosed is a copy of a sample incorporation page which can be used as the cover page of your city's code (see Attachment 1).

2) Upon review of the list of designated positions within the city's code, we note that several positions should be removed. Section 87200 specifically lists positions which are statutorily

required to file statements of economic interests, utilizing the Form 721. Section 87200 filers should not be required to file additionally through inclusion in the city's conflict of interest code. The following positions are statutorily required to file statements of economic interests:

[E]lected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

Section 87200 (emphasis added).

The positions which should be removed from your city's code are as follows:

City Manager
City Treasurer
City Attorney
Planning Commissioners

3) As you are aware, your code at present does not include consultants as designated positions. Additionally, your code does not provide for the specialized disclosure of financial interests by these consultants.

The Commission realizes that not all consultants participate in the making of decisions on behalf of public agencies. And rather than amend your code each time you retain a consultant who is in a decision-making capacity, you may use a specialized disclosure category which provides that the disclosure required of consultants shall be determined on a case-by-case basis by the Mayor or City Manager for the city. The Mayor or City Manager may make a determination as to what disclosure, if any, is required by any particular consultant.

To include this specialized language in your city's code, simply list the position of "consultant*" as the last designated position and include the specialized disclosure category as a footnote. (See Attachment 2 enclosed.)

4) Your letter stated that you are unsure if your Finance Director should be added to your city's conflict of interest code. If the position is making or participating in the making of decisions as described in Section 87302, and the position is not covered in Section 87200^{3/}, it should be included in your agency's conflict of interest code. Appropriate disclosure should be assigned based upon the duties of the Finance Director.

5) Based upon a cursory review of your appendix of disclosure categories, we have the following comments and suggestions:

(a) In 1989, the statute governing the contents of conflict of interest codes was changed to require disclosure categories to specifically require the disclosure of business positions. Your disclosure categories should be amended to now include business positions.

(b) Category 4 should be deleted as positions listed in Section 87200 should not be listed in your conflict of interest code.

(c) Disclosure categories should not contain dollar reporting thresholds. We strongly suggest that you remove all references to monetary thresholds from each of your disclosure categories. For example, your categories require reporting an investment if its value is \$1,000 or more. Should the reporting threshold change by statute, you would have to amend your conflict of interest code to conform to this type of change each time it occurs. Incorporation of Regulation 18730 (as discussed in Item #1) as the body of your agency's conflict of interest code will ensure that your code is accurate.

We have included a sample of how your disclosure categories should now read. (See Attachment 3 enclosed).

3/ The Finance Director may be subject to disclosure under Section 87200 as an official who manages public investments. The Commission currently is in the process of defining who these officials are. If you determine that the Finance Director does make or participate in making city decisions, then the Finance Director is required to file a statement of economic interests. Until the Commission has decided how to interpret Section 87200, the Finance Director should be included in the city's conflict of interest code.

If I can be of any further assistance, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel

Cheryl A. Hoff

By: Cheryl A. Hoff
Staff Services Analyst
Legal Division

SH:CAH:I90599

Enclosures