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# State of California



## Fair Political Practices Commission

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Technical Assistance/Administration (916) 322-5660 ••• Executive/Legal 322-5901 ••• Enforcement/Conflict of Interest 322-6441

July 21, 1976

A-76-552

Mr. L. R. Gillis  
Executive Secretary  
California Highway Commission  
1120 N Street  
P O Box 1139  
Sacramento CA 95805

Re: Request for Opinion  
No. 76-075

Dear Mr. Gillis:

Thank you for your letter of June 30, 1976, requesting the Commission's opinion with respect to various issues involving the effective date of a Conflict of Interest Code. In particular, you ask:

1. When does a Conflict of Interest Code become effective?
2. If a designated official resigns prior to the effective date of the Conflict of Interest Code for his agency, need any disclosure be made by that official?
3. If a designated official resigns within the thirty day filing period after the effective date of the Conflict of Interest Code for his agency, need any disclosure be made by that official?

The Commission will not render a formal opinion in response to your request because it does not pose substantial questions of interpretation under the Political Reform Act. I trust, however, that the following informal response will answer your questions.

With respect to the first question, the analysis contained in your letter is essentially correct. Regarding the Conflict of Interest Code of a state agency, 2 Cal. Adm. Code Section 18750(l) as amended by the Commission on July 6, 1976 (a copy of which is attached), provides:

... the Code as approved by the FPPC, shall be transmitted by the agency to the Office of Administrative Hearings, pursuant to Government Code §11380. The agency shall either:

(1) Request that the Office of Administrative Hearings publish the Code in its entirety within the agency's Title of the California Administrative Code; or

(2) Request that the Office of Administrative Hearings print an appropriate reference to the agency's Code in its Title of the California Administrative Code ....

Because 2 Cal. Adm. Code Section 18750(l) specifically invokes Section 11380 of the Administrative Procedure Act, you are correct in assuming that the effective date of the Code is governed by Government Code Section 11422 which provides:

A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the thirtieth day after the date of filing ....

Accordingly, the Code of a state agency becomes effective on the thirtieth day following its filing with the Secretary of State.

Turning to your second question, the answer is no. Any designated employee who resigns prior to the effective date of his agency's Conflict of Interest Code would not be subject to the provisions of the Code. Consequently, that resigning employee need not file any disclosure statement.

Finally, in response to your third question, the answer is yes. Government Code Section 87302(b) states, in pertinent part:

... Statements shall be filed by each designated employee within thirty days after the effective date of the Conflict of Interest Code ....

The obligation of a designated employee to report attaches on the effective date of the Code under which the employee is covered. The thirty-day period provided by Section 87302(b) is designed to give the employee time to gather the relevant data and complete his statement; but it does not modify or affect the obligation to file, which is binding as of the Code's effective date. Thus, any designated employee who resigns within the thirty-day filing period after the effective date of the Conflict of Interest Code for his agency must file a statement disclosing investments and interests in real property held at the time of resignation.

In addition, most draft Conflict of Interest Codes currently contain a requirement for the filing of a "leaving office" statement. Assuming the existence of such a requirement, a designated employee would not only have to file an initial statement but also a leaving office statement when he resigned during the thirty-day period following the effective date of the Code.

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The leaving office statement would require the disclosure of investments in business entities, interests in real property and income received by the designated employee between the effective date of the Code and the date of the employee's resignation.

If you wish to appeal the denial of your formal opinion request, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please contact Alfredo Flores, an attorney on the Commission staff.

Sincerely,

*Michael Bennett*

Michael Bennett  
Executive Director

MB:pvp

## CALIFORNIA HIGHWAY COMMISSION

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June 30, 1976

Mr. Daniel H. Lowenstein, Chairman  
Fair Political Practices Commission  
1100 K Street  
Sacramento, California 95814

Dear Mr. Chairman and Members of the Commission:

Pursuant to Section 83114 of the Political Reform Act of 1974, the members of the California Highway Commission hereby request the Commission to issue an opinion answering the following questions:

1. When does a Conflict of Interest Code become effective?
2. If a designated official resigns prior to the effective date of the Conflict of Interest Code for his agency, need any disclosure be made by that official?
3. If a designated official resigns within the thirty day filing period after the effective date of the Conflict of Interest Code for his agency, need any disclosure be made by that official?

The terms of several of the current members of the California Highway Commission expire on January 15, 1976. Due to the very short time remaining in their terms, they wish to avoid the effort and expense involved in filing disclosure statements.

Section 87303 of the Act states in part:

"No conflict of interest code shall be effective until it has been approved by the code-reviewing body...."

\* \* \*

"...When a proposed conflict of interest code or amendment is approved by the code-reviewing body, it shall be deemed adopted and shall be promulgated by the agency."

Section 18750(1) of the Fair Political Practices Commission's regulations (2 Cal.Admin. Code) states:

"(1) If any Code placed on the Summary Code Review Calendar is approved by the Fair Political Practices Commission without amendment, it shall be signed as approved and returned to the agency and, in the case of state agencies, filed by the agency, as approved, pursuant to Government Code §11380."

Pursuant to subsection (1), when a state agency's Conflict of Interest Code is approved by the FPPC, the code is returned to the agency, for filing with the Secretary of State's office pursuant to Section 11380.

The effective date of the code would then appear to be governed by the provisions of Government Code Section 11422 which states, in pertinent part:

"A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the thirtieth day after the date of filing unless:

"(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by such statute."

Subsection (a) would appear to be inapplicable as the Political Reform Act does not specifically prescribe an effective date for Conflict of Interest codes.

Thus, it appears that a state agency's Conflict of Interest Code, approved by the FPPC, becomes effective on the thirtieth day after filing with the Secretary of State. For example, if the FPPC approves an agency's code on November 26, 1976, and the agency files the Code with the Secretary of State on December 1, 1976, the effective date of the code is January 1, 1977.

It would seem that a designated official could resign prior to January 1, 1977 without being required to file a disclosure statement.

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Pursuant to Section 87302(b) of the Act, designated employees shall file disclosure statements within 30 days after the effective date of the Conflict of Interest Code. If, for example, the effective date of a state agency's Conflict of Interest Code is January 1, 1976 (the thirtieth day after filing with the Secretary of State's office), can a designated employee resign at any time up to February 1, 1977 without being required to file a disclosure statement?

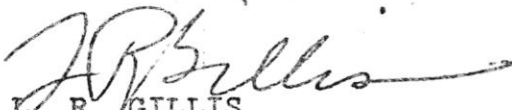
The language contained in Section 87302(b) would appear to support the conclusion that such an employee could do so. A designated employee has 30 days from the effective date of the Code to file a disclosure statement. If such an employee chooses to resign within that 30 day period, it would appear that he or she could do so without having to file a disclosure statement.

Furthermore, the express requirement contained in Section 87204 that Article 2 officers file disclosure statements within 30 days after leaving office strongly suggests that in the absence of any such express requirement for non-Article 2 employees, it could not have been intended that such an employee be required to file a disclosure statement if he or she resigned his position within the 30 day filing period after the effective date of the agency's Code.

In addition, Section 87302(b) merely provides that the manner of reporting reportable items should be substantially equivalent to the requirements of Article 2, not identical.

However, the Act does not expressly state such conclusion. The Commission would appreciate an opinion on the subject.

Very truly yours,

  
L. R. GILLIS  
Executive Secretary