

M-76-574

A pledge must be a legally enforceable promise in order to be a contribution. Decision at O.R. meeting September 3, 1976.

ANALYSIS

The Code of Ethics prohibits Members of the Legislature, among others, from engaging in any business, transaction or professional activity, or incurring any obligation in substantial conflict with the proper discharge of their duties in the public interest or in conflict with their responsibilities as prescribed by state law. Under subdivision (b)(1) through (4) of Section 8920 of the Government Code,¹ various examples of prohibited conflict situations are set forth.

Subdivision (b)(5) of Section 8920 which may be referred to as the "personal interest" provision is the provision we find relevant to your situation and it provides:

"(b) No Member of the Legislature shall, during the term for which he was elected:

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"(5) Participate, by voting or any other action, on the floor of either house, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest, except as follows:

"(i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in substance that he has a personal interest in the legislation to be voted on and notwithstanding such interest, he is able to cast a fair and objective vote on such legislation, he may cast his vote without violating any provision of this article;

¹ All section references, unless otherwise noted, are to the Government Code.

"(ii) If the member believes that, because of his personal interest, he should abstain from participating in the vote on the legislation, he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest. In the event a rule of the house, requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

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Thus, these provisions of subdivision (b) (5) of Section 8920 dictate what a legislator may or may not do as to a particular measure in the light of his personal interest.

Section 8921 states that a person subject to these provisions has a personal interest if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. It also provides that a person does not have such an interest if any benefit or detriment accrues to him as a member of a business, profession, occupation, or group to no greater extent than any other member of such business, profession, occupation or group.

If facts are within a person's knowledge on the basis of which he should conclude that he will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity, he may have a personal interest.

The question thus presented is whether a legislator will derive such a direct monetary gain or suffer a direct monetary loss from his official activity that it would be classified as a personal interest; and even if his interest is classified as a "personal interest," are the circumstances such that the benefits which would accrue to

him as a member of a class (in this case the class would be composed of similarly situated candidates and legislators) be different than the benefits which would accrue to other members of this class?

In this situation, if a legislator has reason to believe that he will derive a direct monetary gain or loss from his official activity and is affected differently than other members of his business, profession, occupation or group, or is not otherwise excepted, then he would have a personal interest within the meaning of Section 8921. While these provisions of the Code of Ethics have never been interpreted by an appellate court in California, we think that there is at least a possibility that the "group" exception may not be available in such a situation, since the group involved is a small definable group, the members of which will not be affected uniformly by such legislation.

By the terms of subdivision (b)(5) of Section 8920, such a personal interest does not necessarily preclude a legislator from casting a vote on the vote for final passage of such legislation, if he can vote impartially notwithstanding his interest and so states in the journal. However, this exception does not apply to votes in committee; and the member would be precluded from voting in committee on such legislation under the Code of Ethics.

The Political Reform Act of 1974, an initiative measure (see Sec. 87100 et seq., Gov. C.), superseded prior legislative enactments to the extent of conflict between such enactments and the act (see Sec. 81013). The act does not, however, in our opinion, supersede the Code of Ethics for legislators and others except for those provisions which would prevent the provisions of the Political Reform Act from being given full effect.

Section 87103 states that for the purposes of Section 87100, 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, upon the interests listed in subdivisions (a) through (d) of Section 87103.²

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"87103.

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"(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

"(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

"For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, by any business entity controlled by the public official or by a trust in which he has a substantial interest. A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000)."

Thus, a legislator is prohibited from taking part in a decision or using his position to influence a decision which would foreseeably have a material financial effect on the interests set out in subdivisions (a) through (d) of Section 87103. This does not, however, prevent him from participating in the making of a governmental decision where his participation is legally required in order for the decision to be made (Sec. 87101).

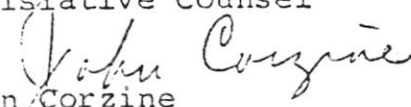
In the case under discussion, the return of a filing fee does not appear to come within any of the categories of financial interests contained in Section 87103. It is not, in our opinion, a source of "income," as defined in subdivision (a) of Section 82030; and it is not, of course, a business entity or an interest in real property.

Thus, we conclude that the conflict of interest provisions of the Political Reform Act would not be applicable to this situation and would not prohibit the legislators in question from voting on such a bill.

In conclusion, an affected legislator may not vote in committee on a bill which will result in the return of his election filing fee; however, he may vote on the vote for final passage of such legislation if he can do so impartially and enters a statement to that effect in the journal before the vote is taken.

Very truly yours,

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By 
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JC:sms