

State of California

Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ... 1100 K STREET BUILDING, SACRAMENTO, 95814  
Technical Assistance/Administration (916) 322-5663 Executive Legal 322-5701 Enforcement/Conflict of Interest 322-6441

March 17, 1976

76-241

Mr. Irving G. Breyer  
Legal Advisor  
San Francisco Community  
College District  
33 Gough Street  
San Francisco, CA 94103

Re: Request for Opinion  
No. 76-032

Dear Mr. Breyer:

This is in response to your letter of March 3, 1976, requesting the Commission to render an opinion concerning Government Code Section 87207(b)(20). The Commission has determined not to issue a formal opinion regarding your request at this time. However, I hope the following information is instructive concerning an individual's responsibilities under the Political Reform Act of 1974.

Initially, it should be noted that the Commission is not in a position to rule or meaningfully comment on the constitutionality of the various provisions of the Political Reform Act. The constitutionality of Section 87207(b)(2) is currently being litigated in the case of Hays v. Wood, No. 36319 (Superior Ct. Mendocino Cty, filed Aug. 11, 1975). With respect to your question concerning our interpretation of the Section, I hope the following analysis will be helpful.

It is assumed for the purposes of this discussion that your questions are aimed at the situation of an attorney sitting as a board member. A law firm is a "business entity" within the meaning of the Political Reform Act. See Government Code Section 82005. It may also, however, be a source of "income" (see Government Code Section 82030) which would be reportable under Section 87207. This would apply to either partners or employees of the firm.

However, it must be emphasized that at this time members of the boards of community college districts have no reporting obligation. As defined in Section 87200, the broad reporting requirements of Section 87207 are applicable only to a limited class of persons, presumably those whose official public duties are so broad and wide-sweeping that it is impossible to rationally limit their disclosure obligations to a limited number of entities likely to be affected by their authority. Only limited disclosure obligations may, however, be imposed on persons covered pursuant to a District Conflict of Interest Code required to

Mr. Irving G. Breyer  
March 17, 1976  
Page Two

be promulgated by state and local agencies under Article 3 of Chapter 7 of the Political Reform Act. For instance, in your example the board member would only be required to reveal sources of income which "may foreseeably be affected materially by any decision made ... by virtue of his position." Government Code Section 87302(b). See attached letter to Mr. McNamara, December 16, 1975.

I realize this comment does not address itself to your threshold question of constitutionality of the cited provisions. However, I hope it will at least put the members' obligations in a little more realistic perspective in terms of both their burdensomeness and their rational relationship to the basic goals of the Act.

Please feel free to call upon me if I can be of further assistance.

Sincerely,



Daniel H. Lowenstein  
Chairman,  
For the Commission

DHL:plh  
Attachment

Louis F. Balmale  
Chancellor/Supervisor

March 3, 1976

Request No. 76 037  
Date Rec'd 3-5-76  
Response Due 3-19-76

MAR 5 5 23 AM '76

76241

Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA. 95804

SUBJECT: Request for Opinion.

Gentlemen:

As legal adviser for the San Francisco Community College District, we respectfully request an opinion on the interpretation and constitutionality of Government Code Section 87207(b)(2) relating to information pertaining to income.

This provision reads as follows:

"In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the filer's pro-rata share of fees for such person was equal to or greater than \$1,000."


1. What is the meaning of the term "Business Entity"? Is it applicable to an individual attorney or firm of attorneys as distinguished from being employed to do legal work by a firm doing some other business.
2. Assuming that the section is applicable to board members practicing law as private attorneys, is it not unconstitutional in that it discriminates between those who provide legal and brokerage services on the one hand and all other types of work (note Section 87207(b)(3) Government Code).
3. It also appears to me that insofar as attorneys are concerned, this section is in conflict with the requirement of confidentiality between the attorney and client.

I personally am of the opinion that the section is unconstitutional. However, the penalties are heavy for violation. It is my understanding that your Commission has the authority to render opinions as to the interpretation of Proposition 9. Because of the importance and urgency of the question raised, your consideration

March 3, 1976

and early response would be greatly appreciated.

Sincerely,



IRVING G. BREYER  
Legal Adviser

cc: San Francisco Community College  
District Governing Board

Dr. Louis F. Batmale  
Chancellor/Superintendent

IGB:lc

## FAIR POLITICAL PRACTICES COMMISSION

1100 K Street  
San Francisco 95514  
(416) 522-5650



December 16, 1975

Mr. T. N. McNamara  
Pillsbury, Madison & Sutro  
225 Bush Street  
San Francisco, Ca. 94104

Re: Request for Opinion  
No. 75-209

Dear Mr. McNamara:

This is in response to your request for an informal interpretative opinion regarding the responsibilities of the Board of Trustees of the Dixie School District in the development of a conflict of interest code pursuant to Government Code Section 87300.

In particular, you seek advice with respect to your potential obligation to disclose your interest in a law firm of which you are a general partner but have less than a ten percent interest.

At the onset, it should be clear that the responsibility for the development of the conflict of interest code, in the first instance, resides with the school district. Following the district's determination of what form the code should take, including such considerations as who constitutes a "designated employee," what investments, interests in real property or income must be reported, and what circumstances require disqualification of designated employees, the draft code is reviewed by the Board of Supervisors, which has the responsibility for its ratification and approval.

The Fair Political Practices Commission has, at best, limited review responsibilities with respect to the development or operation of local codes. The Commission does have primary responsibility for the receipt and review of financial disclosure statements required pursuant to Government Code Section 87200, et seq.

You ask, hypothetically, whether your distributive share of the income of the law firm would constitute income for purposes of Section 87207(a) were you required to report income under that Section. The answer is yes. "Income means, ... income of any nature from any source, including but not limited to any salary, (or) wage ...." Government Code Section 82030(a). Clearly, your distributive share of the income of the firm would constitute income for the purposes of Sections 87203 and 87207(a).

You next ask whether Section 87207(b) applies to you " ... in connection with disclosure pursuant to a conflict of interest code." Taking the liberty to rephrase the issue, you appear to ask whether you would be compelled to disclose under Section 87207(b), were you covered by that Section, the names of your law firm's clients whose interests might be materially financially effected by a potential decision of the Dixie School District.

To this inquiry, the answer is no. Section 87207(b) must be read in conjunction with Section 82030(a) to determine whether or not the income of a business entity is required to be reported. The income of a business entity is required to be reported under Section 87207(b) when the official owns a ten percent interest or greater in the business entity (See Government Code 82030(a)). Therefore, so long as you own less than a ten percent interest in the law firm, its income, and thus its clients, would not have to be disclosed if you were filing under Section 87207(b).

I hope that my response, although framed in hypothetical terms, will assist you, your Board and other concerned officials in the development of a conflict of interest code for the Dixie School District.

This response does not constitute an official opinion of the Commission.

Sincerely,



Delbert L. Spurlock, Jr.  
Chief, Conflicts of Interest  
Division

DLS:ma:pvp

cc: Doug Maloney  
David Beatty