

State of California



A-76-283
Fair Political Practices Commission

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

December 28, 1976

Mr. Austin R. Sellery
Secretary to the Board
San Mateo Union High School District
650 North Delaware Street
San Mateo, California 94401

Dear Mr. Sellery:

Thank you for your letter of December 15, 1976, inquiring whether designated employees, within a Conflict of Interest Code adopted pursuant to Government Code §87300 et seq., may be required to disclose income received prior to the effective date of the Conflict of Interest Code.

Your letter is not being treated as an opinion request but rather as a request for informal staff advice. However, the Commission has considered this matter at its meeting of August 10, 1976, when it formally resolved issues which were proving troublesome to state and local agencies and which involved a matter of policy or interpretation under the Act.

The Commission's determination was embodied in the following paragraph in a memorandum to "Code Drafters" from the Conflicts of Interest Division, dated August 25, 1976. Copies of this memorandum are contained in Part III of "Informational Material -- Conflict of Interest Codes", transmitted to the Office of every County Clerk in September. This determination follows:

Income Reporting on Initial Statements: This requirement is impermissible. The Act is clear, both in Article 2 and in §87302(b), that the report of income received prior to assuming office is not required. Furthermore, it would be an unwarranted invasion of the designated employee's privacy if such a requirement was imposed by the Code of an agency.

My own view is that the privacy issue, together with the constitutional due process requirements, absolutely prohibit disclosure of income received prior to the effective date of the Code. This is because the official required to disclose income must be sufficiently apprised of the reporting obligations of personal income when he or she actually receives that income. Such notice obviously cannot take place prior to the effective date of the Conflict of Interest Code.

You also ask whether a school board under the jurisdiction of a county board of supervisors for the adoption of a Conflict of Interest Code may remove a provision requiring disclosure of pre-Code income. You indicate that your school district has been given a proposed model by the board of supervisors requiring the disclosure of such income.

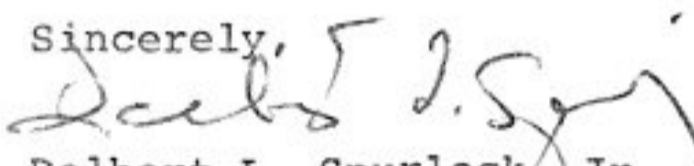
Government Code §87300 provides that "[e]very agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article". Thus, it is required that each school district adopt and promulgate a Code in the form it deems appropriate to satisfy the requirements of Government Code §87300 et seq. It then becomes the responsibility of the code reviewing body, pursuant to Government Code §§87303 and 87309, to review the Code for compliance with the Act. If the two agencies disagree, Government Code §87308 provides:

Judicial review of any action of a code reviewing body under this chapter may be sought by the agency, by an officer, employee, member or consultant of the agency or by a resident of the jurisdiction.

Board members suing as individuals pursuant to this section may be entitled to attorney's fees. See Government Code §91012.

I trust that these comments have been responsive to your questions. If you have other questions, please feel free to call me at 916/322-6444.

Sincerely,


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

DLS:glb

San Mateo Union High School District

650 NORTH DELAWARE STREET, SAN MATEO, CA. 94401

(415) 347-3031

AUSTIN R. SELLERY, Superintendent

December 15, 1976

Mr. Del Spurlock, Chief
Conflict of Interest Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95814

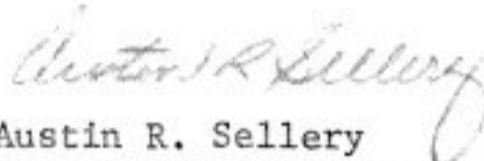
Dear Mr. Spurlock:

This letter was stimulated by Mrs. Carol Gonella, President of our Governing Board, as a consequence of a conversation with you in San Diego during the CSBA/ACSA Annual Conference this December.

She shared with you at that time a particular difficulty which we are having with the San Mateo County's recommended model Conflict of Interest Code. She pointed out that the District Attorney's office had inserted a statement in that model that we judge and believe goes beyond the requirements of the law. You agreed with her that if it goes beyond the requirements of the law, it either should not be in the Conflict of Interest Code or we have the prerogative of removing it. You also suggested that you would be willing to give us your opinion on this matter. The specific condition is as follows.

Enclosed is a copy of the model code with the statement in question removed under section 6. TIME OF FILING, subsections (a), (b), and (c). The words that have been deleted are identifiable by the line drawn through those words on the document you possess. If you feel it is an appropriate deletion, a letter to that effect would be greatly appreciated.

Sincerely,


Austin R. Sellery
Secretary to the Board

P.S. In keeping with a further recommendation made to Mrs. Gonella, I will contact one of our legislators and ask that he request an opinion from the Attorney General for us.

ARS:cm

Enclosure

RESOLUTION NO. _____

BOARD OF TRUSTEES OF THE SAN MATEO UNION HIGH SCHOOL DISTRICT
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION ADOPTING A CONFLICT OF INTEREST CODE

RESOLVED, by the San Mateo Union High School District, County of San Mateo, State of California, that

WHEREAS, the Political Reform Act of 1974 (Title 9 of the Government Code, beginning with Section 81000) requires that this Board of Trustees adopt a Conflict of Interest Code which shall be applicable to all designated employees therein named:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the following shall constitute the Conflict of Interest Code for the San Mateo Union High School District.

1. AUTHORITY FOR CODE. This Conflict of Interest Code is adopted in order to comply with the provisions of Article 3 of Chapter 7 of Title 9 of the Government Code. Nothing herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Title 9 of the Government Code, commencing with Section 81000) or any other statute or ordinance pertaining to conflicts of interests. Reference is hereby made to the definitions contained in said Act and regulations adopted pursuant thereto, and by this reference said definitions are hereby incorporated herein.

2. OFFICERS AND EMPLOYEES AFFECTED. The positions listed on Exhibit "A", attached hereto, and by this reference incorporated herein, are designated positions. Any officer or employee holding any such position is deemed to be a designated employee in that this Board of Trustees has found that he makes or participates in the making of, decisions which may foreseeably have a material effect on any of his financial interests.

3. PENALTIES FOR VIOLATIONS. Violation of this Code by a designated employee shall be deemed a violation of the Political Reform Act of 1974 and shall subject the violator to civil or criminal penalties, or both, and shall cause the violator to be subject to disciplinary action, including dismissal.

4. FILING OFFICER. The Assistant Secretary to the Board is hereby designated the filing officer to receive all statements required by this code to be filed. The Filing Officer shall retain the original of the statement except where she is required by law to retain a copy of each such statement and forward the original of each such statement to the Code Reviewing Board.

5. CONTENTS OF DISCLOSURE STATEMENTS. Each designated employee's disclosure statement shall contain a full disclosure of those types of financial interests listed in the category or categories of reportable financial interests to which his designated position is assigned on Exhibit "A", and which may foreseeably be materially affected by any decision made or participated in by the designated employee.

6. TIME OF FILING. Designated employee shall file disclosure statements as follows:

(a) Each person who is a designated employee as of the effective date of this Code shall file a first disclosure statement within thirty (30) days thereafter. Such statement shall disclose the designated employee's reportable investments, interest in real property, and management positions as of the date of said statement, together with a disclosure of ~~reportable income which has been received by, or promised to, the designated employee during the twelve (12) calendar months immediately preceding the effective date of this code.~~

(b) Each person appointed to a designated position which is not an elected office shall file a first disclosure statement within thirty (30) days after being so appointed. This first statement shall disclose the designated employee's reportable investments, interests in real property, and management positions as of the date of his appointment, together with a disclosure of ~~reportable income which has been received by, or promised to, the designated employee during the twelve (12) calendar months immediately preceding the date of his appointment.~~

(c) Each person appointed or elected to a designated position which is an elective office shall file a first disclosure statement not less than ten (10) days before assuming office, unless an earlier assumption of office is required by emergency circumstances, in which case the first statement shall be filed within thirty (30) days after the person assumes office.

This first statement shall disclose the designated employee's Reportable investments, interests in real property, and management positions as of the date of said statement; ~~together with a disclosure of reportable income which has been received by or promised to, the designated employee during the twelve (12) calendar months immediately preceding the date upon which he assumed office.~~

(d) After having filed a first disclosure statement as provided above, each designated employee shall file subsequent disclosure statements of financial interests during the month of May of each year. Each such subsequent statement shall disclose all reportable financial interests received, held, or owned by the designated employee filing the statement during the twelve calendar months immediately preceding the first day of May of the year in which the statement is filed.

7. SPECIFICATION OF INTERESTS. Disclosure statements required to be filed by this Code shall contain the following information:

(a) When an investment or an interest in real property is required to be reported, the statement shall contain:

(1) A statement of the nature of the investment or interest in real property;

(2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

(3) The address or other precise location of the real property;

(4) A statement as to whether the Fair market value of the investment or interest in real property exceeds ten thousand dollars (\$10,000), and whether it exceeds one hundred thousand dollars (\$100,000). This information need not be provided when reporting an interest in real property which is used principally as the residence of the designated employee;

(5) In the case of an investment which constitutes fifty percent (50%) or more of the ownership interest in a business entity, disclosure of the investments and interests in real property of the business entity.

(b) When personal income is required to be reported, the statement shall contain:

(1) The name and address of each source of income aggregating two hundred and fifty dollars (\$250) or more in value, or twenty-five dollars (\$25) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(2) A statement whether the aggregate value of income from each source was greater than one thousand dollars (\$1,000), and whether it was greater than ten thousand dollars (\$10,000);

(3) A description of the consideration, if any, for which the income was received;

(4) In the case of a gift, the amount and the date upon which the gift was received.

(c) When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity;

(2) 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 designated employee's pro-rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000).

(3) In the case of a business entity not described by paragraph (2) immediately above, the name of every person from whom the business entity received payments if the designated employee's pro-rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(d) In the case of a statement of financial interests filed pursuant to paragraph 6(d) above, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of such acquisition or disposal.

(e) When management positions are required to be reported, designated employees shall list the name of each business entity in which the designated employee is a director, officer, partner, trustee, employee, or in which the designated employee holds any position of management.

8. CIRCUMSTANCES REQUIRING DISQUALIFICATION. Every designated employee must disqualify himself from making or participating in the making

of any decision which may foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any of his financial interests, as that term is defined in Government Code Section 87103, whether or not such financial interests are reportable financial interests for that designated employee.

Regularly passed and adopted this _____ day of _____, 1976.

AYES and in favor of said resolution:

Trustees:

NOES and against said resolution:

Trustees:

Absent Trustees:

President, Board of Trustees

ATTEST:

Clerk of Said Board

EXHIBIT "A"

Designated Positions: Persons occupying the following positions are designated employees and must disclose reportable financial interests in categories indicated and described below:

<u>Position</u>	<u>Category</u>				
	Key: 1. Investments				
	2. Real Property				
	3. Income				
	4. Management Positions				
	5-8. (Other)				
Members of the Board of Trustees	1	2	3	4	
Superintendent	1	2	3	4	
Assistant Superintendent-Educational Services	1	2	3	4	
Assistant Superintendent-Operations	1	2	3	4	
Director of Personnel/Employee Relations	1		3	4	7
Principals	1	2	3	4	
Director of Management Services	1	2	3	4	
Director of Maintenance, Operations & Engineering	1	2	3	4	
District Manager of Purchasing Services	1	2	3	4	
District Manager of Food Services					5
Athletic Directors					6
District Attorney					8

Category 1. A designated employee assigned to Category 1 is required to disclose reportable investments.

"Investment" means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this code. No asset shall be deemed an investment unless its fair market value exceeds one

thousand dollars (\$1,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro-rata share of investments of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

Whenever disclosure of investments is required by this Code, investments of the spouse and dependent children of the designated employee must also be disclosed.

Category 2. A designated employee assigned to Category 2 is required to disclose reportable interests in real property.

"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction if the fair market value of the interest is greater than one thousand dollars (\$1,000). Interests in real property of an individual includes a pro-rata share of interests in real property of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

Real property shall be deemed to be "within the jurisdiction" with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

Whenever disclosure of interests in real property is required by this Code, interests in real property of the spouse and dependent children of the designated employee must also be disclosed.

Category 3. A designated employee assigned to Category 3 is required to disclose reportable income.

"Income" means, except as provided below, income of any nature from any source, including but not limited to any salary, wage, advance, payment, dividend, interest, rent, capital gain, return of capital, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the public without regard to official status, rebate, reimbursement

for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

"Income" does not include:

(1) Campaign contributions required to be reported under the Political Reform Act of 1974;

(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;

(3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;

(4) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(5) Gifts from an individual's spouse, child, parent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph;

(6) Any devise or inheritance;

(7) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;

(8) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government.

Category 4. A designated employee assigned to Category 4 is required to disclose any reportable business entity in which the designated employee is a director, officer, partner, trustee, or holds any position of management.

Category 5. A designated employee assigned to Category 5 is required to disclose reportable income as defined in Category 1 from each business entity which supplies food to this agency, or which plans to supply food to this agency, or which has supplied food to this agency within the two years immediately preceding the date of the designated employee's disclosure statement.

Category 6. A designated employee assigned to Category 6 is required to disclose reportable income as defined in Category 1 from each business entity which supplies athletic supplies and equipment to this agency, or which plans to supply athletic supplies and equipment to this agency, or which has supplied athletic supplies and equipment to this agency within the two years immediately preceding the date of the designated employee's disclosure statement.

Category 7. A designated employee assigned to Category 7 is required to disclose income as defined in Category 1, or positions of management as defined in Category 4, of any employee organization with whom he or she meets and negotiates.

Category 8. A designated employee assigned to Category 8 is required by the Political Reform Act of 1974 to file annual statements of financial interest (Government Code Section 87200) and may not be required by this code to do so (Government Code Section 87302(b)). Such a designated employee, therefore, need not file financial interest statements with the Filing Officer designated by this code but is subject to the disqualification provisions of Section 8 hereof.