

State of California



Fair Political Practices Commission

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

September 24, 1976

A-76-289

Mr. William M. Wilcoxon
220 Park Avenue
Laguna Beach, California 92651

Dear Mr. Wilcoxon:

You represent the Capistrano Bay Park and Recreation District, which must adopt a Conflict of Interest Code. You ask whether any provision of law prevents the Board of Directors of the District from including within the provisions of its Conflict of Interest Code a clause providing for reasonable reimbursement up to a maximum of \$100 for the Board members' cost of preparation of statements of economic interests required by the Conflict of Interest Code. Such cost would be incurred by the members of the Board in securing legal and/or accounting assistance in the preparation of individual members' statements of economic interests.

While I cannot express any opinion with respect to the general propriety or legality of public officials seeking reimbursement from taxpayers for personal expenses incidental to office holding, there appears to be no provision of the Political Reform Act which would prevent the inclusion of a clause such as that envisioned above in a Conflict of Interest Code. Thousands of public officials throughout the state are required, pursuant to the Political Reform Act and Conflict of Interest Codes adopted thereunder, to file statements of economic interests disclosing reportable investments, interests in real property, and sources of income. The subject matter of your inquiry is unique.

I trust that the disclosure responsibilities of the District Board members will be drawn in such a fashion that there will be no need for reporting Board members to resort to extra District resources to fulfill their obligations of complying with the terms of their Conflict of Interest Code.

Sincerely,

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

DLS:mra

~~CONFIDENTIAL~~

May 7, 1976

Mr. George H. Murphy
Legislative Counsel
3021 State Capitol
Sacramento, California 95814

Dear Mr. Murphy:

Thank you for your letter of April 21, 1976, requesting an opinion on whether the Commission on Uniform State Laws must adopt a Conflict of Interest Code pursuant to Chapter 7, Article 3 of the Political Reform Act of 1974. In response to an earlier opinion request on the same subject by Mr. Robert H. Cornell, Chairman of the California Commission on Uniform State Laws (Request No. 75-197), the Chairman responded that the Commission would draft a regulation "which will enable agencies which do not have designated employees to satisfy the requirements of §87300 by filing some sort of letter or form in lieu of a complete Conflict of Interest Code." Such a regulation will be noticed for hearing in July. The draft regulation will establish a procedure for resolving whether a Conflict of Interest Code for a particular state agency need be adopted based on the absence of any designated officials within the agency.

Whether members of the Commission on Uniform State Laws are public officials within the meaning of the Act, or may be designated officials pursuant to a Conflict of Interest Code, would appear, based upon your letter, to present issues difficult of resolution without scrutiny by this Commission of the operations of the California Commission on Uniform State Laws. It is preferable that such scrutiny take place in the context of a formalized procedure.

If the anticipated procedure compromises your plans for the timely development of a Conflict of Interest Code for the Commission on Uniform State Laws (should it be determined that such a Code is required), please feel free in July or August to request an extension of the due date for the submission of such a Code to the Fair Political Practices Commission for review.

If you have any further questions, please feel free to contact me at 322-6441.

Sincerely,

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

BERNARD CZESLA
CHIEF DEPUTY

OWEN K. KUNS
EDWARD K. PURCELL
RAY H. WHITAKER

KENT L. DECHAMBEAU
ERNEST H. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
EDWARD F. NOWAK
RUSSELL L. SPARLING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

107 SOUTH BROADWAY
LOS ANGELES 90012

APR 23 9 20 AM '76

Legislative Counsel of California

APR 23 9 20 AM '76

GEORGE H. MURPHY

Sacramento, California

April 21, 1976

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
JEFFREY D. ARTHUR
CHARLES C. ASBILL
JAMES L. ASHFORD
JERRY L. BASSETT
JOHN CORZINE
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCES S. DORBIN
ROBERT CULLEN DUFFY
CARL NED ELDER, JR.
LAWRENCE H. FEIN
JOHN FOSSETTE
HARVEY J. FOSTER
HENRY CLAY FULLER III
ALVIN D. GRESS
ROBERT D. GRONKE
JAMES W. HEINZER
THOMAS R. HEUER
EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
DANIEL LOUIS
JAMES A. MARSALA
DAVID R. MEEKER
PETER F. MELNICOE
MIRKO A. MILICEVICH
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
TRACY O. POWELL, II
MARGUERITE ROTH
MARY SHAW
WILLIAM K. STARK
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Mr. Delbert L. Spurlock, Jr.
Chief, Conflicts of Interest Division
Fair Political Practices Commission
1100 K Street
Post Office Box 807
Sacramento, CA 95814

Dear Mr. Spurlock:

On behalf of the members of the Commission on Uniform State Laws, I would like to obtain from the Fair Political Practices Commission a formal ruling that our commission is not subject to the conflict of interest code requirements of the Political Reform Act of 1974 (Art. 3 (commencing with Sec. 87300), Ch. 7, Title 9, Gov. C.).

As you may recall, our commission requested an opinion from your commission on this same issue in November 1975 (Request No. 75-197). In response, Chairman Lowenstein stated that "it would not further the purposes of the act to require agencies which have no 'designated employees' who would be subject to such a code to adopt a Conflict of Interest Code." In denying the opinion request, he further stated that the issue would be resolved by the future adoption of a regulation which would permit an agency with no designated employees to file a letter or form in lieu of a complete conflict of interest code.

However, you informed my office last week that the commission now has no plans to adopt a regulation and suggested that the commission would decide whether an agency is required to prepare a code upon receiving an informal written request from the agency for such a determination.

Accordingly, for the reasons stated below, I hereby make such a request in order that the issue may be resolved as quickly as possible.

Provisions governing the organization and duties of the Commission on Uniform State Laws are contained in Chapter 3 (commencing with Section 10400), Part 2, Division 2, Title 2 of the Government Code. The commission consists of one member of the Senate appointed by the Committee on Rules, one member of the Assembly appointed by the Speaker, and four additional members appointed by the Governor. As Legislative Counsel, I serve as an ex officio nonvoting member of the commission (Sec. 10401, Gov. C.). Commission members receive no compensation (Sec. 10406, Gov. C.) and the commission has no employees. The duties of the commissioners are set forth in the Government Code as follows:

"10430. The commissioners shall either each attend the meetings of the National Conference of Commissioners on Uniform State Laws, or arrange for the attendance of at least one of their number at such National conference."

"10431. The commissioners shall do all in their power to promote uniformity in State laws upon all subjects where uniformity is deemed desirable and practicable."

"10432. The commission shall bring about, as far as practicable, the passage of the various uniform acts recommended by the National conference, and shall devise and recommend such additional legislation or other or further course of action as is deemed necessary to accomplish the purposes of this chapter."

"10433. The commission shall report to the Legislature from time to time as the commission deems desirable and practicable, giving an account of its transactions and its advice and recommendations for legislation."

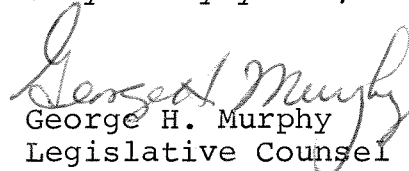
Initially, I note that the commission apparently meets all of the criteria established by the Fair Political Practices Commission in its administrative definition of a "state agency" (2 Cal. Adm. C. 18249). However, a conflict of interest code of a state agency only applies to "designated employees" (Sec. 87302, Gov. C.). The definition of "designated employee" expressly excludes "any unsalaried member of any board or commission which serves a solely advisory function" (Sec. 82019, Gov. C.). I think it is clear from the statutory duties quoted above that the commission serves solely an advisory function.

Moreover, I think it is clear that members of the Commission on Uniform State Laws are excluded from the administrative definition of public officials who are subject to the general disqualification provision of Section 87100 of the Government Code (2 Cal. Adm. C. 18700(a)(1)). I understand that the commission staff regards this definition as further clarification of the term "designated employee." Among other things, this regulation includes as public officials those unsalaried members of commissions who make "substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency." Based on my 10 years with the commission, I can assure you that recommendations of the commission to the Legislature, when adopted, have not been adopted solely on the basis of commission recommendations. In fact, legislation recommended by the commission, in many instances, has been rejected or substantially modified.

Lastly, I point out that the two legislative members of the commission are already subject to the broad financial disclosure requirements of Article 2 (commencing with Section 87200) of Chapter 7. I will be subject to the conflict of interest code adopted for my own agency. No purpose would be served to require the three of us to make duplicate filings.

In conclusion, I hope that the commission staff may consider and make a recommendation on this request early enough for the commission to resolve the issue at its May meeting. If necessary, my representative will make an appointment to meet with you or your staff for further discussions at your earliest convenience.

Very truly yours,


George H. Murphy
Legislative Counsel