

State of California



A-76-297
Fair Political Practices Commission

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

June 24, 1976

Ms. Carlotta Mellon
Appointments Assistant
to the Governor
Governor's Office
State Capitol, First Floor
Sacramento, California 95814

Dear Carlotta:

This letter is in response to our recent telephone discussion concerning the need, by appointees, to file Statements of Economic Interests pursuant to the conflict of interest provisions of the Political Reform Act. As the Appointments Assistant to the Governor, you were concerned that appointees receive full information, and appropriate forms, as to their financial interest disclosure responsibilities, as members of various boards, bureaus, commissions, etc., at the time the appointments were under active consideration. To permit you adequately to brief prospective appointees, you ask for a list of the agencies that would require disclosure of financial interests, the extent of the disclosure required, and an explanation of why disclosure is required. Let me attempt to answer your questions.

The conflict of interest provisions of the Political Reform Act (Attachment A) are found in Chapter 7 of the Act, beginning at Government Code §87100. This section contains a basic prohibition applicable to all public officials:

"87100. Public Officials; State and Local. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

*All citations are to the California Government Code unless otherwise indicated.

Disclosure Provisions for Article 2 Filers

The financial interest disclosure provisions are to be found in Article 2, beginning at §87200, and Article 3, beginning at §87300, of the Act. Article 2 basically applies to high-ranking state and local public officials, many of whom are gubernatorial appointees.

"87200. Applicability. This article is applicable to elected state officers, judges of courts of record, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Zone Conservation Commission, members of the board of supervisors, district attorneys, and chief administrative officers of counties, mayors, city managers, chief administrative officers and members of city councils of cities, members of each of the six regional coastal zone conservation commissions, and to candidates for any of these offices at any election."

Appointees to positions or agencies identified in §87200 are required by §87202 to file, not less than ten days prior to assuming office, a Statement of Economic Interests, Form 720 (Attachment B), disclosing investments and interests in real property (not income).

Within thirty days after each anniversary of assuming office, a Statement of Economic Interests, Form 721 (Attachment C), disclosing investments, interests in real property, and income is required to be filed (§87203), covering the period since the previous statement was filed. Then, within thirty days after leaving office, a final statement, disclosing investments, interests in real property, and income during the period since the previous statement filed under §§87202 and 87203, is required (§87204).

Not all investments and interests in real property, however, are reportable on these statements. The definitions of investment (§82034) and interest in real property (§82033) are both limited to investments in business entities and interests in

real property with a fair market value of \$1,000 or more, and in the jurisdiction of the agency. "Jurisdiction" means the state, with respect to a state agency; and, with respect to a local government agency, the region, county, city, district, or other geographical area in which it has jurisdiction. Thus, an appointee to the Public Utilities Commission, a state agency, would report investments and interests in real property worth \$1,000 or more within California, while an appointee to a board of supervisors would report investments and interests in real property, worth \$1,000 or more, within that county. When income is reportable (on anniversary and departure statements), however, all income from any source, within or outside of California, of \$250 or more, must be disclosed. Note, however, that the definition of "income", at §82030, does not include such things as salary and reimbursement of expenses from a state or local government agency, any devise or inheritance, and specified interests and dividends. The Instruction Manuals (Attachments B and C) to Forms 720 and 721 are very helpful in explaining what must be disclosed on each form. Basically, the financial interest disclosure responsibilities imposed on the high-ranking state and local public officials, covered by Article 2, are quite broad and completely statutory. The Fair Political Practices Commission has no authority to increase or diminish the disclosure required of persons under Article 2, as the Government Code (§§87200-87207) compels this broad disclosure. To explain, more graphically, the conflict of interest disclosure requirements for Article 2 and Article 3 appointees, I have put together a somewhat detailed chart, for each category, that shows who discloses what, when, with citations to relevant sections of the Government Code. See Attachments D and E.

Disclosure Provisions for Article 3 Filers

Most gubernatorial appointees will be governed by the financial interest disclosure provisions of Article 3, beginning with §87300, which requires every agency to adopt and promulgate a Conflict of Interest Code consistent with the provisions of the Article. "Agency" means any state agency or local government agency (§82003). Appointees, if they are "designated employees", will be required to disclose financial interests in accord with the provisions of a Conflict of Interest Code which their agency adopts. Initially, §87302 requires each Conflict of Interest Code to contain a list of

positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. People appointed to or serving in these listed positions are called "designated employees" because of their ability, through making or participating in the making of decisions, to materially affect financial interests.

Secondly, §87302(b) provides that each Conflict of Interest Code must require that each "designated employee" file annual statements disclosing reportable investments, interests in real property, and income. Thus, when a person is appointed to a "designated" position, the agency's Conflict of Interest Code will require that person to disclose investments, interests in real property, and income. Just as we pointed out with Article 2 disclosers, however, not all investments, interests in real property, and income are reportable for Article 3 disclosers. First, only investments in business entities and interests in real property with a fair market value of more than \$1,000 are reportable. Secondly, the investment or interest in real property must be within the jurisdiction, as explained above. With regard to income, the amount must aggregate \$250 or more within the reporting period (since the last statement was filed). And, finally, §87302(b) makes an investment, interest in real property, or income reportable by the Conflict of Interest Code only if the business entity in which the investment is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the "designated employee" by virtue of his or her position. Thus, it is up to the agency in adopting its Conflict of Interest Code to determine, first, who will be a "designated employee". and secondly, what the scope of disclosure will be for each "designated employee". The agency drafters, with knowledge of the powers and responsibilities of each "designated employee" use their own judgment and discretion to establish the scope of disclosure appropriate for each "designated employee" under the "foreseeability" standard contained in §87302(b).

In summary, an appointee to an agency required to adopt and promulgate a Conflict of Interest Code pursuant to Article 3 (§87300) will have financial interest disclosure responsibilities if the appointee assumes a "designated employee" position. The scope of financial interest disclosure to which the appointee will be subjected will be tailored to

the powers and responsibilities of the position. While all "designated employees" will be required to disclose, they will fall into different disclosure categories. "Designated employees" exercising the broadest powers and responsibilities will be required to disclose most broadly; "designated employees" exercising narrow powers and responsibilities will disclose most narrowly.

Specific Information Not Yet Available

As you may know, most state agencies are now in the process of developing and adopting their own Conflict of Interest Codes. These Codes will become effective and subject designated officials, members, employees and consultants to disclosure requirements only after approval of the Codes by the Fair Political Practices Commission. To get the detailed information that you need to adequately advise prospective employees, you need to have:

- (1) The list of all "designated employees" for the agency in question;
- (2) The disclosure category to which that particular "designated employee" is assigned. This will tell you the breadth of disclosure required of the individual being considered for appointment; and
- (3) A copy of the agency disclosure form(s), which may be nearly identical to Forms 720 and 721 (Attachments B and C).

As most agencies are just now beginning to develop their Conflict of Interest Codes, this information is not yet available. I attach for your review, however, our latest list of deadlines (Attachment F) for submission of Conflict of Interest Codes to the Commission. Review of this list will give you an idea of the time frame for each agency. Some of these deadlines may be extended at the request of the agency, on a showing of good cause.

Possible "Existing" Disclosure Requirements

You should note, however, that some agencies already may have developed Conflict of Interest disclosure requirements under the old Moscone Governmental Conflict of Interest and Disclosure Act. As adoption of a Conflict of Interest Code

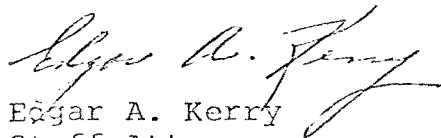
Ms. Carlotta Mellon
June 24, 1976

Page Six

was permissive under the Moscone Act, most agencies probably have not yet taken action to develop their Codes. Where an agency, however, has adopted a Code under the Moscone Act, that disclosure is currently required by law, and will continue to be applicable until the agency adopts and has had approved a new Conflict of Interest Code required by the Political Reform Act.

After you have had a chance to digest this rather complicated explanation of a very complex statute, I would be pleased to discuss the matter with you, if you have any questions or you feel that we can be of further assistance. It was my thought, in drafting this rather lengthy explanation, with attached charts, that it would be helpful to you to understand, generally, the disclosure requirements of the Act in order to give a full explanation and briefing on disclosure requirements to prospective appointees. For that reason, I have gone to considerably more detail on Conflict of Interest disclosure than would have been required for a simple answer to your inquiry.

Sincerely,



Edgar A. Kerry
Staff Attorney
Conflicts of Interest
Division

EAK/g

Attachments

Who Discloses What? When?

I 1/
Investments

- (1) All candidates for or holders of any offices listed in Govt. Code Sec. 87200, disclose Columns I & II upon filing statements of candidacy and within 30 days of assuming office;
- (2) Every person appointed to an office specified in Gov. Code Sec. 87200 must disclose Columns I & II not less than 60 days prior to assuming office;
- (3) Anniversary and leaving office statements by persons in (1) & (2) above, include Columns I, II and III.

- (1) With fair market value over \$1,000;
- (2) If the business entity has real property in the jurisdiction 4/, or does business or plans to do business in the jurisdiction, or has done business in the jurisdiction within 2 yrs. prior to time disclosure statement required;
- (3) Including investments owned by:
 - (a) Spouse or dependent child;
 - (b) Agent on behalf of public official;
 - (c) Business entity controlled 5/ by public official;
 - (d) Trust in which public official has substantial 6/ interest.
- (4) Investments of the individual include a pro rata share of investments of business entity or trust in which individual or spouse owns, directly, indirectly or beneficially a 10% interest or greater.

II 2/
Interests in Real Property

- (1) with fair market value over \$1,000;
- (2) Within the jurisdiction 4/; with respect to a local government agency, property deemed within jurisdiction if not more than 2 miles outside the boundaries of the jurisdiction or within 2 miles of any land owned or used by the local government agency;
- (3) Including interest in real property owned by:
 - (a) Spouse or dependent child;
 - (b) Agent on behalf of public official;
 - (c) Business entity controlled 5/ by public official;
 - (d) Trust in which public official has substantial 4/ interest.
- (4) Interests in real property of the individual includes pro rata share of interests in real property of any business entity or trust in which individual or spouse owns, directly, indirectly or beneficially a 10% interest or greater.

III 3/
Income

- (1) Of \$250 or more, within reporting period 7/, from one source;
- (2) Of \$25 or more, within reporting period 7/, from one source, if income was a gift;
- (3) Income of the individual includes community property interest in income of spouse;
- (4) Income of the individual includes the individual's pro rata share of any income from any business entity or trust in which the individual or spouse owns directly, indirectly or beneficially, a 10% interest or greater.
 - (a) 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 filer's pro rata share of fees from such person was equal to or greater than \$1,000;
 - (b) In the case of a business entity not covered by (4) (a), the name of every person from whom the business entity received payments if filer's pro rata share of gross receipts from such person was equal to or greater than \$1,000.

1/See G.C. Sec. 82034.

2/See G.C. Sec. 82033.

3/See G.C. Sec. 82030.

4/See G.C. Sec. 82035. "Jurisdiction" means the state with respect to a state agency and, with respect to a local gov't agency, the region, county, city, district or other geographical area in which it has jurisdiction...."

5/See G.C. Sec. 87103(d).

6/See G.C. Sec. 87103(d).

7/See G.C. Sec. 87203.

1/

CONFLICT OF INTEREST DISCLOSURE REQUIREMENTS FOR ARTICLE 3 DISCLOSERS

- 76277
1. Who is required to disclose? Every person identified, by position, in an agency Conflict of Interest Code, as a "designated employee" is required to disclose "reportable" investments, interests in real property, and income. 2/
 2. What is reportable? An investment, interest in real property, or income is made reportable by the Conflict of Interest Code if:
 - (a) the business entity in which the investment is held,
 - (b) the interest in real property, or
 - (c) the income or source of income,

may foreseeably be affected materially by any decision made or participated in by the "designated employee" by virtue of his/her position. 3/
 3. When must disclosure occur?
 - (a) Persons holding "designated employee" positions file within 30 days after the effective date of the Conflict of Interest Code.
 - (b) New civil service "designated employees" file within 30 days after assuming office.
 - (c) All other new "designated employees" file not less than 10 days before assuming office or, if subject to confirmation, 10 days before being confirmed.
 4. Content of first statement The first statement filed by a "designated employee" is required to include reportable investments and interests in real property (not income).
 5. Content of subsequent statements Thereafter, each "designated employee" is required to file an annual statement disclosing reportable investments, interests in real property, and income. 4/

1/The definitional citations and other information concerning investments, interests in real property, and income contained in Columns I, II and III of Attachment "D" are applicable to Article 3 filers as well.

2/In addition, an agency may require disclosure of any position as director, officer, partner, trustee, employee, or management, with a business entity since this business entity relationship can be the basis for disqualification by a "designated employee". This would bring disclosure and disqualification requirements into symmetry.

3/Government Code Section 87302(b).

4/In addition, an agency "may" require a leaving office statement to be filed, within 30 days after leaving office, with the same disclosure as required by the annual statement.

76297

6. Important agency role

The agency 5/, with knowledge of the powers and responsibilities of its personnel, exercises its judgment and discretion to determine:

- (a) who is to be a "designated employee"; and
- (b) what the scope of disclosure for each "designated employee" or category of "designated employee" shall be.

In making this determination, the agency is bound by Sections 82019 and 87302(a), which define "designated employee" and by Section 87302(b), which explains what financial interests are reportable.

7. Disqualification

Every Conflict of Interest Code must require disqualification when a "designated employee" has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be materially affected by the decision. No "designated employee" is required to be disqualified, however, when the matter at issue legally could not be acted upon or decided without the participation of the "designated employee". NOTE: Because disqualification is linked to the definition of financial interest in Section 87103, all of which is not required to be disclosed, a "designated employee" may be required to disqualify him/herself because of a non-disclosed business entity relationship. Because of this anomaly, some agencies opt to require disclosure of any position as director, officer, partner, trustee, employee, or management with a business entity. 6/

5/Subject to the approval of the Fair Political Practices Commission. Government Code Section 87303.

6/Government Code Section 87103(d).