

State of California



A-72-293
Fair Political Practices Commission

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

Technical Assistance Administration ••• Executive Legal ••• Enforcement ••• Conflict of Interest
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September 27, 1977

Fritz E. Walgenbach
Conflict of Interest Coordinator
Department of Fish and Game
1416 Ninth St., 12th Floor
Sacramento, California 95814

Re: Request for Informal Advice Pursuant to
2 Cal. Adm. Code Section 18329(b)(1)

Dear Mr. Walgenbach:

In answer to your request for informal advice dated August 22, 1977, regarding your Conflict of Interest Code, I trust the following reply will be helpful.

1. The Fish and Game Conflict of Interest Code requires the reporting of financial interest in manufacturing and supplying of fishing gear, including boats. General Motors manufactures engines for fishing boats. Do designated employees have to report holdings in General Motors Corporation?

The answer to question #1, above, is yes, if your agency defines engines used for fishing boats as an item separate and apart from the boat and therefore within the meaning of "fishing gear" contained in your category.

On the other hand, if your definition of fishing gear does not include the engine, then the boat and the engine would only be reportable as a unit. Thus, only holdings in Evinrude Boat Manufacturers would have to be disclosed and not holdings in General Motors. This would be particularly appropriate in the instance where General Motors produces engines for Evinrude under the Evinrude Trademark.

2. The Marine Research Committee is composed of nine members, five members constitute a quorum and five votes are needed to pass any action. If only five members are available for a meeting where business is conducted and one of those members has a financial interest which would normally require his abstaining from participation, but because a quorum action is necessary, can he participate:

(A) When there is not sufficient time to reconvene another meeting and arrange for more members to be present?

(B) When deferment of a vote until the next meeting is possible but not desirable?

(C) When no matter how many members are present, a quorum is not possible because at least five members have a financial interest in the matter before the group?

The above-stated questions are too hypothetical for an appropriate private answer at this time. However, the issues raised therein may be answered in an opinion currently pending before the Commission.

3. The Marine Research Committee Conflict of Interest Code requires disclosure of income from commercial fishing. One member of that committee is a Union official, paid to represent commercial fisherman. Is his salary as a Union official reportable as income from commercial fishing?

The above-stated question requires some clarification. Upon soliciting further information, Mr. Walgenbach stated that the above-mentioned official is employed to represent an association of Independent small fishing boat owners. Therefore, the question is yes; the official will be required to disclose his salary as income from commercial fishing.

4. If a vote is taken on any action where one of the participants should have disqualified himself, but didn't, and the action is subsequently challenged, is the action

(decision) void:

(A) If his vote did not change the outcome (six votes, five necessary to pass, and all six were to pass)?

(B) If his vote didn't change the outcome, but his vote was necessary for passage? (five votes present and five votes cast to pass)

The answer to question #4, above, is contained in Government Code Section 91003(b), which states:

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Section 87100) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include, but are not limited to orders, permits, resolutions and contracts, but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action.

Further, the answers to #4, 4(A) and 4(B) are all the same. The decision is voidable in each instance.

Government Code Section 87100 states:

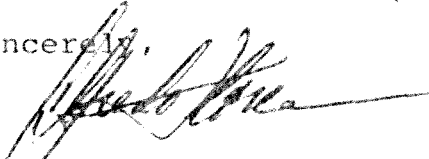
87100. Public Officials; State and Local. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

[emphasis added]

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Therefore, notwithstanding the fact that the outcome would not be changed by the participants vote, under Government Code Section 87100, an official could still be found to be participating or attempting to influence a governmental decision. But because each alleged violation would ultimately be determined from the surrounding facts, it would be a matter to be decided on a case-by-case basis.

Sincerely,



Alfredo Flores
Research Specialist I
Conflicts of Interest Division

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Memorandum

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To : Mr. Alfredo Flores
Fair Political Practices Commission
1100 "K" Street
Sacramento, CA 95814

Date: August 22, 1977

From : Department of Fish and Game

Subject: Specific Questions Regarding the Legal Interpretation
of the 1974 Political Reform Act

As per our phone conversation on August 19, 1977, the Department of Fish and Game would like an informal opinion on the following four questions.

QUESTION #1

The Fish and Game Conflict of Interest Code requires the reporting of financial interest in manufacturing and supplying of fishing gear, including boats. General Motors manufactures engines for fishing boats. DO designated employees have to report holdings in General Motors Corporation?

QUESTION #2

The Marine Research Committee is composed of nine members, five members constitute a quorum and five votes are needed to pass any action. If only five members are available for a meeting where business is conducted and one of those members has a financial interest which would normally require his abstaining from participation, but because a quorum action is necessary, can he participate:

- (A) When there is not sufficient time to reconvene another meeting and arrange for more members to be present?
- (B) When deferment of a vote until the next meeting is possible but not desirable?
- (C) When no matter how many members are present, a quorum vote is not possible because at least five members have a financial interest in the matter before the group?

QUESTION #3

The Marine Research Committee Conflict of Interest Code requires disclosure of income from commercial fishing. One member of that committee is a Union official, paid to represent commercial fishermen. Is his salary as a Union official reportable as income from commercial fishing?

August 22, 1977

QUESTION #4

If a vote is taken on any action where one of the participants should have disqualified himself, but didn't, and the action is subsequently challenged, is the action (decision) void:

- (A) If his vote did not change the outcome (six votes, five necessary to pass, and all six were to pass)?
- (B) If his vote didn't change the outcome, but his vote was necessary for passage? (five votes present and five votes cast to pass)

Thank you for your consideration.



Frederick E. Walgenbach
Conflict of Interest Coordinator
Department of Fish and Game

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