

Memorandum

To : Noel J. Robinson
Counsel
Franchise Tax Board

Date : January 12, 1977

M-77-332

From : FAIR POLITICAL PRACTICES COMMISSION - Delbert L. Spurlock, Jr., Chief
Conflicts of Interest Division

Subject: Department Responsibility Pending Employee Appeal of
Designated Status

You indicate that an employee designated within the Conflict of Interest Code of the Franchise Tax Board objects to such designation and may commence a review of his status within the department through appeal to the Fair Political Practices Commission, as provided in the departmental Code. You ask, "Can the department permit the designated employee to continue discharging his duties during the review process though no disclosure statement has been filed?" The following constitutes staff advice in response to the foregoing situation.

The employee in question will violate a provision of the department's Conflict of Interest Code by failing to file a Statement of Economic Interests pursuant to the deadline established. Such late filing may subject the employee to a fine of \$10 per day to a maximum fine of \$100. In addition, the individual may be subject to the remedies provided in Government Code §91004, which provides:

Any person who intentionally or negligently violates any of the reporting requirements of this act shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported.

Section 91013 provides that discretion shall be lodged in the filing officer to impose late filing fines on a person required to file a Statement of Economic Interests pursuant to the Act. If pursuant to the Board's authority as filing officer it is determined that it is proper pursuant to the standards established in §91013 for the Board to waive the fine of the individual, the Board is certainly free to do so. Furthermore, you indicate that the employee in question may be failing to file while pursuing internal

Noel J. Robinson
January 12, 1977
Page Two

administrative remedies provided in the Conflict of Interest Code for the Board. You indicate that there may be an obligation on the part of the department to reassign the employee to other duties in the interim. No such formal obligation is mandated by the Political Reform Act. However, as you are undoubtedly aware, the agency may discipline the employee who violates a provision of the Conflict of Interest Code pursuant to Government Code §83116; and Government Code §91003 provides: "... the court may restrain the execution of any official action in relation to which ... a violation occurred ...". The Board may wish to consider any or all of these potential actions in relation to the employee's failure to file a Statement of Economic Interests pursuant to its Code.

In sum, it appears that the initial enforcement responsibility rests with the agency -- in this case, the Board.

DLS:glb