

81005

State of California



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
(916) 322-5660		322-5901		322-6441		322-6444

September 7, 1977

77-093

Anthony S. Alperin
 Deputy City Attorney
 City Hall, East
 Los Angeles, CA 90012

Dear Mr. Alperin:

We have received a letter dated June 27, 1977, from Rex E. Layton, Los Angeles City Clerk, with which he enclosed an opinion from your office concluding that the Fair Political Practices Commission ("the Commission") is not the filing officer for Statements of Economic Interests of city councilmembers. In telephone conversations with our staff, you have asked that the Commission's response to Mr. Layton's letter be addressed to you. Your opinion reasons that the Commission's regulation, 2 Cal. Adm. Code Section 18227, is inconsistent with the provisions of the Political Reform Act and that it is therefore invalid. We respectfully disagree with your reasoning and conclusions and continue to adhere to the position that the regulation in question correctly interprets Government Code Section 82027.^{1/}

The definition of the term "filing officer" states that:

"Filing officer" means the office or officer with whom any statement or report is required to be filed under this title. If copies of a statement or report are required to be filed with more than one office or officer, the one first named is the filing officer, and the copy filed with him shall be signed in the original and shall be deemed the original copy.

Section 82027

^{1/} All references are to the Government Code unless otherwise noted.

Anthony S. Alperin
September 7, 1977
Page Two

With respect to Statements of Economic Interests, Section 81005(g) provides that they shall be filed as follows:

... one original with the agency; provided that for reports and statements filed by ... a person who files a financial disclosure report pursuant to Article 2 ... of Chapter 7, the agency shall make and retain a copy and forward the original to the code reviewing body.^{2/}

Section 81005(g)

You conclude in your opinion that pursuant to these provisions the City Clerk of Los Angeles is the filing officer since the City Clerk is the person with whom a City Councilmember must file his Statement of Economic Interests.^{3/} Unfortunately, this analysis ignores other provisions of the Political Reform Act and compelling policy considerations which support the view that Statements of Economic Interests are "filed" with the Commission, not with the City Clerk.

For example, Section 81009(d) provides that:

Original reports and statements not specified above in this section [which includes city councilmembers' Statements of Economic Interest] shall be retained by filing officers for a period of not less than seven years.

(Emphasis added)

Obviously, it would be difficult for the City Clerk, as "filing officer," to perform this obligation since he will not have the original Statements of Economic Interest. Pursuant to Section 81005(g), the Commission will have the originals.

^{2/} It is stipulated that the code reviewing body for the Statement of Economic Interests of a city councilmember, such as Mr. Cunningham, is the Fair Political Practices Commission. See City Attorney's opinion, Footnote on p.2.

^{3/} Your opinion indicates that the City Clerk is the filing officer, as opposed to the City Council itself, which is the "agency," on the basis of certain Los Angeles City Charter provisions. City Attorney's opinion at p.2.

Moreover, Section 81009(e) provides that:

Copies of reports or statements shall be retained by the officer with whom they are filed for a period of not less than four years.

This subsection governs the City Clerk's duties with respect to the retention of copies of Statements of Economic Interests filed by City Councilmembers, and refers to the City Clerk as the "officer," not the "filing officer." This language is in telling contrast to the reference in Section 81009(d) to the officer who retains the original statements, in this case the Commission, as the "filing officer."

Section 81009(e) is significant for another reason. It demonstrates that the officer with whom a statement is technically filed is not necessarily the filing officer. Section 81009(e) speaks of the officer "with whom [copies] are filed." However, a copy of a Statement of Economic Interests is not filed with the City Clerk. Rather, the City Clerk makes a copy pursuant to Section 81005(g) and it is this copy that the City Clerk retains to fulfill his obligations under Section 81009(e).

This would seem to undercut your opinion's technical reliance on the phrase "with whom any statement ... is required to be filed," as used in Section 82027. The phrase can merely mean, as it does in Section 81009(e), the officer who ultimately has the Statement.

Finally, we think that the correct interpretation of the language of Section 82027 is that the Commission is the office with which a Statement of Economic Interest is required to be filed. Section 82027 provides that "[i]f copies of a statement or report are required to be filed with more than one office or officer, the one first named is the filing officer...." It is true that the city clerk is the first officer named in Section 81005(g) which governs the filing of Statements of Economic Interests. However, the language of Section 82027 concerning the first officer named does not apply in this case because, as we have pointed out, "copies" of Economic Interests are not required to be "filed" with City Clerk. Instead, a filer lodges an original statement with the City Clerk who is then responsible for forwarding the statement to the Commission. The City Clerk is required by Section 81005(g) to make and retain a copy of the statement for its own records, but a filer is not required to "file" a "copy" of the statement with the City Clerk. This interpretation of the Act serves to harmonize the provisions of Sections 81005, 81009 and 82027.

Anthony S. Alperin
September 7, 1977
Page Four

We also think our regulation is supported by strong policy considerations. Under the Political Reform Act, the code reviewing body has general responsibility for ensuring compliance with the provisions of Chapter 7 of the Act by those agencies subject to its jurisdiction. In particular, the code reviewing body must make certain that an agency's code complies with the requirements of Sections 87302 and 87309. If your interpretation of Section 82027 were accepted, the Commission, as code reviewing body, would be divested of much of the authority it needs to ensure that agency heads, members of certain boards and commissions and Article 2 filers other than legislators, comply with the codes the Commission has approved. This would seem to be contrary to the obvious reasons for establishing code reviewing bodies, to guarantee objectivity and strict enforcement in the conflict of interest area.

Your interpretation of Section 82027 would frustrate these purposes by giving code reviewing bodies authority only at the code development stage and practically removing them from the code implementation process. The dangers inherent in this approach become readily apparent in the context of the authority to impose late fines. Under your approach, the agency itself, or presumably some employee of the agency, would have the responsibility for fining the head of an agency when he or she failed to file a Statement of Economic Interests. This is an unacceptable means of enforcing the Act since employees are going to be understandably reluctant to discharge their duties vigorously if it means incurring the disfavor of their supervisors.^{4/}

For these reasons, we think it is appropriate to interpret Section 82027 to mean that the Commission is the filing officer for Statements of Economic Interests of city councilmembers. Since our interpretation is supported by the Act's provisions and by sound policy considerations, 2 Cal. Adm. Code Section 18227 represents a valid exercise

^{4/} The problem may not be as acute with elected city clerks who enjoy a degree of independence vis-a-vis the city council, but your opinion would necessarily affect all agencies and, hence, raises the specter referred to in the text.

Anthony S. Alperin
September 7, 1977
Page Five

of the Commission's authority to carry out the purposes of the Act by adopting regulations consistent with it.

After reviewing this letter with the City Clerk, you may want to contact me so that we can attempt to resolve this problem. I look forward to hearing from you.

Sincerely,



Michael Bennett
Executive Director

MB:KHF:plh
cc: Rex E. Layton
David S. Cunningham
Burt Pines

77093

CITY OF LOS ANGELES

CALIFORNIA

REX E. LAYTON
CITY CLERK



OFFICE OF THE
CITY CLERK
ROOM 395, CITY HALL
LOS ANGELES 90012
485-5708

TOM BRADLEY
MAYOR

June 27, 1977

Mr. Michael Bennett, Executive Director
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Dear Mr. Bennett:


Enclosed is a copy of a City Attorney Opinion that I have received regarding the adoption by the Fair Political Practices Commission of Regulation 18227. As you know, this regulation establishes the Commission as the filing officer for Statements of Economic Interest.

In view of the City Attorney's Opinion, I wish to advise that the City Clerk's Office in Los Angeles will continue to act as the filing officer in such matters and, of course, the City of Los Angeles will receive all payments for late filings.

In this regard, I am advising Councilman David S. Cunningham that the recent request of Ms. Dawn Wiser of your office to Mr. Cunningham regarding a \$70 late payment fee, will have to be paid to the City of Los Angeles rather than the State.

For your information, I am enclosing copies of all correspondence pertaining to this matter. If you have any questions, please let me know.

Very truly yours,


REX E. LAYTON, CITY CLERK

REL:lh
Enclosures

cc: Councilman David S. Cunningham
Mr. Burt Pines, City Attorney

JUN 23 1977

OFFICE OF
CITY ATTORNEY
CITY HALL EAST
LOS ANGELES, CALIFORNIA 90012



BURT PINES
CITY ATTORNEY

June 23, 1977

FILED
JUN 23 11 23 AM '77
REX E. LAYTON
CITY CLERK
BY [Signature] DEPUTY

Honorable Rex E. Layton
Los Angeles City Clerk
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Dear Mr. Layton:

In your communication of April 27, 1977, you inquired concerning the validity of a regulation of the Fair Political Practices Commission (2 Cal.Admin. Code Section 18227), inasmuch as it appears to conflict with your duties as a filing officer under the Political Reform Act of 1974 (Government Code Section 81000 et seq.). Your questions and our answers to them are as follows:

Question No. 1

Is 2 Cal.Admin. Code Section 18227 inconsistent with the provisions of the Political Reform Act, and, if so, is the regulation invalid?

Answer

The regulation is inconsistent with the provisions of the Political Reform Act and is therefore invalid.

Analysis

The Political Reform Act requires members of city councils and mayors of cities to file statements of economic interests at certain specified times. (Government Code Section 87200 et seq.) With respect to the filing of such statements, Government Code Section 81005 provides:

"Reports and statements required by

this title shall be filed as follows:

"* * *

"(g) All reports and statements re-
quired by Chapter 7 - one original with
the agency; provided that for reports and
statements filed by . . . a person who
files a financial disclosure report
pursuant to Article 2 (commencing with
Section 87200) of Chapter 7, the agency
shall make and retain a copy and forward
the original to the code reviewing body. *

"* * *

(Emphasis added)

Whenever a document is required to be filed with the
City of Los Angeles and another office is not specified as
the place for filing the document, the document is to be
filed with and maintained by the City Clerk. (See City
Charter Section 44(2), and 44(4))

Government Code Section 82027 provides:

" 'Filing officer' means the office or
officer with whom any statement or report
is required to be filed under this title.
If copies of a statement or report are re-
quired to be filed with more than one office
or officer, the one first named is the
filing officer, and the copy filed with him
shall be signed in the original and shall be
deemed the original copy."

* Section 81005(g) provides that the "code reviewing body"
is the Fair Political Practices Commission with respect
to statements filed under Sections 87200 et seq. The
"agency" is the City of Los Angeles. (Government Code
Sections 82003, 82041)

Based on the above-quoted provisions, it appears that the City Clerk is the "filing officer" for statements of economic interests filed by the Mayor and Members of the City Council.

Government Code Section 83112 provides:

"The [Fair Political Practices] Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of this title, and to govern procedures of the Commission. These rules and regulations shall be adopted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part I, Chapter 4.5, Sections 11371 et seq.) and shall be consistent with this title and other applicable law."
(Emphasis added)

Pursuant to its authority under Section 83112, the Commission has adopted 2 Cal.Admin. Code Section 18227, which provides:

"The filing officer for reports and statements filed under Government Code Section 81005(g) is the office or officer which ultimately receives and retains the original report or statement."

Under this regulation, it would appear that the "filing officer" for statements of economic interests filed by the Mayor and Members of the City Council would be the Commission.

The regulation, however, appears to conflict with the express provisions of the Political Reform Act, which provides that the "filing officer" is the "office or officer with whom any statement or report is required to be filed . . ." (Government Code Section 82027; emphasis added) Clearly, statements of economic interests are required to be filed with the City Clerk. (Government Code Section 81005(g)) It is only after such statements are filed with the Clerk that the Clerk is required to transmit them to the Commission. That requirement does not alter the Clerk's status as the office or officer with whom such statements must be filed.

Inasmuch as the regulation seeks to alter the identity of the filing officer for such statements, it is in conflict with the Act and cannot stand. In support of this conclusion, Government Code Section 11374 provides:

"Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. . . ." (Emphasis added)

Based upon that provision, the courts have on numerous occasions invalidated administrative regulations. (See: Desert Environment Conservation Assn. v. Public Utilities Comm'n. (1973) 8 Cal.3d 739, 742-43; Mooney v. Pickett (1971) 4 Cal.3d 669, 679; California Emp. Comm'n. v. Kovacevich (1946) 27 Cal.2d 546, 553; Whitcomb Hotel v. California Emp. Comm'n. (1944) 24 Cal.2d 753, 155 A.L.R. 405; Rosas v. Montgomery (1970) 10 Cal.App.3d 77, 92; Macomber v. State Social Welf. Bd. (1959) 175 Cal.App.2d 614, 616-16) Similarly, 2 Cal.Admin. Code Section 18227 is inconsistent with the provisions of the Political Reform Act and is thus invalid.

Question No. 2

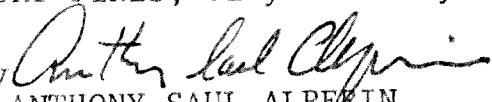
What are the responsibilities of the City Clerk under Government Code Sections 81010 and 91013 for statements of economic interest filed by the Mayor and Members of the City Council?

Answer

The City Clerk is the "filing officer" for such statements and as such should exercise the duties imposed by Sections 81010 and 91013.

Very truly yours,

BURT PINES, City Attorney

By 
ANTHONY SAUL ALPERIN
Deputy City Attorney

CITY OF LOS ANGELES

CALIFORNIA

REX E. LAYTON
CITY CLERK



OFFICE OF THE
CITY CLERK
ROOM 395, CITY HALL
LOS ANGELES 90012
465-5708

TOM BRADLEY
MAYOR

April 27, 1977

Burt Pines, City Attorney
Room 1700, City Hall East

Attention: Anthony S. Alperin
Election Compliance Section

Dear Mr. Pines:

In order for the Los Angeles City Clerk to fulfill his duties under the Political Reform Act of 1974, we are asking for the Los Angeles City Attorney's advise to the following question:

Is the Fair Political Practices Commission's adoption of Regulation 18227 consistent with the purposes and provision of the Act and consistent with existing statute?

The regulation provides that the Commission is the filing officer for all Statement of Economic Interests required under Chapter 7, Article 2. For the City of Los Angeles, this would involve filings by the Mayor, members of the City Council and candidates for these positions.

The Political Reform Act of 1974 requires such statements to be filed with the City Clerk. Government Code Section 81005(g) provides as follows:

Reports and statements required by this title shall be filed as follows:

(g) All reports and statements required by Chapter 7 - one original with the agency; ... and a person who files a financial disclosure report pursuant to Article 2 (commencing with Section 87200) of Chapter 7,

the agency shall make and retain a copy and forward the original to the code reviewing body.

"Code reviewing body" as used in this subdivision means the commission¹ for the purpose of filing financial disclosure statements prepared pursuant to Article 2 (commencing with Section 87200) of Chapter 7. "Agency" as used in this subdivision means the clerk of the court for judges of courts of record.

It appears from this section of the Code that these statements are to be filed with the City Clerk. The question we are asking therefore: "Is the City Clerk the filing officer or is it the Commission?"

As defined in Section 82027, "filing officer" means the office or officer with whom any statement or report is required to be filed under the Act. From Sections 81005(g) and 82027, we conclude the City Clerk is the filing officer for Statement of Economic Interests filed by those persons enumerated in Article 2 of Chapter 7. However, Commission Regulation 18227 puts priority over the Act, (specifically Sections 81005(g) and 82027) and makes the Commission the filing officer for these statements.

The Administrative Procedure Act (Government Code Title 2, Division 3, Part 1, Chapter 4.5) allows the Commission to adopt reasonable rules and terms to carry out the purpose and intent of the Act. But in any case, if the regulation is not consistent with statute it is subject to challenge. Furthermore, the regulation must meet the standard of Section 11374 which reads as follows:

11374. Regulations must be consistent with statute: Repeal of conflicting rules and regulations

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the

¹Section 82012. Commission. "Commission" means the Fair Political Practices Commission.

provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Any existing rules or regulations conflicting with this section are hereby repealed.

Citing the above sections of the Government Code, we believe there is an apparent conflict in the Regulation and the Political Reform Act of 1974.

Because of the apparent ambiguity of who the filing officer is for the Statement of Economic Interests, we are asking what the City Clerk's responsibility is in the following:

1. Determining whether the required statement has been filed and if so, whether it conforms with the requirements of the Act;
2. Notifying those persons who failed to file the required statement at the required time;
3. Reporting apparent violations of the Act to the appropriate agencies;
4. Imposing and collecting late filing penalties for late Statement of Economic Interests.

Your response to these questions will be appreciated. If you need additional information regarding this matter, please contact Mr. Ken Ito of my Campaign Disclosure Section at 485-4792.

Very truly yours,


REX E. LAYTON, CITY CLERK

REL:cp

7u 4/21

April 15, 1977

*Wiser
4/15/77*

Honorable David S. Cunningham
Los Angeles City Council
2221 South Virginia Road
Los Angeles, CA 90016

Dear Mr. Cunningham:

According to records of the Fair Political Practices Commission, your Statement of Economic Interests, which was due April 1, 1977, was filed seven days late. Government Code Section 91013 provides that any person who files a Statement after its deadline is liable in the amount of \$10 per day, up to a maximum of \$100.

If there is a justifiable excuse for your filing late, please inform the Commission of that excuse in writing within twenty (20) days so that a waiver of your fine may be considered. Waivers have been granted to late filers who, because of an extreme emergency, found it impossible to file on or prior to their deadline but filed as soon as possible thereafter. If such an emergency is asserted full details must be provided. Waivers also have been granted to late filers whose clerk has written the Commission verifying that the clerk erroneously or misleadingly advised the filer - by notifying the filer of an erroneous filing date, for example.

If no such excuse for late filing exists, please remit within twenty (20) days a check or money order in the amount of \$70 made payable to the "State of California." The full amount will be deposited into the General Fund of the State of California.

If you have any questions, please contact me.

Very truly yours,

Dawn Wiser

DW:plh

✓ cc: City Clerk