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# State of California



# Fair Political Practices Commission

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

January 13, 1977

17-01-117

Mr. John D. Flitner  
City Attorney  
6750 Commerce Boulevard  
Rohnert Park, California 94928

Dear Mr. Flitner:

This is a response to three letters submitted to the Fair Political Practices Commission regarding questions arising under the conflict of interest provisions of the Political Reform Act of 1974. Generally, your questions cannot be specifically answered either formally or informally since in many instances the questions are hypothetical and in no instances are affected parties identified. However, in responding specifically to several questions and generally to the subject matter of the bulk of the remaining questions, it is my hope that sufficient guidance can be provided in order to enable you to make judgments and advise upon various conflict situations that may arise within your city.

First, with respect to your letter of October 20, 1976, I will respond to questions seven through ten presented therein. Situation seven relates the following question:

May a Councilman who holds stock in a local bank or savings and loan vote on a matter if the applicant has applied, or may apply, for a loan from, or become a depositor or saver in the bank of savings and loan?

Government-Code §87100 provides:

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.

2.2.

Government Code §87103 provides:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000); ...

Examining situation seven. In light of the disqualification provisions of the Political Reform Act it is clear that:

- (a) The Councilman is a public official;
- (b) The Councilman has an investment in a business entity, the local bank or the savings and loan;
- (c) The Councilman is about to vote on a matter, that is, to make a governmental decision; and
- (d) The applicant is not an investment of the Councilman, nor is the applicant a source of income to the Councilman unless the Councilman owns at least a ten percent interest in the business entity, the bank or savings and loan, and the applicant has made payments to the business entity in an amount sufficient to make the Councilman's pro rata share thereof \$10,000 or more [see Government Code §§82030 and 87207(b)(3)].

Thus, the issue is whether the Councilman's vote can materially financially affect the business entity in which he or she has an investment, namely the local bank or savings and loan itself. The mere fact that the applicant is a depositor or may become a depositor or saver or a loan applicant quite obviously cannot make the decision material to the savings and loan. What is important is that the Councilman or his representative look to the surrounding circumstances to determine whether or not a reasonable

inference of bias could be made concerning the Councilman's interests, the applicant, and the foreseeable transactions which flow from the Councilman's decision. Quite obviously if an applicant for a loan of some significance with the bank or savings and loan appears before the Council for a variance concerning the particular project for which the loan is sought, the Councilman should disqualify himself or herself.

Situation eight states the following question:

At what amount must gifts be reported?  
Government Code §82028 has one definition. Government Code §83117.5 has another definition and Government Code §87103 has a different view as does Government Code §87207.

The Act at Government Code §87207(b)(1) clearly and unambiguously states that gifts of \$25 or more must be reported. This holds true for persons filing pursuant to Government Code §87200 and those filing pursuant to a Conflict of Interest Code [see Government Code §87302(b)].

Situation nine asks the following questions:

Is a lunch a gift? If not, are two lunches from the same person, association or corporation, a gift? If not, at what quantity and cost are multiple lunches from a person, association or corporation considered a gift?

Yes, a lunch may be a gift. I am attaching for your information a regulation of the Commission defining the reporting obligations of persons filing in a related area. The value of lunches are cumulative over the reporting period and, in general, when the cost of the lunches reaches \$25, they are reportable as a gift.

Situation ten:

Does the Political Reform Act of 1974 apply to non-elective officials? If it does, then why is it necessary that a local code reviewing body consider and approve a Conflict of

Interest Code for its subordinate boards, committees and commissions, department heads and chief administrative officers? If the Political Reform Act does not apply to non-elective officials, when must local code reviewing bodies enact the ordinance requiring local Conflict of Interest Codes?

The Political Reform Act of 1974 applies to non-elective officials. The Act requires every state and local agency to develop a Conflict of Interest Code. The purpose of the Code is to require disclosure of certain specified interests and to require disqualification from certain decisions by public officials covered by the Code. The remedies for violation of a Code are set forth in Chapter 11 of the Act, which remedies are, of course, not operative until the Code is adopted.

I turn now to your letter of November 10, 1976, and the situation involving the planning commissioner who is an agent for Farmers Insurance Group. I assume that the commissioner has at least a ten percent interest in his local agency. Commissions paid to the agent are reportable only when the agent's pro rata share of the fees paid to his business equals \$1,000 or more. See Government Code §87207(b)(2).

Question two regarding this agent appears to ask whether fees paid to a business entity by business entities outside of the jurisdiction are reportable by a public official. The answer is no [See, Government Code §82035].


In response to question three in the series, a careful reading of the Act reveals that one's business entity itself may be a source of income to a public official. However, persons paying fees to the business entity are not reportable as sources of income to the official, unless (1) the public official has at least a ten percent interest in the business entity, and (2) the official's pro rata share of such fees is \$1,000 or more if the business entity provides legal or brokerage services, or the official's pro rata share of fees is \$10,000 or more if the business entity does not provide legal or brokerage services. [See, Government Code §§82030 and 87207(b)(2), (3).] Thus, a person who owns ten percent of a drugstore need not report payments made by persons to the drugstore unless such payments equal \$100,000 during the period covered by the Statement of Economic Interests.

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I trust that these answers may clarify some of your problems. Please feel free to call on me if you have specific fact patterns and the names and position of persons who are desirous of opinions from the Commission.

Sincerely,

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

DLS:glb