

82030.

State of California



Fair Political Practices Commission

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

February 7, 1977

77-02-118

Mr. Ralph Prince
City Attorney
300 North "D" Street
San Bernardino, California 92418

Dear Mr. Prince:

Thank you for your letter of January 14, 1977, in which you pose several questions concerning the Political Reform Act of 1974.

In answer to your first question in which you ask whether income received by a City Commissioner (hereinafter Commissioner) from a business entity (corporation or partnership) located within the City but which entity derives all of its income from a source outside the jurisdiction (city limits) is reportable, please refer to the last sentence contained in the first paragraph of your letter in which you state correctly that, "... as to the Commission member, the source of the income is the business entity ...", which is located within the City. Therefore, the income is reportable.

This is the correct interpretation to the definition of "income" as amended by SB 1356 which states as follows:

"Income", other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

--Government Code §82030
(Emphasis added.)

2.13

Ralph Prince
February 7, 1977
Page Two

Clearly here the business entity could not be a source of income outside the jurisdiction, nor could it possibly be found not to be doing business within the jurisdiction. Moreover, should the Commissioner own directly, indirectly, or beneficially, a ten percent interest or greater, in the business entity, the Commissioner would be required to disclose his or her pro rata share of any income of the business entity. This requirement is dictated by Government Code §82030, which states:

... Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a ten percent interest or greater..."

and Government Code §87207(b), which provides that when income of a business entity is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity;

(2) 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 the filer's pro rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000);

(3) In the case of a business entity not covered by paragraph (2), the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

For further clarification of this point, I am enclosing a copy of a letter to Dr. Feehan, dated November 5, 1976.

Ralph Prince
February 7, 1977
Page Three

In answer to your second question contained in the second paragraph of your letter, the answer is "\$20,000". This is assuming that each brother owns a 50% interest in the business entity -- therefore, each brother's pro rata share of \$20,000 would equal \$10,000 for purposes of satisfying Government Code §87207(b)(3).

The \$40,000 figure is not the proper amount (based on a marriage relationship) because the pro rata share of the spouses' income includes income owned indirectly by their respective spouses and vice versa. This conforms with Government Code §82030, which defines "income" as:

... income of any nature ... from any source, and including any community property interest in income of a spouse...

Regarding your third question, it will be necessary for you to request a formal opinion from the Fair Political Practices Commission pursuant to 2 Cal. Adm. Code §18320, which requires that the identity of at least one person be provided as a representative of the members affected on the Parking and Business Improvement Area Board.

Your request for a formal opinion will be consolidated with a similar opinion currently pending before the Commission (see enclosed copy).

The conclusion of the Attorney General, 58 Ops. Cal. Atty. Gen. 670, at page 675, is the correct interpretation of Government Code §87101. (See, 2 Cal. Adm. Code §18701, attached.)

Finally, in answer to your last question, you may obtain all relevant information concerning the Fair Political Practices Commission from:

Continuing Education of the Bar
2150 Shattuck Avenue
Berkeley, California 94704

Ralph Prince
February 7, 1977
Page Four

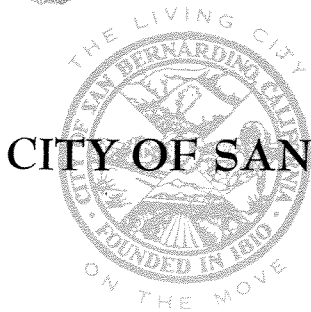
CEB's service costs \$60 per year and includes all FPPC opinions, regulations, forms, manuals, instructions, index and informational section.

Sincerely,



Alfredo Flores
Research Specialist
Conflicts of Interest
Division

AF:gb
Enclosures



CITY OF SAN BERNARDINO

300 NORTH "D" STREET, SAN BERNARDINO, CALIFORNIA 92418

F P P C
JAN 17 11 33 AM '77

Prince
77118

RALPH H. PRINCE
CITY ATTORNEY

January 14, 1977

700.61

Fair Political Practices Commission
Enforcement/Conflict of Interest
1100 "K" Street Building
Sacramento, California 95814

Attention: Mr. Alfredo Flores

Dear Mr. Flores:

Some of the questions I will ask I discussed with you on the telephone on this date.

A member of a commission has a business entity (either a corporation or a partnership) with his brother. The entity is within the City of San Bernardino. The income of the entity is received from a source outside the jurisdiction that does not do business within the jurisdiction, does not plan on doing business within the jurisdiction, and has not done business within the jurisdiction in the past two years. According to Government Code Section 82030 this income is not reportable. However, as to the commission member, the source of the income is the business entity located within the City. Is the income reportable?

The same commissioner has another business entity (either a corporation or a partnership) with his brother. The entity provides neither legal or brokerage services and is community property; both brothers are married. All income received by the entity is reportable and Government Code Section 87207 (b) (3) is applicable. In order for the commissioner's pro-rata share of gross receipts to be equal to \$10,000 must the entity receive \$10,000, \$20,000 or \$40,000.



An ordinance was adopted by the City, pursuant to Streets and Highways Code Section 36000, et seq., establishing a Parking and Business Improvement Area. Additional business license taxes are imposed within the area to promote retail trade activities within that area. The ordinance created an unsalaried area advisory board to recommend to the Mayor and Common Council projects for which the additional taxes should be spent. These recommendations have been consistently approved over an extended period of time. The Board members are persons owning businesses and real property within the area. According to 2 Cal. Adm. Code Section 18700 (a)(1)(C), the Board is required to adopt a Conflict of Interest Code. There is no doubt that the recommendations of the Board are meant to promote retail trade and provide parking within the area, and the members businesses may benefit financially from those decisions.

Under the provisions of the Conflict of Interest Code, the board members would be compelled to disqualify themselves from making recommendations and the board would cease to function with the present membership. Government Code Section 87101 might provide an exception for disqualification if the members participation is "legally required". However, 58 Ops.Cal.Atty.Gen. 670 at page 675 concludes that this exception may only be used in isolated situations and not where there is a continuing conflict of interest. Is the exception provided in Government Code Section 87101 applicable to this board?

The local law library does not maintain opinions of the Fair Political Practices Commission. I would appreciate it if you could inform me of the cost to get all opinions that have been issued by the FPCC as well as the cost for those to be issued in the future.

Very truly yours,



RALPH H. PRINCE
City Attorney

RHP:ld