

State of California



Fair Political Practices Commission

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

January 7, 1977

Dr. Malcolm Richland
3304 White Oak Court
Sacramento, CA 95825

77-01-212

Dear Dr. Richland:

This is in response to your letter of October 22. Please forgive our delay in replying. You request advice with respect to a possible conflict of interest under the Political Reform Act of an attorney who represents the Sacramento Area Economic Opportunity Council. Section 87100 of the Government Code, the general prohibition against conflicts of interest 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.

"Public official" is defined in Government Code Section 82048 as:

"Public official" means every member, officer, employee or consultant of a state or local government agency.

If the Attorney, Mr. Long, is to be considered a public official it would be by virtue of his status as a "consultant" to your agency. "Consultant" has been further defined by a regulation of the Fair Political Practices Commission, 2 Cal. Adm. Code Section 18700(a)(2), which provides:

"Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

- (A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

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(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Mr. Long receives no retainer from the agency. He is available to provide legal services to the agency purely on an ad-hoc basis, and attends meetings only upon specific request of the Board. When he performs legal services at the request of the agency he is paid on an hourly basis. He has no real or apparent authority to act on behalf of the agency or bind it to a specific course of action. Accordingly, we cannot conclude that the attorney is a "consultant" within the meaning of the regulation and hence is not subject to the prohibitions of Government Code Section 87100.

If you wish to present us with more detailed facts concerning the situation or have further questions, please feel free to call me at (916) 322-6444.

Sincerely,



Kenneth W. Goshorn
Research Specialist

KWG:plh

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October 22, 1976

Mr. Daniel Lowenstein, Chairman
Fair Political Practices Commission
Conflict of Interest Division
925 J Street, Suite 522
Sacramento, CA 95814

Dear Mr. Lowenstein:

As Chairman of the Board of Directors of the Sacramento Area Economic Opportunity Council, I would appreciate receiving an opinion.

The local press has raised a question of conflict of interest with respect to the services of the SAEOC Legal Counsel. Mr. James Long is retained by the agency and has represented us in numerous legal proceedings. The press has raised the issue of conflict of interest because Mr. Long represented Mr. John Robinson in a bankruptcy case and also represented the agency in a personnel litigation in which Mr. Robinson was one of the defendants.

To the best of my knowledge the bankruptcy resulted from financial problems encumbered prior to his employment by SAEOC. The personnel litigation involved allegations by one Alice Coburn that she was terminated owing to her accusations of alleged fiscal improprieties involving Mr. Robinson. Subsequent to her allegations, her firing, and her loss in court, Mr. Robinson was indicted and convicted of embezzlement.

Mr. Long believes there was no conflict of interest. An opinion is desired. We, the Board of Directors, would appreciate an opinion as quickly as possible so that we may put the matter to rest one way or the other.

Thank you for your consideration.

Sincerely,



Dr. Malcolm Richland
3304 White Oak Court
Sacramento, CA 95825