

State of California



Fair Political Practices Commission

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

May 10, 1977

A-77-355

Mr. Edward F. Buckner
County Counsel
County of Sutter
463 Second Street
Yuba City, California 95991

Dear Mr. Buckner:

This is in response to your letter to Ms. Wiser of our staff dated 20 April 1977.

You ask whether persons holding acting appointments to an office specified in Government Code Section 87200 are under an obligation to file a statement of economic interest, and if so, what time constraints are involved in such filing. With respect to the first matter, it is the staff's opinion that persons holding such an office for a significant period of time and under circumstances in which the person previously holding the office has no intention of returning are obliged to file statements pursuant to Government Code Sections 87202 and 87203. As I understand the circumstances of your situation, the appointment to the position of County Administrative Officer is for a period of at least eight months and the person previously holding the office will not be returning. These circumstances are clearly distinguishable from a situation where an officeholder described in Section 87200 is on a brief and finite leave of absence for personal health or other reasons.

With respect to your second question, Government Code Section 87202 provides, in pertinent part, that:

"...Every person who is appointed to an office specified in Section 87200 shall file such a statement not less than ten days prior to assuming office."

We recognize that assumption of such an office may in some cases be dictated by emergency circumstances. Government Code Section 87302(b), in discussing the required provisions of conflict of interest codes, specifically recognizes this by providing that, "...All other new designated employees shall file statements not less than ten days before assuming office or, if subject to confirmation, ten days before being confirmed, unless an earlier assumption of office is required by emergency circumstances." (emphasis supplied). However, no similar provision is found in Section 87202.


Mr. Edward F. Buckner
May 10, 1977
page two

Accordingly, we are not of the opinion that emergency circumstances would create a waiver of the obligations imposed by Section 87202.

However, as Ms. Wiser indicated in her letter of April 15, the Commission may, and frequently has, waived fines for late filing imposed pursuant to Government Code Section 91013 where there is a "justifiable excuse" for such late filing. The type of emergency circumstances described in your letter would, in all probability, constitute a "justifiable excuse." Filing of the statement should still be accomplished as quickly as practicable. Accordingly, I would reiterate Ms. Wiser's advice to please inform the Commission of the reasons for the late filing in order that we may make a determination on this matter.

If I can be of any further assistance, please feel free to call me at (916) 322-6444.

Sincerely,


Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division

KWG:mfa

EDWARD F. BUCKNER
County Counsel

CLAUDE L. BIDDLE, JR.
~~GERARDE * * * * *~~
Deputy County Counsel

DARRELL W. LARSEN
Deputy County Counsel

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SUTTER

463 SECOND STREET
YUBA CITY, CALIFORNIA 95991

PHONE ~~674-8795~~ 674-8650

April 20, 1977

7-17355

E P 11 3
APR 21 8 52 AM '77
Dawn Wiser
State of California
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Wiser:

I am in receipt of your letter of April 15, copy attached; also attached is a copy of the minutes of the Sutter County Board of Supervisors.

I am currently, and have been for the past nine years, County Counsel of this county; and on January 11, 1977, I was also appointed Acting County Administrative Officer so that I am not in effect holding two positions.

The addition of the duties of the County Administrative Officer offers no additional salary; however, it does offer great rewards in that it allows me to work many extra hours without compensation, together with the assumption of many problems not associated with my duties as County Counsel.

In the past, we have had acting appointments for various officers but I find no clear authority that requires disclosure by a person appointed in an acting role: However, I have advised, as County Counsel, that a disclosure be filed as a courtesy if for no other reason.

Acting appointments are made for many reasons and for various terms; they could be for one day or for longer unspecified periods.

Many acting appointments are made because of emergency situations, such as death of the incumbent. The acting appointment is made immediately after the death. It would appear that an acting appointment would always be in violation since death

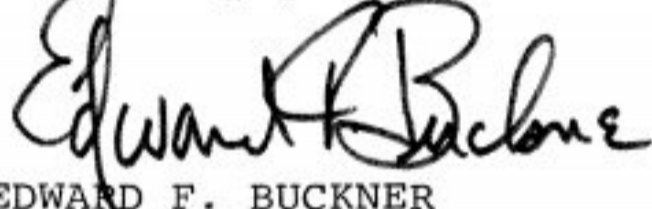
Ms. Dawn Wiser
Fair Political Practices Commission
Page two
April 20, 1977

cannot ordinarily be anticipated precisely ten days in advance.

Please advise of the legal authority requiring disclosure by an acting officer, and at what point the acting officer should assume office in an emergency situation so as to avoid the ten day filing before assuming office. Your opinion in this regard will assist me as County Counsel in advising my clients in similar situations.

Thank you for your courtesy.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward F. Buckner". The signature is written in a cursive, flowing style with a large initial "E".

EDWARD F. BUCKNER
COUNTY COUNSEL

EFB:pb
Attachments

State of California



Fair Political Practices Commission

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

April 15, 1977

Honorable Edward F. Buckner
Sutter County Administrative Officer
1225 Maple Ave.
Yuba City, CA 95991

Dear Mr. Buckner:

The Fair Political Practices Commission has received your Statement of Economic Interests executed on January 31, 1977. The Political Reform Act provides that every person who is appointed to the office you hold shall file a Statement of Economic Interests not less than ten (10) days prior to assuming office (Government Code Sections 87200, 87202). It further provides that if a Statement is filed after its deadline, the late filer is liable in the amount of \$10 per day, up to a maximum of \$100 (Government Code Section 91013). Since you filed your Statement 30 days late, you are subject to a fine 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 can be considered. If no such excuse exists, please remit to this office within twenty (20) days a check or money order in the amount of \$100, made payable to the "State of California." The full amount will be deposited into the General Fund of the State of California.

Sincerely,

Dawn Wiser

Dawn Wiser

DW:plh

cc: County Clerk

REPORT ON TENTATIVE MAPS

Mr. Larson reported on Planning Commission's action on tentative map for H.D. & Bertha Richter, et al.

Mr. Larson from Planning asked the Board members if they are going to request that a presentation be made relative to the new EIR Guidelines next week. It was the consensus of the Board that a study session be scheduled relative to these new guidelines. Mr. Larson to work with County Counsel Buckner on setting up a study session relative to discussing the new guidelines of the EIR.

The Board adjourned into an executive session relative to personnel.

APPOINTMENT TO
COUNTY ADMINISTRATOR POSITION

On motion of Supervisor Taylor, seconded by Supervisor Green and unanimously carried, the Board hereby appoints E.F. Buckner, as Acting County Administrator for approximately 6 to 8 months on a trial basis to see how this will work out with the option to change their decision at any time.

STUDY SESSION
TAX PROTEST

Dr. Libby, Chairman of the Taxpayer's Association, appeared and requested to have this session recorded, the Board gave their okay.

Mr. Hal Simpson appeared and stated that the theme the Taxpayers would like to have today is everyone to work together for a benefit to Sutter County. Mr. Simpson gave the reasons that the taxpayers have listed on their tax forms as to why they were filing under protest. Mr. Simpson stated that there are 1379 taxpayers paying taxes under protest this year and he feels that the main reason they filed under protest is that they have no idea what this money is being used for and would like to find out where it all goes.