

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

April 21, 1978

18-143

William W. Taylor
 Deputy County Counsel
 San Diego County
 355 County Administration Center
 San Diego, California 92101

Dear Mr. Taylor:

Thank you for your letter of March 18, 1978, requesting written advice, under Government Code Section 83114(b)^{1/}, with respect to the Act's provisions regarding filing officers. In your letter, you asked two questions: first, can the Board of Supervisors delegate its filing officer responsibilities, with respect to agency Conflict of Interest Code filings, to the Clerk of the Board; and second, can Statements of Economic Interests filed by supervisorial and district attorney candidates pursuant to Section 87201 be filed with the County Registrar rather than the County Clerk.

With respect to your first question, you referred to the August 19, 1976, letter from Delbert Spurlock, former Chief of the Fair Political Practices Commission's Conflict of Interest Division, to Mr. S.L. Burr. That letter still reflects the Commission's policy regarding the delegation of filing officer responsibilities. Accordingly, the Board of Supervisors may delegate substantial authority to its Clerk. However, the ultimate responsibility for carrying out the duties of the filing officer under Section 82010 will remain with the Board itself.

You should be aware that the Board will not be the filing officer for all of the Statements filed by agencies for which the Board is the code reviewing body. Under a 1977 amendment (Stats. 1977, Ch. 1193), Section 81005.2(j) provides that

^{1/} All further statutory references are to the Government Code, unless otherwise stated.

William W. Taylor
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original statements are to be filed with the agency. The code reviewing body is the filing officer for only specified agency heads or members of boards or commissions.

With respect to your second question, Section 81005.2(e) provides that Statements of Economic Interests of supervisorial and district attorney candidates must be filed with the County Clerk who will make and retain a copy and forward the original to the Commission who will be the filing officer. Section 82009.5 permits the Board of Supervisors to designate another county official to perform the functions of the County Clerk. Thus it would be appropriate for the Board of Supervisors to designate the County Registrar to fulfill the limited function of the County Clerk with respect to supervisorial and district attorney candidates' Statements of Economic Interests filed under Section 87201. The appropriateness of the designation is supported by Section 26802 which expressly provides for the Office of the County Registrar to handle all election-related filing activity. There is no requirement that the Board of Supervisors pass a formal resolution for its designations of the County Registrar to perform the Clerk's function in connection with Statements filed under Section 87201.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Ted Prim
Ted Prim
Chief, Conflicts of
Interest Division

TP:mfa



County of San Diego

OFFICE OF COUNTY COUNSEL

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March 16, 1978

LLOYD M. HARMON JR.
Chief Deputy County Counsel

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Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

REQUEST FOR WRITTEN ADVICE (Gov. Code § 83114(b))

Honorable Commission:

Pursuant to Government Code Section 83114(b) (all references herein are to the Government Code unless otherwise indicated), request is hereby made on behalf of the Board of Supervisors of the County of San Diego for written advice with respect to the Board's duties as the code reviewing body for County Agency Conflict of Interest Codes.

MATERIAL FACTS

The offices of County Clerk, Clerk of the Board of Supervisors and Registrar of Voters have been separately established within the structure of San Diego County government.

QUESTIONS

Our general question concerns the extent of the authority of the Board of Supervisors, or agencies under its jurisdiction, to designate other officers to perform functions under the Political Reform Act of 1974 (§ 81000 et seq., hereinafter, the "Act") in lieu of the officers designated by the Act. Since we have some discussion to offer, we will state and discuss our two particular questions individually.

FIRST QUESTION: May the Clerk of the Board of Supervisors (i.e., the Clerk of the code reviewing body) be designated as the "filing officer" for all purposes of the Conflict of Interest Codes of County Agencies (and have the duties stated at Section 81010)?

By the terms of the Act, it would seem that the agency itself is the "filing officer" for purposes of its code. Government Code Section 81005.2(j) states that Statements of Economic Interests of persons not otherwise provided for in said section are to be filed, ". . . one original with the agency", and Section 82027 defines "filing officer" as the "officer with whom any statement or report is required to be filed under this title."

We are aware of an advice letter wherein your Commission's Conflict of Interest Division Chief, Delbert L. Spurlock, Jr., on August 19, 1976 responded to a similar question submitted by Mr. S. L. Burr of the City of Santa Clara. (This advice letter is included as "Attachment A" to Part VI B of materials forwarded to this office from your Commission with a memorandum dated September 15, 1976 addressed to "Persons Responsible For Drafting and Reviewing Conflict of Interest Codes.") Mr. Spurlock stated:

"The Political Reform Act of 1974, as amended by SB 1373, would permit adoption of your contemplated procedure under the following conditions:

"1. As § 81005(g) of the Act requires all such statements to be filed with the agency, each agency participating in this arrangement will have to delegate its authority for receipt and administration of such statements to the city clerk. It must be clear, however, that the agency will retain responsibility for receipt of statements and administration of the duties of the filing officer, pursuant to the provisions of § 82027 of the Act." [Emphasis added.]

Because of the above underlined language, Mr. Spurlock's opinion does not authorize a designation of "filing officer" for all purposes.

The FPPC regulations seem inconsistent with the above Government Code provisions and with Mr. Spurlock's advice on this issue. Section 18227 of these regulations (Cal.Admin.Code, title 2) states:

"The filing officer for reports and statements filed under Government Code Section 81005(g) [the predecessor of section 81005.2(j)] is the office or officer which ultimately receives and retains the original report or statement."

While the "ultimate receiver" is the agency under Section 81005.2(j), the FPPC regulations at Section 18115 make the code reviewing body the ultimate receiver:

"Agencies which receive statements of economic interests shall:

- (a) Within five days following the deadline for filing such statements, forward each original statement to the code reviewing body indicating the date received on the face of the statement, and retain a copy;
. . ."

Thus, by literal application of these two sections of the FPPC regulations, the Clerk of the Board of Supervisors is the filing officer for all county agency Conflict of Interest Codes. In advising us whether the designation of filing officer presented by our question is permissible, will you also resolve this apparent inconsistency?

SECOND QUESTION: May the Registrar of Voters be designated in lieu of the County Clerk as the officer with whom candidates for the office of District Attorney or member of the Board of Supervisors file that Statement of Economic Interest which is required to be filed with a declaration of candidacy?

Section 87201 requires each candidate for one of these offices to "file with his declaration of candidacy" a Statement of Economic Interests. Section 81005.2 states the place of filing to be "one original with the county clerk" The County Clerk would thus be the officer with whom generally all such Statements are to be filed.

However, section 82009.5 states that "clerk" means, in the case of a county, the county clerk unless the board of supervisors "has designated any other agency to perform the specified function." This section implies an amount of discretion in the board to designate another officer to perform one or more functions of the county clerk.

Further, section 26802 (not part of the Political Reform Act) provides in relevant part:

March 16, 1978

"In those counties in which a registrar of voters office has been established, the registrar of voters shall discharge all such duties vested by law in the county clerk which duties relate to and are a part of election procedure." [Emphasis added.]

Since the Statement required by section 87201 is only required of those who are seeking election and commencing the election procedure by filing the declaration of candidacy, it seems that the filing of this particular Statement can properly be considered "a part of election procedure."

Finally, the language of section 87201 requiring the Statement to be filed "with" the declaration can be interpreted to mean "at the same place as" as well as "at the same time as." Since declarations of candidacy are filed with the registrar of voters (pursuant to section 26802 above), the Statement would also be filed with this officer under this interpretation.

Very truly yours,

DONALD L. CLARK, County Counsel

By *William W. Taylor*
WILLIAM W. TAYLOR, Deputy

5
WWT:am

Memorandum

To : Participants of the Opinion Request Meeting

Date : March 27, 1978

From : FAIR POLITICAL PRACTICES COMMISSION
John Giansello

~~78-144~~
78-144

Subject:

A judge wishes to make a personal contribution to another judge running for re-election. Judge I (donor) is not himself a candidate for re-election this year. Judge I has no committee and raises and spends no funds himself for political purposes other than the contribution at issue here. Does the making of the instant contribution make Judge I a candidate so that he is required to file a semi-annual statement for the period in which the contribution is made? Would the answer change if the judge were raising and spending money to pay off debts in his own election two years ago?

The making of a personal contribution by itself does not constitute the making of an expenditure with a view to bringing about his nomination or election to any elective office. Therefore, the making of personal contributions does not make the judge a candidate under 82007. By its terms 84206 does not apply to judges unless they are "candidates or committees" receiving contributions or making expenditures during the specified periods. If the judge were otherwise receiving contributions or making expenditures during the specified periods, his personal contributions would be reportable on his semi-annual statement. We did not reach the issue of whether the raising or spending of funds since the last election solely to repay debts incurred in connection with that (past) election made the judge a candidate with semi-annual reporting obligations.

John Giansello

2727 San Ramon Drive
Rancho Palos Verdes, Calif. 90274
29 December 1978

Fair Political Practices Commission
Technical Assistance and Analysis Division
1100 Kay Street
Sacramento, California 95814

78-145

Gentlemen:

I would like to have a clarification of committee off-year reporting requirements. I am the treasurer of a committee for which a Statement of Organization has been filed and which has a total expenditure of \$40 since 1 July 1978 (and no income during that period). I telephoned the City of Rancho Palos Verdes for a Form 420 in order to make the semiannual report. I was told by the person with whom I talked (not an elected official) that no report was required. Later she amended that statement to no report being required unless at least \$50 was involved. She was very adamant, and I was equally adamant in my request for a form, which I have just received. It is my understanding that a report is required even if only a dollar has been received or expended by the committee. I plan to file Form 420 in any event, but I would appreciate a clarification since I believe that misinformation is perhaps being given to other elected city officials (or their committee treasurers) and failure to file is subject to criminal sanctions.

Sincerely,

John A. Feyk
John A. Feyk

cc: Barbara Hein, city council

Phone:
No 82013 committee;
no reports required
Jay Greenwood