

Memorandum

*provisions of the Act;
seek legislative changes when
appropriate*

To : All Opinion Request Meeting Participants

Date : June 22, 1978

From : FAIR POLITICAL PRACTICES COMMISSION
Ted Prim

M-78-303

Subject: The last paragraph of §87103

§87103 requires that an official disqualify himself from decisions which will foreseeably and materially affect indirect investments or interests. The last paragraph of §87103 defines an indirect investment or interest to mean investments or interests owned by business entities controlled by the official or trust in which he has a \$1,000 interest. This paragraph is different from the staff's traditional approach to second-tier disqualification with respect to both business entities and trusts. This paragraph provides that only 50% shareholders are disqualified from decisions which would materially affect second-tier investments whereas virtually anyone with an interest in a trust would be disqualified from participating in decisions which will affect the investments held by the trust. As you know, the staff traditionally has required that the official have a 10% interest or greater in a business entity or trust before he will be disqualified from participating in decisions affecting second-tier assets. The last paragraph of §87103 sets a 50% threshold with respect to disqualification from decisions affecting second-tier assets held by business entities and no percentage ownership threshold with respect to second-tier assets held by trusts. In the case of a trust, the official need only have a thousand dollar interest in the trust in order to be disqualified from participating in a decision which will materially affect an investment or interest held by the trust even if the official's pro rata share in such an investment or interest is less than one thousand dollars.

Assuming that you agree with Dan, Lee and me with respect to this interpretation of §87103, which, if any, of the following alternatives do you prefer?

1. We should happily apply the provisions of the last paragraph of §87103.
2. We should seek legislative changes to the last paragraph of §87103.
 - a. The paragraph should be eliminated from the Act.
 - b. It should be amended to read as follows:

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"For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of the public official, by an agent on behalf of the public official, or by any business entity controlled by the public official. An indirect investment or interest also means any investment or interest owned by a trust in which the official has a present, future, or beneficial interest provided, however, that the public official's pro rata of the investment is worth more than one thousand dollars (\$1,000)."

3. If we decide to seek legislation, what should we do in the interim?

a. Apply the last paragraph of §87103?

b. Continue to apply the staff's traditional interpretation?

I apologize for the fact that this memo is quite complicated. In order to understand it, you may have to spend some time re-reading it and staring at the provisions of §87103. The questions, however, are important so I hope you will spend the time to think about the material.

TP:mfa