

State of California



Fair Political Practices Commission

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Technical Assistance • • • Administration • • • Executive/Legal • • • Enforcement • • • Conflict of Interest
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June 19, 1979

Richard B. Spohn, President
Executive Director's Association
1020 N Street
Sacramento, CA 95814

A-79-157

Dear Mr. Spohn:

On June 5, 1979, the Fair Political Practices Commission made a ruling which will affect the consumer boards under the jurisdiction of the Department of Consumer Affairs. The ruling and its background are as follows.

Government Code Section 87100 et seq. provides that no public official shall make or participate in the making of a decision which foreseeably will have a material effect, distinguishable from its effect on the public generally, on the official's financial interests. Commission regulation 2 Cal. Adm. Code Section 18703 provides that "public" includes a significant segment thereof and that an industry, trade or profession generally is not a significant segment of the public. However, with respect to boards some of whose members must be chosen from a particular industry, trade or profession, that industry, trade or profession may be a significant segment of the public if the board's enabling legislation contains the following declaration, including an express reference to Government Code Section 87103, or if it is implicit from the enabling legislation and surrounding circumstances that the substance of the declaration is true with respect to that board:

* * *

The Legislature [or other authority] declares that the individual[s] appointed to the office of _____ is [are] intended to represent and further the interest of the [specified industry, trade or profession], and that such representation and furtherance will ultimately serve the public interest.

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Accordingly, the Legislature [or other authority] finds that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

In response to an inquiry from the State Board of Forestry, the Commission concluded at its June 5 meeting that the provisions of Regulation 18703 would be met if the Legislature (in the case of an express declaration in the enabling legislation) or the Commission (in the case of an implicit finding) concludes that the industry members of a particular board are intended to represent and further the purposes of that industry. It is not necessary that the entire board be established to represent and further the purposes of the industry. Since legislation is presently moving through the Legislature concerning the Funderal Board and since other boards may propose similar legislation, I thought you should be specifically apprised of this ruling.

In addition, it was also clear from the Commission's deliberations that without a legislative declaration stating that industry members of consumer boards under the jurisdiction of the Department of Consumer Affairs are intended to represent and further the interests of the specified industry, it is unlikely that the Commission will infer such an intention from the enabling legislation. Therefore, until legislation enacting the declaration set forth in regulation 18703 is adopted, we think it would be prudent for all industry members of consumer boards under the jurisdiction of the Department of Consumer Affairs to disqualify themselves from making or participating in the making of governmental decisions which foreseeably will have a material financial effect on their financial interests.

If I may be of further assistance, please contact me.

Sincerely,


Ted Prim, Chief
Conflicts of Interest Division

cc: Gus Skarakis, Chief Counsel, Legal Office, Department of Consumer Affairs

Bill Peterson, Executive Secretary, Board of Fabric Care

TP:nrw