

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 • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

December 5, 1980

James A. McCarty
811 Dianna Drive
Lodi, CA 95240

A-80-12-060

Dear Mr. McCarty:

This is in response to your letter requesting advice concerning the conflict of interest provisions of the Political Reform Act of 1974. This advice is provided pursuant to Government Code Section 83114(b). The facts as I understand them are as follows.

You are a member of the City Council of Lodi. You have made a loan to the owners of a newspaper of local circulation and have received as security for that loan a deed of trust on a lot located in Lodi. The terms of the loan provide for a payment of 9 percent of the principal (\$10,000) annually as interest, with the full amount of the principal due and payable on June 20, 1982. The newspaper plans to bid for some of the business of carrying legal notices for the City of Lodi. You have asked the consequences of this set of facts as well as whether there would be any additional consequences if you converted the loan into shares in the newspaper. In addition, you receive interest from some local financial institution on an account which you have with them.

The Political Reform Act of 1974 requires you, as a city councilman, to file statements of economic interests at various times, and to disqualify yourself from making or participating in governmental decisions which will foreseeably have a material financial effect on a source of income to you, on a business entity in which you have an investment or are a director, officer, partner, trustee, employee or hold any position of management, or on real property in which you have an interest.

Under the disclosure provisions of the Act, you are required to disclose investments and interests in real property when filing a declaration of candidacy, upon assuming office, annually and upon leaving office. In addition, you are

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82030
82033

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required to disclose income annually and upon leaving office. See Government Code Sections 87200, et seq. The term "income" as defined in the Act includes forgiveness or payment of indebtedness, Government Code Section 82030, so that if you receive more than \$250 in repayment of either the principal or interest of the loan during the period covered by a statement of economic interests, you must disclose the owners of the newspaper as sources of income on that statement. In addition, the term "interest in real property" includes any beneficial or ownership in property, Government Code Section 82033, and you are therefore required to disclose the deed of trust on the lot which is security for the loan on any statement of economic interests which covers a period during any part of which you held the deed of trust.

With respect to the interest you receive on accounts you hold with financial institutions, the definition of "income" excludes interest, dividends or premiums on a time or demand deposit in a financial institution, including shares in a credit union. Government Code Section 82030(b)(4). This interest is therefore not reportable. If you have any further questions concerning exactly how to report any of these interests, please feel free to contact either Alice Hughes or Gina Lunetta of this office at (916) 322-6444.

With respect to disqualification, the Political Reform Act provides that:

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 governmental decision in which he knows or has reason to know he has a financial interest.

Gov. Code §87100.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

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(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

. . .

Gov. Code §87103.

As the terms of the loan provide for a payment to you of approximately \$900 annually from the owners of the newspaper, Government Code Sections 87100 and 87103 do require you to refrain from making or participating in any decisions which could have a material financial effect on them. Enclosed is a copy of the regulation of the Fair Political Practices Commission which contains guidelines for determining if a financial effect is material. You can apply these to the amount of business the paper is bidding on to determine whether the decision to grant the business to the paper would have a material effect on it. Assuming that the people to whom you made the loan are majority shareholders of the paper and operate it, an effect upon the paper can be assumed to be an effect upon them as well. Consequently, if the decision to either accept or reject the newspaper's bid would have a material effect on the paper, you should not vote or otherwise participate in that decision.

If you were to obtain shares in the newspaper, and those shares were worth more than \$1,000, you would be required to disqualify yourself from decisions which would have a material effect on the paper regardless of whether or not the owners of the paper were sources of income to you. In addition, although this agency does not interpret Government Code Section 1090, which is not part of the Political Reform Act, that section may come into effect depending on how great an interest in the paper you would be obtaining. I

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therefore urge you to consult the City Attorney or private counsel concerning the application of Section 1090.

Finally, although it is not immediately apparent that any such decisions are before the City Council, you must also refrain from participating in any decisions which would have a material financial effect on the lot which serves as security for the loan to the owners of the newspaper. As the interest you receive from the financial institution is not income, your receipt of it does not require you to disqualify yourself from decisions which would affect those institutions. If you have any further questions concerning this matter, please do not hesitate to contact me again.

Sincerely,



Sarah T. Cameron
Deputy Chief for
Conflicts of Interests
Legal Division

STC:plh
Enclosure

October 6, 1980

Dear Sir:

As a city councilman, I need your ruling on several issues. I have made a \$10,000.00 to persons known as Steven Mann and Myrtle Mays owners of a newspaper of local circulation. Terms are for repayment of principal on June 20th 1982, and an interest of 9% per annum, payable annually.

Security received is a deed of trust on lot identified by address 1797 South Stockton Street, Lodi, California.

The newspaper has not carried any City of Lodi legal notices that I know of, but in the very near future plans to bid for some of the action.

With these facts in mind, what shall be my correct course of action?

I have a number of small accounts with local financial institutions, from which I receive funds in the form of interest. Is there any problem in this area?

Back to question #1. What problems would be created if my loan to the aforementioned were converted to shares in their newspaper?

Comment: I was pleased to see that you have required the City Clerk, Police Chief, and Fire Chief to make at least a limited declaration. I am definitely against more government, but the acts of so many greedy people seem to sanction your department. Being on the inside, I see and hear more than a person of the general public.

I would suggest that due to the immense administrative and often legislative, by steering, powers in hand, the following should make full disclosures, and including close relatives. viz. City Attorney, City Clerk, Fire Chief, Police Chief, Finance Director, Community Development Director, Utility Director, Assistant City Manager, Director of public works, City Engineers, Assistant Planners if they can steer or influence committees such as Lodi's Site and Architectural Review Committee.

I could expand much further, but will conclude by offering up a conference with any of your staff and discussing a councilman's views on possible conflicts of interest.

Please get back to me on my specific questions as soon as possible.

Sincerely,
James A. McCarty
811 Dianna Drive
Lodi, CA 95240