

July 31, 1980

Fred S. Eyerly, Chairman
Northern California Power Agency
770 Kiely Boulevard
Santa Clara, CA 95051

A-80-07-088

Dear Mr. Eyerly:

This is in response to your recent letter concerning whether any conflict of interests arises by virtue of a former Northern California Power Agency (NCPA) Commissioner being hired by a firm which has major contracts with the agency. The Political Reform Act, which this agency administers, allows us to provide advice, i.e., an analysis of how the law applies to a particular fact situation, only in response to a request from a person who wants to know what his or her own duties and obligations under the Act are. See Government Code Section 83114(b) and 2 Cal. Adm. Code Section 18329.^{1/} I hope, however, that the following general discussion of the law will prove helpful.

The general prohibition against conflicts of interests contained in 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 a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100.

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

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The act also expands upon this by providing that:

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:

. . .

(c) Any source of income ... 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;....

Section 87103.

There are a couple of concepts here that may be of interest to you. First, the Act as currently in effect applies only to the actions of persons who are public officials. Chaptered amendments which will go into effect on January 1, 1981, will restrict certain former officials from representing other persons in matters in which they participated as public officials, but these provisions will apply only to state officials who leave office after the effective date of the amendments. See Stats. 1980, Ch. 66. These amendments will therefore not have any effect to restrict the actions of former Commissioners of the NCPA. Second, the Act prohibits participation in a decision which will affect someone who has promised an official more than \$250 in income.

If a court concludes that an official has participated in a governmental decision in which he or she has a financial interest in violation of Section 87100, and if the court concludes that that decision might not otherwise have been made, it may set aside the decision as void, but in doing so the court must accord due weight to any injury that might be suffered by innocent persons relying on the official action. See Section 91003(b). This is the only remedy available for

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a violation of Section 87100, but if the official is designated in a Conflict of Interest Code there may be other remedies available for violation of the Code's disqualification provision.

If you have any further questions concerning this matter, please do not hesitate to call me.

Sincerely,

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

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Northern California Power Agency

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PHILIP G. MICHAELS

General Manager

June 25, 1980

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

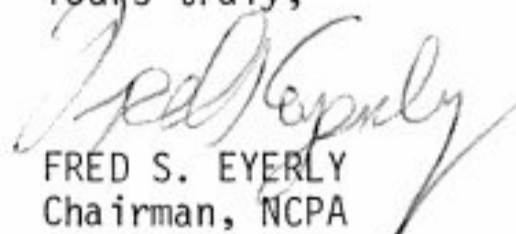
Gentlemen:

The Northern California Power Agency is a Joint Power Agency composed of eleven Northern California cities who own their electric utility. The policy is set by a board of Commissioners who are either elected City Councilmembers or professional city staff people.

Mr. Allan Beer, past elected Councilmember of Healdsburg, has recently been hired by SAI Engineers of Santa Clara. This firm has major contracts with NCPA. Mr. Beer has not been a Councilmember of Healdsburg or an NCPA Commissioner since Spring of 1980.

My concern relates to voting decisions prior to Mr. Beer's termination of elected office. Any advice you can give me regarding conflict of interest, etc., would be most appreciated.

Yours truly,



FRED S. EYERLY
Chairman, NCPA