

Memorandum

To : Commissioners Houston, Lapan,
McAndrews, Metzger and Quinn

Date : May 1, 1980

M-80-133

From : **FAIR POLITICAL PRACTICES COMMISSION**
Ted Prim and Sarah Cameron

Subject: Legislation Implementing Standardized Boilerplate Code

When the Conflict of Interest Division conducted the local code oversight project last year, one of the primary findings was that codes and statements at the local level were not being administered and updated in accordance with the requirements of the Political Reform Act. In order to remedy these problems the staff proposed, and the Commission generally endorsed, the concept of a standardized boilerplate for conflict of interest codes.

At its April meeting, the Commission adopted 2 Cal. Adm. Code Section 18730 which embodied the provisions of the standardized boilerplate. It still remains for the Commission to determine whether it wishes to propose legislation which would automatically incorporate the standardized boilerplate into all codes throughout the state.

In an attempt to determine the degree of support for such legislation among cities and counties, we met with a number of local officials over the past nine months after conducting individual interviews with a number of cities and counties. The staffs of the League of California Cities and the County Supervisors Association of California also put together a task force of local clerks, city attorneys and county counsels. The concept of legislation implementing the standardized boilerplate was endorsed by this group. Subsequently, we met with the administrative services committee of the League which endorsed voluntary incorporation of the standardized boilerplate but opposed legislation which would automatically incorporate the standardized boilerplate into all codes. Similarly, CSAC^{1/} and the County Counsels Association endorsed voluntary incorporation but opposed legislation which would automatically incorporate the boilerplate.

^{1/} The CSAC Executive Committee indicated that they would support the legislation only if it were supported by the County Counsels Association.

Commissioners Houston, Lapan,
McAndrews, Metzger and Quinn
May 1, 1980
Page Two

The reason for opposition was a general reluctance to relinquish local control on any matter and was not based on specific disagreements with the standardized boilerplate as adopted in 2 Cal. Adm. Code Section 18730. These local groups pledged again that they would encourage cities and counties to incorporate 2 Cal. Adm. Code Section 18730 and to do a better job of administering their codes. We told these groups that we would be monitoring the status of local conflict of interest codes closely over the next year or so and if matters do not substantially improve, we would expect them to work with us to increase compliance including possibly supporting legislation at that time which would implement the standardized boilerplate code.

We think it is unfortunate that the League and CSAC did not endorse the concept of automatic incorporation of the standardized boilerplate code. However, they did not. Accordingly, we recommend that we refrain from introducing such legislation this year. We will provide as much technical assistance as we can to local communities and work with the League and CSAC to encourage local communities to implement better the requirements of the conflict of interest provisions of the Political Reform Act. If these ventures do substantially improve the situation, we plan to return to the Commission with legislation next year, and under such circumstances, we think the chance of obtaining legislation would be greatly improved. First, we might obtain the endorsement of the League and CSAC. Second, even if we did not obtain the endorsement of these organizations, we would be able to demonstrate to the Legislature that we had made a concerted effort to solve the problem through voluntary cooperation and without the need for legislation.

An alternative to legislation automatically implementing the standardized boilerplate code is legislation authorizing code reviewing bodies to implement the standardized code for all of their agencies. However, since in our opinion code reviewing bodies already possess such authority, such legislation would only serve as a clarification of their power. It is our recommendation that the Commission not propose such legislation until a need for this clarification has been demonstrated.

If the Commission nevertheless wishes to propose legislation, Sarah's previous memorandum regarding several alternative proposals is attached. Those portions of the memorandum concerning legislation which you acted upon in February have been crossed out.

TP:STC:plh
Attachment

Memorandum

To : Members of the Commission

Date : January 24, 1980

From : **FAIR POLITICAL PRACTICES COMMISSION**
Sarah Cameron

Subject: Oversight Legislation

Attached are several suggested amendments to the Act which would implement our program to standardize the boiler-plate provisions of Conflict of Interest Codes throughout the State, leaving the decisions of which employees should be designated and what the extent of their disclosure obligations should be to individual agencies and code reviewing bodies. The content and effect of these amendments are as follows.

Mandatory and Automatic Standardization of Codes

The most significant amendment is proposed Section 87302.5. Alternative A would put the terms of any regulation the Commission might adopt containing boiler-plate Code provisions into effect automatically, without any additional action being required on the part of individual agencies or code reviewing bodies. When we first began to ask local agencies what they would think of a standardized Code, several of them suggested that such a Code would be most welcome if its implementation required no action on the part of local agencies -- if its effect were accomplished automatically. This suggestion received strong support from the Task Force of city and county clerks and attorneys we consulted with in August.

When we sent the regulation to city and county officials to solicit their comments, we also told them that the Commission would consider sponsoring legislation to make the provisions of the regulation go into effect automatically in all Codes throughout the State. The Association of California Water Agencies has expressed some opposition to

this concept from the outset of this project, although they have been conditioning their objections and have not expressed a final position of opposition. Of all the city and county officials who have commented on the standardization concept, the only ones to object to automatic and mandatory standardization were J. Kenneth Brown, who represents several small cities, Ralph B. Helm, who represents several one-county special districts and the City Attorney of San Leandro. The objections of Brown and the San Leandro City Attorney seem to be based on the wording of Section 87301. See discussion of proposed amendments to that Section below. The University of California has objected to standardization out of fear that the Commission will amend the regulation in ways which do not comport with law. We have received explicit expressions of support from the San Diego County Counsel, the San Luis Obispo County Counsel, the Sonoma County Counsel, the Los Angeles City Attorney, the Hayward City Attorney, and Art Kidman, who represents various cities and agencies.

Opposition to this regulation which is based on the thought that various agencies have already adopted Codes does not address the real question at issue. The primary purpose of the standardization of Codes is not to get Codes into effect in the first place, although that is a problem addressed by some of the other proposed amendments. The purpose of standardization is to provide a mechanism to amend Codes which have already been adopted so as to keep them up-to-date and in accord with the Act and with our regulations, amendment required by the Act but ignored by many agencies, resulting in many of the deficiencies noted during the course of our oversight project. Even if standardization is achieved, local agencies and code reviewing bodies will still have to decide which employees should be designated and what their disclosure categories should be. This is the truly difficult part of developing a Code and one of the merits of standardization of the boiler-plate provisions of the Code is that it allows agencies and other code reviewing bodies to concentrate their valuable time and effort on designations and disclosure categories, leaving to the Commission the rather ministerial but nevertheless important task of seeing that the boiler-plate conforms with changes in the Act and in our other regulations.

A suggestion which might receive less opposition because it would have no mandatory effect on cities and counties is Alternative B. This would leave the option of standardization to each code reviewing body. Undoubtedly, however, any objections ACWA or UC raise to Alternative A they would also raise

to Alternative B, as it would clearly authorize the Commission to standardize all Codes subject to our authority. ACWA argues that under the Act as currently written, once a Code is adopted, changes can only be required when there are changed circumstances, see Section 87306, and that the extent of amendments which can be imposed by the code reviewing body on agencies is limited to the extent of the changed circumstances. My reply is that amendments to the Act and regulations are changed circumstances, and such amendments have already made virtually all Codes out-of-date. For example, only the Codes most recently approved by the Commission do not require attorneys and brokers to report second-tier income at the \$1,000 pro rata level. Once changed circumstances require a Code to be amended, the Act provides that such amendments shall be considered by the code reviewing body pursuant to Section 87303 of the Act and that Section explicitly permits us to revise the Code and approve it as revised.

There is nothing to indicate that the condition of local Codes has improved since last summer. The conditions which led the Codes to be in such bad shape in the first place -- lack of expertise, apathy, limited resources because of Proposition 13, etc. -- have not changed, and the possibility of Jarvis II further straining the resources of agencies at all levels of government, including this agency must not be ignored. Standardization is still the most efficient way to deal with all these problems. It is still a good idea, and I recommend that we seek to have the Legislature pass Alternative A.

Clarification of level at which various parts of Code should be established.

Both J. Kenneth Brown and the San Leandro City Attorney cited Section 87301 as a bar to standardization of boilerplate provisions. This section as currently written provides in part that "It is the policy of this act that Conflict of Interest Codes be formulated at the most decentralized level possible. . ." The staff has always believed that the policy of the Act is that the designation of employees and the formulation of disclosure categories should be done at the most decentralized level possible, but that Act itself sets down such strict guidelines in Section 87302 concerning the rest of any Code and that it could hardly be said to

embody the idea of much flexibility in that area. The proposed amendment would make this understanding explicit.

Giving the Commission authority to seek enforcement of the provisions relating to Conflict of Interest Codes.

Regardless of the specificity of the Act's requirements concerning Conflict of Interest Codes, there will always be agencies which ignore them and refuse to adopt sufficient Codes. One City Attorney who had repeatedly advised his City Council that they did not have to adopt Codes for city agencies because the Act contained no deadline has now begun to assert, since a deadline of June 1, 1980 was added, that although they must adopt a Code, it is within their discretion to refuse to designate any employees. If the City Council follows his advice, and there is no reason to think that they will not, it is unlikely that any city agency, officer, employee, consultant or member will bring an enforcement action to force designation of those officials whose duties entail making or participating in making decisions which could foreseeably have a material financial effect on their private interests. This would leave the burden on local citizens or the District Attorney to remedy the failure to act, or perhaps require us to get written authorization from the District Attorney. The amendments I have proposed to Sections 87305 and 87308 would allow us to take actions in the Code area without the District Attorney's authorization.

Clarification of the contents of Codes.

There are several changes I have suggested in Section 87302 that would make it more clear concerning the required provisions of Conflict of Interest Codes. First, I have moved the discussion of the formulation of disclosure categories from subsection (b) to subsection (a). This makes subsection (a) include all the provisions which we think should remain within the ambit of local agencies and code reviewing bodies. If Section 87302.5 gets adopted as proposed, this makes it much easier to refer to those provisions.

1/ The Commission's civil jurisdiction in local enforcement cases is unclear but it is possible the Commission could assert jurisdiction in such an instance as a test case.

Second, I have added language with respect to each kind of statement which clarifies the period covered by the statement. These provisions are parallel to suggested amendments to Article 2, and close what I believe to be a significant hole in the Act -- the failure to state a clear period covered for statements. These amendments would require annual statements to cover the previous calendar year and would therefore, by themselves, require that many local codes be amended. In particular, see Comments to Section 5 of proposed regulation 18730 made by the Beverly Hills City Attorney. The 730 Form, which the Commission has mandated, already assumes that annual statements will cover a calendar year.

Third, I have suggested that language be added to subsection (c) to clarify that the disqualification provisions of Codes should apply to a designated employee's use of his or her official position to influence governmental decisions. See Comments to Section 8 of proposed regulation 18730 made by the Los Angeles City Attorney.

Finally, if the Commission wants to allow code reviewing bodies to require "management positions" to be reported, I have suggested adding language to this affect to Section 87302. See Comments to Section 6 of proposed regulation 18730 made by the Los Angeles City Attorney. Many Codes which we have approved contain this requirement, although we leave to the particular agency the decision to include it or leave it out, and the 730 Form provides a schedule on which to report such information.

STC:nrw

87302.5 - Alternative A

The Commission may by regulation establish those terms of Conflict of Interest Codes required by subsections (b) and (c) of Section 87302. The provisions of such a regulation and any amendments to it shall replace any terms of a Conflict of Interest Code other than those terms required by subsection (a) of Section 87302 and shall become effective without any further action by the agency or code reviewing body.

87302.5 - Alternative B

Any code reviewing body may establish for those agencies subject to its authority those terms of Conflict of Interest Codes required by subsection (b) and (c) of Section 87302. Such terms may be contained in a standardized Code applicable to all agencies under the code reviewing body's authority and may be amended by the code reviewing body using the procedures specified in Section 87311.

87301

It is the policy of this act that those portions of Conflict of Interest Codes in which employees are designated and the extent of disclosure applicable to them is determined pursuant to subsection (a) of Section 87302 shall be formulated at the most decentralized level possible, but without precluding intra-departmental review. Any question of the level of a department which should be deemed an "agency" for purposes of Section 87300 shall be resolved by the code reviewing body.