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# State of California



## Fair Political Practices Commission

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Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest  
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March 9, 1981

Harold N. Christianson  
3225 Freese Avenue  
Eureka, CA 95501

A-81-03-073

Dear Mr. Christianson:

This is in response to our phone conversation in early February regarding the conflict of interest provisions of the Political Reform Act. Please forgive our delay in responding. The facts as I understand them are as follows.

You are a Harbor Commissioner for the City of Eureka. You also own a commercial fishing vessel. The City has built a new marina and you asked whether you were required to disqualify yourself from making a decision setting rates for leasing berths at the new marina.

The basic prohibitions against conflicts of interests in the Political Reform Act are found in Government Code Sections 87100-87103<sup>1/</sup> which in relevant part provide 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.

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:

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise stated.

(a) Any business entity in which the public official has a direct or indirect investment 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 12 months prior to the time when the decision is made.

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

. . .

#### Section 87103.

A "business entity" is defined in Section 82005 as:

"Business entity" means any organization or enterprise operated for profit, including but not limited to a proprietorship, firm, business trust, joint venture, syndicate, corporation or association.

Thus, to the extent that your fishing vessel is operated for profit, it would constitute a business entity within the meaning of Section 87103(a).

If the fishing vessel provided income to you of \$250 or more within the past year, it is also a "source of income" to you within the meaning of Section 87103(c).

Therefore, if it is foreseeable that the rate-setting decision will have a material financial effect, distinguishable from its effect on the public generally on your commercial fishing enterprise, you must disqualify yourself from making or participating in the decision.

The Commission has provided guidance on the question of what constitutes a "material financial effect" by regulation in 2 Cal. Adm. Code Section 18702. This regulation provides in relevant part that:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

. . .

(3) Whether, in the case of a source of income as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:

(A) The effect of the decision will be to directly increase or decrease the amount of income (other than rents) to be received by the official by one hundred dollars (\$100) or more; or

. . .

Thus, if the effect of the decision will be to increase or decrease the amount of income you receive by \$100 or more the financial effect will be deemed material.

Even if your income is changed by \$100 or more you are not required to disqualify yourself unless the effect of the decision on you is distinguishable from its effect on the public generally. This concept is also defined by regulation in 2 Cal. Adm. Code Section 18703 which provides in relevant part that:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public....

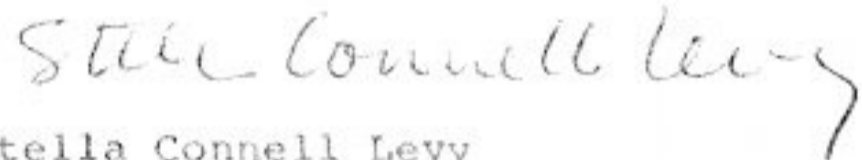
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This concept was also discussed by the Commission in the William Owen opinion 2 FPPC Opinions No. 76-005; June 2, 1976, a copy of which is enclosed. Unless a significant segment of the population are boat owners who would foreseeably be renting berths, the public generally exception would not apply in your case.

In conclusion I would advise you that if the above discussed factors are satisfied by your situation you should not use your official position to influence the rate for leasing berths at the new marina.

Again, please forgive our delay in replying. Please let me know if I can be of further assistance in this matter.

Sincerely,



Stella Connell Levy  
Counsel  
Legal Division

SCL:plh  
Enclosure