

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

February 5, 1981

Arthur W. Walenta, Jr.
Assistant County Counsel
Office of County Counsel
Contra Costa County
County Administration Bldg.
P.O. Box 69
Martinez, CA 94553

A-81-144

Dear Mr. Walenta:

Ted Prim, our executive director, has asked me to respond to your letter of January 5, 1981, questioning the authority of the Fair Political Practices Commission to mandate certain procedures for local code reviewing bodies.

The first issue you raise is whether the Commission has authority to require the use of Form 730 for Statements of Economic Interests of employees designated by a local code reviewing body. Government Code Section 83113(a)^{1/} states that:

The Commission shall, in addition to its other duties:
(a) Prescribe forms for reports, statements, notices and other documents required by this title;

(Emphasis added.)

Thus, the Commission has clear authority to mandate the standardization of forms. The standardization of Form 730 is meant to correct the confusing situation in which every local code reviewing body promulgated its own forms. As you point out, there are well over a hundred local conflict codes in Contra Costa County alone. Standardization will make it easier for the Commission to carry out its duty of providing necessary assistance to local agencies.

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

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Questions 2 and 3 raise the issue of whether the Commission is precluded from regulating the administration of local codes. Specifically, you object to the provisions that:

1. late filers under local codes are subject to the penalties imposed by Section 91013; and
2. filing officers designated by local codes are subject to the duties expressed in Section 81010 and 2 Cal. Adm. Code Section 18115.

These objections appear to be based on the premise that Title 9 - The Political Reform Act - "is a state, not a local, enactment," and therefore, that local codes are not subject to the administrative provisions of the Act. We reject this premise for the following reasons.

The Political Reform Act addresses the activities of both state and local government (Section 81001(a)). Among the purposes it seeks to accomplish is the provision in Section 81002(d) that:

Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

"Public officials" are members, employees, officers or consultants of state or local government agencies (Section 82048). The further requirement in Section 87300 that every state and local agency adopt a conflict of interest code in conformity with the provisions of the Act clarifies the fact that local activities are well within the ambit of Title 9.

This leaves only the question of the scope of the authority of the Commission to administer the provisions of Title 9. Section 83111 specifically designates the Commission as the agency primarily responsible for the administration and implementation of the Act. In Section 83112 the Commission is empowered to adopt regulations in order to carry out the provisions and purposes of the Act. Section 83113(a) specifically empowers the Commission to prescribe forms for statements filed under the Act. The fact that the Commission is not the code reviewing body for local government agencies in no way detracts from the express provisions of Sections 83111, 83112 and 83113(a).

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The late filing fines imposed by Section 91013 apply to deadlines established under all conflict of interest codes. A violation of the local code is deemed a violation of the Act. Section 87300. Therefore the deadlines expressed in local codes are deadlines imposed by the Act. Similarly, the duties expressed in Section 81010 and 2 Cal. Adm. Code Section 18115 are imposed on all filing officers including those who receive disclosure statements required by local codes.

As this review of the Act shows, there is no basis for your suggestion that the Commission is precluded from exercising authority over local code reviewing bodies. On the contrary, the fact that local agencies have been afforded discretion in several areas in no way relieves this Commission of its primary duties and responsibilities to carry out the purposes of the Act.

I hope that this advice has been helpful to you. Please do not hesitate to call me if you have further questions.

Sincerely,



Stella Connell Levy
Counsel
Legal Division

SCL:plh

JOHN B. CLAUSEN
COUNTY COUNSEL

GEORGE W. McCLURE
CHIEF DEPUTY

ARTHUR W. WALENTA, JR.
VICTOR J. WESTMAN
ASSISTANTS

BONNIE B. CLAUSEN
OFFICE MANAGER

OFFICE OF COUNTY COUNSEL
CONTRA COSTA COUNTY

COUNTY ADMINISTRATION BUILDING

P.O. BOX 69

MARTINEZ, CALIFORNIA 94553

PHONE (415) 372-2074

JAN 6 9 28 AM '81

January 5, 1981

DEPUTIES

VICKIE L. DAWES
MICHAEL D. FARR
LILLIAN T. FUJII
HOWARD T. GONSALVES
DENNIS C. GRAVES
ELIZABETH B. HEAREY
EVERETT W. JENKINS, JR.
ELLADENE L. KATZ
EDWARD V. LANE, JR.
VIVIAN LILY
PETER J. LUCEY
SILVANO B. MARCHESI
JOHN M. MILGATE

Robert M. Stern, General Counsel
Fair Political Practices Commission
P.O. BOX 807
Sacramento, CA. 95804

Re: November, 1980, Informational Newsletter;
Lack of authority for some FPPC actions, & cost of enforcing same

Dear Mr. Stern:

The November, 1980 Informational Newsletter and other correspondence from the Fair Political Practices Commission gives rise to several issues involving the right of the Commission to regulate the administration of local conflict of interest codes adopted pursuant to Government Code §87300.

1. The Newsletter states that the use of Form 730 is mandatory for all designated employees. We have approved the use of Form 730 with minor modifications for use in Contra Costa County. This office is not aware of authority under which the FPPC can mandate the use of Form 730 for disclosure statements filed solely pursuant to §87300 local conflict of interest codes.

2. The Newsletter implies that persons who file late disclosure statements under local codes are subject to a \$10 per day fine not to exceed \$100. The late statement fees expressed in Government Code §91013 are levied for filing statements or reports after deadlines imposed by the act. It appears to this office that the word act in §91013 means the "Political Reform Act of 1974" (see §81000). In our view, except for those imposed by §87302, deadlines expressed in local conflict of interest codes are not deadlines imposed by the "act", and the late fees expressed in §91013 are not applicable. The "Act" is a state, not a local, enactment.

3. The Newsletter implies that persons who receive disclosure statements under local conflict of interest codes are subject to certain duties expressed in 2 Cal. Adm. Code §18115. It is not clear to this office that the requirements of §18115 extend to persons who are designated only by local conflict of interest codes to receive and retain disclosure statements, and it appears to this office that the FPPC lacks authority to impose duties upon persons who receive disclosure statements only pursuant to local codes.

Under Government Code §83112 the Commission is empowered only to adopt regulations consistent with Title 9 and to carry out the provisions of Title 9 (the Political Reform Act of 1974). Government Code §82027 defines "Filing Officer" as an office or officer with whom a statement or report "is required to be filed under this title." Sec. 87500(j) identifies the code reviewing body as the filing officer for heads of agencies, but Title 9 does not designate filing officers for the disclosure statements of designated employees other than heads of agencies. Furthermore, Title 9 does not require that there be a "filing officer" for the disclosure statements of designated employees other than heads of agencies. Government Code §87500(k) provides that the disclosure statements of designated employees shall be filed "as provided by the code reviewing body in the agency's conflict of interest code."

By providing in §82011 for code reviewing bodies other than the Commission, and by providing in §87303 for local code reviewing body control over the content of local conflict of interest codes, in the view of this office the Act has precluded Commission regulation of the content of local codes and of their administration. It appears to this office that the Commission is without jurisdiction to impose duties upon persons designated only under local codes to receive disclosure statements or to carry out any other duties imposed solely by local codes.

There are well over a hundred local conflict codes in Contra Costa County and probably thousands in the State. These codes are administered by persons who are without legal training and whose duties and experience are quite foreign to the technicalities of disclosure under Title 9. These thousands of individuals throughout the state are not competent to actually determine whether the disclosure statements of designated employees conform technically to the requirements of the local codes, which include provisions of the Act which are abstruse and complex. These individuals are not competent to actually determine whether schedules are complete and include "all required descriptive information." These individuals cannot competently determine whether "information contained on one schedule does not suggest that either that schedule or another schedule contains obvious omissions." These individuals are not competent to reach informed conclusions as to whether there is "reason to believe that the statement contains material inaccuracies or omissions." We have noted only the most obvious examples under 2 CAC §18115. It appears to us that what is an essentially clerical function under state law is converted into complex administrative duties by your detailed regulations.

4. If the Commission can effectively impose such burdens on the local agencies of the state, it appears to this office that under Revenue and Taxation Code sections 2201 et. seq. and

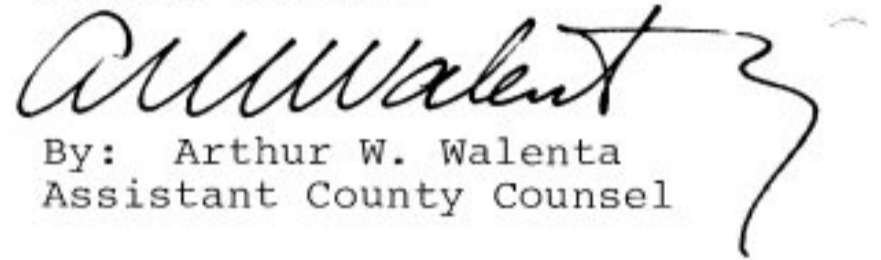
January 5, 1981

Article XIII-B of the State Constitution, the State must bear the total cost of compliance.

We would appreciate advice as to your views on the issues noted herein.

Very truly yours,

JOHN B. CLAUSEN
County Counsel


By: Arthur W. Walenta
Assistant County Counsel

AWW/ljs

cc: County Supervisor's Association - Alan Burdick
League of Cities - Carolyn Galway
County Counsels' Association - James Herman, Imperial County
Office of Administrative Law