

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
(916) 322-5662 322-5660 322-5901 322-6441

July 12, 1984

Alvin W. Beardsley
City Attorney
City of Big Bear Lake
40927 Big Bear Boulevard
P.O. Box 2819
Big Bear Lake, CA 92315

Re: Your Request for Advice
Our File No. A-84-166

Dear Mr. Beardsley:

Thank you for your letter requesting an interpretation of Government Code Section 91001.5 which is a part of the Political Reform Act.^{1/} You asked whether this section precludes the appointed city attorney of a charter city from prosecuting violations of the Act. The answer is that it does.

Section 91001.5 is part of the enforcement provisions of the Act. Section 91001 sets forth the various officials who are responsible for the enforcement of the Act. It provides that the district attorneys are the criminal and civil prosecutors with respect to local agencies. Section 91000.5 provides that in addition to the district attorney, the elected city attorney of a charter city may act as the civil or criminal prosecutor with respect to violations of the Act occurring within the city. As originally enacted, Section 91001 provided that each city attorney was the civil prosecutor with respect to the city and its agencies. Concerns were raised by many appointed city attorneys about the difficult ethical problem that they faced as a result of the conflict between their obligations under the Act and their obligations under their charters. A copy of a typical letter that the Commission received in 1975 shortly after the

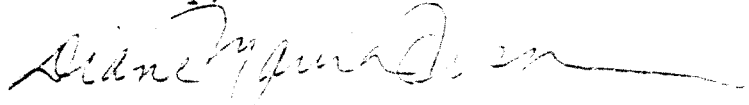
^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code.

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Act became effective is attached. In response to these concerns, the Commission sponsored legislation which removed city attorneys from Section 91001 and specified only elected city attorneys in Section 91001.5. Elected city attorneys were retained because they cannot be fired or pressured by city councilmembers, and the conflict in obligations does not exist.

I trust that this letter responds to your question. If I can be of further assistance, please feel free to call me at (916) 322-5901.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:plh
Attachment

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City of Big Bear Lake

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June 11, 1984

State of California
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Section 91001.5

Dear Sirs:

In a review of the Political Reform Act, I would request an interpretation of the above captioned section.

Big Bear Lake, is a Charter City since November of 1983. The Charter provides that the City Attorney is an appointed official, to serve at the pleasure of the Council. The specific individual is named each year by resolution. Section 91001.5 provides that an "elected" City Attorney may prosecute violations of the act. Does the language "elected" preclude an "appointed" City Attorney from prosecution.

Very truly yours,

ALVIN W. BEARDSLEY
City Attorney

cc: City Manager