



California Fair Political Practices Commission

April 29, 1987

Richard A. Swart, Manager
Management Services Section
Department of Alcohol and
Drug Programs
111 Capitol Mall
Sacramento, CA 95814

Re: Revisions to Conflict of
Interest Code
Our File No. I-87-120

Dear Mr. Swart:

You have requested our assistance regarding your agency's duties with regard to its conflict of interest code adopted under the provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

You have asked if the Department of Alcohol and Drug Programs should make certain amendments to its conflict of interest code at this time.

CONCLUSION

If your code does not reflect the current organizational structure of your agency or does not cover individuals who are in decision-making capacities, then it is appropriate for you to amend your code at this time.

ANALYSIS

Section 87306 requires an agency to amend its conflict of interest code when change is necessitated by changed circumstances within the agency. These amendments shall be submitted to the code reviewing body within 90 days after the changed circumstances necessitating the amendments have become apparent.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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As your conflict of interest code is an administrative regulation, it is subject to the provisions of the Administrative Procedure Act and Commission Regulation 18750. The basic procedure to amend the code is to prepare the amendments showing deletions in strikeout form and additions in underscore form. The proposed amendments must then be "noticed" through the Office of Administrative Law and to each employee affected by the amendments 45 days prior to adoption by the agency.

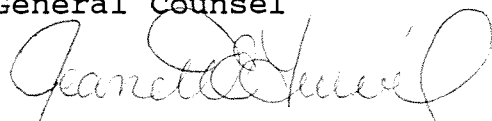
After your agency has adopted the amendments, the code must be submitted to the Fair Political Practices Commission for approval. When the code is submitted to this agency, certain substantiating information must be provided, such as duty statements or job descriptions for newly designated employees and written justification for each position proposed to be deleted. When the code has been approved by the Commission, it is then returned to you to be forwarded to the Office of Administrative Law for filing with the Secretary of State. Rulemaking files generally required for other types of regulations are not required for conflict of interest codes.

Within the memo to John Erickson, you proposed deleting certain positions because they do not entail contract negotiations or participating in the competitive-bid process. You should be aware that an employee's contracting authority is not the only criteria to consider. Any position in which the incumbent makes or participates in the making of decisions and can, in the making of decisions, affect the incumbent's financial interests, should be included in the code. Those types of decisions are not exclusively limited to contracting decisions.

I have enclosed for your review a copy of Commission Regulation 18750 which describes the procedure to follow to amend your code. Once you have reviewed the procedure, please feel free to call me at (916) 322-5901 if you have any questions.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanette Turvill
Legal Assistant

DMG:JET:plh
Enclosure

Memorandum

F P P C

MAR 5 9 03 AM '87 Date : February 27, 1987

To : Jeannette Turvill
Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento CA 95804

From : Department of Alcohol and Drug Programs

Subject: REVISION OF DEPARTMENTAL CONFLICT OF INTEREST CODE

The Department of Alcohol and Drug Programs requests your assistance in determining if its Conflict of Interest Code should be revised.

Management is considering a staff analysis of the existing Code which proposes several additions, deletions, and changes to the list of designated officers and employees. The intent of the proposed revision would be to add new job classifications not now in the Code, delete obsolete or abolished classifications, and eliminate the need for non-decision-making staff to file Statements of Economic Interest. A copy of the staff analysis is attached for your review.

We would appreciate your comments on the appropriateness of making the proposed changes. Please feel free to contact me at 323-1860 if you would like to discuss this request.



RICHARD A. SWART, Manager
Management Services Section


Attachment

cc: Robert L. Jackson
John P. Erickson

Memorandum

To : John P. Erickson

Date : February 27, 1987


Richard A. Swart

From : Department of Alcohol and Drug Programs

Subject: CONFLICT OF INTEREST CODE REGULATIONS

Background

The Political Reform Act (Act), Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. State agencies, including the Department of Alcohol and Drug Programs (ADP), have complied by promulgating administrative regulations. ADP's regulations are found in Title 9, California Administrative Code, Article 3, Section 9100, issued June 9, 1982.

Purpose

The purpose of ADP's Conflict of Interest Code is to require its officers and employees to disclose their economic interests which may conflict with their official duties as defined in the Act. Where actual conflict arises, the officer or employee must abstain from taking official action or rendering decisions which would impermissibly impact his or her economic interests.

ADP's Regulations

For a small department, ADP's regulations extend to a large percentage of its positions and classifications of employees and officers. This appears to have occurred because the department intended to guard against any appearance of unreported potential conflict of economic interest.

Recent Amendments to the Act

The Legislature requested recommendations from the Fair Political Practices Commission on how the Act's implementation was progressing. In partial response to those recommendations, the Legislature amended the Act in 1983 to give further guidance to agencies which have Conflict of Interest Codes. Section 82019 of the Government Code was amended to provide that any state employee who engages in negotiating or signing any contracts awarded through competitive biddings, or otherwise makes decisions on contracts, must be included as a "designated employee" in the departmental Conflict of Interest Code. The Legislature's concern was that the integrity of state contracting procedures become a special focus of the department's codes.

In a memo dated March 1, 1984, to FEPC attorney Janis S. McLean, ADP Deputy Director Robert L. Jackson stated that the existing ADP Code involved all officers and employees who negotiate and make contracting decisions are "designated employees," and that ADP is therefore in compliance with Section 82019.

Current Status of ADP's Code

ADP's Code was issued in 1982, and some changes have rendered certain designated positions obsolete.

For example:

1. Special Representative, ADP, was abolished by SPB action on December 16, 1986. It should be deleted.
2. Management Services Assistant (MSA) is a low-level classification that does not include contract negotiation or decision-making in the class concept. This classification has not been used by ADP for four years, and no plans exist to use it again. It should be deleted.
3. Management Services Technician (MST) is a low-level sub-technical class used to bridge the clerical and entry analyst classes. ADP, and most other agencies, do not designate MSTs as employees who negotiate or make contract decisions. MST should be deleted.
4. Advisory Liaison no longer exists. It should be deleted.

Other designated positions are not currently used by ADP now, but may be in the future. For example:

1. Assistant Chief, Division of Drug Programs.
2. Assistant Chief, Division of Administration.
3. Attorney.
4. Drug Program Administrator (redundant with 1 above).

These should probably be retained, unless management wishes otherwise.

Finally, consideration should be given as to the reason and necessity for designating certain non-supervisory analyst classifications for reporting economic interests. Experience has shown that virtually every analyst below the "associate" level has submitted negative declarations, year after year.

Further, it is difficult to justify the notion that they negotiate, or make decisions on, ADP contracts. Section 82109 of the Government Code does not define what constitutes the making of decisions on contracts in state departments. As a practical matter, negotiation of contracts is limited to "staff" level employees and above. Decisions to approve contract proposals and execute contracts are reserved to management employees.

Finally, the Department's Statement of Incompatible Activities prohibits improper business and economic conflicts by any employee, and provides remedies for violations. Thus, the following positions classifications should be deleted from the ADP Code:

1. Alcohol Program Analysts I.
2. Drug Program Analysts I.
3. Associate Governmental Program Analyst *See note.
4. Staff Services Analysts *See note.
5. Personnel Analysts.
6. Budget Analysts.
7. Research Analysts
8. Affirmative Action Officer (not a contract decision-maker) and redundant as SSM II.
9. Civil Rights Officer (not a contract decision-maker) and redundant as SSM II.

***Note: The Contracts Officer and Contracts Analysts should be added to the list of designations to conform to Government Code Section 82019.**

Two additional changes are recommended, in order to include changes in exempt position entitlements in the Executive Office subsequent to the promulgation of the ADP Code in 1982.

These are:

1. "Legislative Liaison" should be changed to the current official title of "Legislative Coordinator".
2. The "Communications Director" should be added.

Because these two exempt positions are for staff, rather than executive line officers, the disclosure categories most appropriate would be 3 and 4.

Other Designations to be Retained

The remaining designations appear to meet the intent of the Code's emphasis upon contract negotiation and decision-making. They should be retained.

Implementation

If management decides to adopt all or some of these suggested revisions, staff time would have to be committed to amending the administrative regulations containing the ADP Code.

There appears to be no urgent need justifying the issuance of emergency regulations. Therefore, the timeline would be the typical 270-day period from issuing the assignment to promulgating the revised regulations.

Sufficient time should be allowed for internal discussions of changes to the Code, as some individuals typically question the need for any change to regulations of this sort, while others will want to propose different or more extensive changes.

If and when a decision to amend the Code is made, the Management Services Section (MSS) should be asked to draft the Initial Statement of Reasons. The to-be-hired Regulations Coordinator would then guide the revised regulations through the system with staff support from the Management Services Section.

A proposed draft revised listing of designated employees is attached for discussion.

Please let me know if you have any questions.

Attachment

cc: Eileen Smith, Personnel Officer
Cynthia Cole, COI Filing Officer

APPENDIX

Designated Employees	(Proposed Changes)	Disclosure Categories
Director.....		1
Chief Deputy Director.....		1
Deputy Director.....		1
Chief, Division of Alcohol Programs.....		2, 3, 4, 5
Assistant Chief, Division of Alcohol Programs.....		2, 3, 4, 5
Chief, Division of Drug Programs.....		2, 3, 4, 5
Assistant Chief, Division of Drug Programs.....		2, 3, 4, 5
Chief, Division of Administration.....		2, 3, 4, 5
Assistant Chief, Division of Administration.....		2, 3, 4, 5
Attorney.....		2, 3, 4, 5
Fiscal Manager.....		2, 3, 4, 5
Auditors.....		2, 3, 4, 5
Drug Program Analysts II, III, IV.....		2, 3, 4, 5
Alcohol Program Analysts II, III, IV.....		2, 3, 4, 5
Drug Program Administrators.....		2, 3, 4, 5
Alcohol Program Administrators.....		2, 3, 4, 5
Drug Program Specialists.....		2, 3, 4, 5
Alcohol Program Specialists.....		2, 3, 4, 5
Staff Services Managers I, II, III.....		2, 3, 4, 5
Accounting Officer.....		2, 3, 4, 5
Business Services Officer.....		2
Research Managers.....		3, 4
Legislative Coordinator.....		3, 4
Communications Director.....		3, 4
Alcohol and Drug Advisory Board Members.....		3, 4, 6
Special Consultants.....		1
Contractors for Personal Services.....		3, 4, 6