



California Fair Political Practices Commission

December 4, 1987

Irvin Nikolai, Superintendent
San Luis Coastal Unified School District
1499 San Luis Drive
San Luis Obispo, CA 93401

Re: Informal Assistance
Our File No. I-87-244

Dear Mr. Nikolai:

It has been brought to our attention that the conflict of interest code for the San Luis Coastal Unified School District may be out-of-date and in need of revision. We have had an opportunity to review the code and have found some of its provisions are not consistent with the provisions of the Political Reform Act (the "Act").^{1/} We hope this letter will assist you in updating your code.

The Act at Section 87300 requires each government agency to have a conflict of interest code. Section 87302 contains the provisions that are required to be in codes. In 1980, the Commission adopted a regulation which contains those provisions required by Section 87302. (Regulation 18730.) For instance, the regulation spells out the reporting thresholds, the manner of disqualification and the manner in which interests are to be disclosed. By incorporating Regulation 18730 into your code, the provisions of your code will always be up-to-date. You will only need to update the appendix portion of your code when any personnel changes occur within the district. For agencies for which we are the code reviewing body, we require the incorporation of Regulation 18730 in the conflict of interest code, but can only strongly urge local agencies to adopt it as the body of their code. I have attached a memo which describes the regulation and the procedure to follow to incorporate it into your code.

^{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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Should you decide to incorporate Regulation 18730, you can easily resolve some of the concerns we have with your code. Those concerns are detailed below.

Your code provides that an investment need not be disclosed if the filer's ownership represents less than 1/2 of one percent of the outstanding shares. The Act provides that an investment is reportable if its value equals or exceeds \$1,000. (Sections 87206 and 87302(b).) There is no exception based on percentage ownership of the outstanding shares. Section 101(a), the reference to investments in Section 202, and footnote 2 at the end of your conflict of interest code should be deleted.

Should you decide to incorporate Regulation 18730 into your code as suggested earlier, footnotes 1 and 3 can be deleted as well. Footnote 3 does contain an error. Gifts are reportable only if their aggregate value is \$50 or more, not more than \$25. (Section 87207(a) and 87302(b).)

Section 203(a) of your conflict of interest code should be deleted entirely. This section informs filers that they are not required to comply with Section 87206(e). Conflict of interest codes should not prevent a person from complying with the Act.

Disclosure categories 2 and 3 need to be amended. The categories as written require each designated employee at the time of filing his or her statement to determine if it is reasonably foreseeable that an interest can be affected by a decision and should be reported. Disclosure categories should describe those types of interests which could be affected by the decisions of the designated employees. For example, for employees who participate in purchasing decisions, the disclosure category should require disclosure of investments, business positions, and income from any business entity which provides services, equipment, machinery or supplies of the type utilized by the district. In that case, should a designated employee receive income from, or have an investment in, a manufacturer of playground equipment, that income or investment interest would be disclosed by the designated employee regardless of whether or not the manufacturer has in fact contracted with the district in prior years. Since the manufacturer is "of the type" to provide equipment to the district, it is "reasonably foreseeable" that such an interest could be affected. Accordingly, the phrase "may with reasonable foreseeability contract with the district in the next one year" should be deleted from disclosure categories 2 and 3.

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Section 203(b) of your conflict of interest code, for similar reasons, should also be deleted. Since a properly written disclosure category would only require the disclosure of specific interests (i.e, an entity which provides equipment, or services to the district), a client or customer of the business entity would be reportable only if the client or customer were of the type to provide equipment, etc., of the type utilized by the district.

Category 5 of your code should be deleted. A separate category which requires the disclosure of clients or customers is unnecessary. This type of disclosure is provided under the definition of income. (Section 82030.) Clients or customers of a business entity in which a designated employee holds a 10 percent or greater interest are reportable whenever "income" must be disclosed. Should you still desire a separate disclosure category specifically requiring the disclosure of clients or customers, then category 5 needs to be amended to provide for the disclosure of clients or customers when the designated employee's pro rata share of the income reaches the \$10,000 threshold level rather than the \$1,000 level. (Sections 87206(b) and 87302(b).)

Section 301(a) of your conflict of interest code should be revised to indicate where statements are to be filed pursuant to the direction of the Board of Supervisors. At the time the code was developed in 1977, the school district delegated filing officer duties to the county clerk. Such a delegation can only be made by the Board of Supervisors. (Section 87500(m).)

Another concern is with the code's limited jurisdiction for the purpose of disclosing real property. The Act at Section 82035 defines jurisdiction to mean the district or geographical area over which your district has jurisdiction. The boundaries of the school district constitute the jurisdiction of the school district. For the purpose of disclosing real property, property is considered to be "within the jurisdiction" of the district if the property or any part of it is located within two miles of the boundaries of the school district or within two miles of any land owned or used by the school district. (Section 82035.)

Your code presently requires property to be disclosed only if it is within 1/2 mile of the boundary of any land owned or used by the district and only if it is reasonably foreseeable that it will be the subject of consideration by the board. Under the Act, real property is reportable if it is located within the boundaries of the district plus two miles,

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regardless of whether or not it is near any property owned by the district or the subject of a decision before the board. Category 1 should be amended to read: "Disclose all interests in real property." If you incorporate Regulation 18730 into your code, the definition of jurisdiction is provided.

As mentioned earlier, several of the problems with your code could be alleviated by the incorporation of Regulation 18730. After you have reviewed this letter, should you have any questions, or if I could be of further assistance, please call me at (916) 322-5901.

Sincerely,

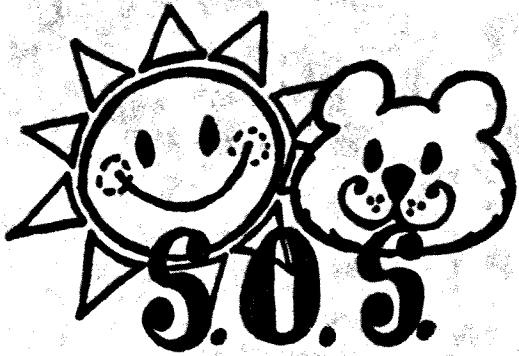
Diane M. Griffiths
General Counsel



By: Jeanette E. Turvill
Legal Assistant

DMG:JET:plh
Enclosure

rec'd at FPCC 9/25



Stop Overcrowded Schools

September 4, 1987

Attorney General Van de Kamp
555 Capitol Mall, Suite 290
Sacramento, CA 95814

Dear Sir:

As representatives of South Bay Citizens for Community Schools, we are concerned about possible conflicts of interest within our school board and district administration.

As in many school districts in California, San Luis Coastal Unified School District (SLCUSD) is in a building mode. Decisions and actions by the board over the past several years seem to confirm community concern that conflicts of interest may be influencing the objectivity and decision making of both administrators and trustees.

We respectfully request a legal opinion from your office which addresses the questions listed below. Please find enclosed copies of relevant documents which we hope will aid you in your analysis. More detailed information may be provided, if required.

1. Policy Regarding Conflict of Interest Statements

- a. DOES THE SLCUSD "CONFLICT OF INTEREST CODE" MEET ALL STANDARDS SET IN THE CURRENT "MANUAL FOR STATEMENTS OF ECONOMIC INTEREST FOR DESIGNATED EMPLOYEES, FORM 730"? (Specifically, in regard to schedules A, B, and C and page 169 of the local code.)

**South Bay Citizens for
Community Schools**

- b. SHOULD ALL PROPERTY OWNED BY "DESIGNATED EMPLOYEES" WITHIN THE DISTRICT BE REPORTED, AS THE SLCUSD IS CONTEMPLATING BUILDING PROJECTS THROUGHOUT THE ENTIRE DISTRICT?
- c. DO CONFLICT OF INTEREST STATEMENTS FILED BY TRUSTEES AND ADMINISTRATORS COMPLY WITH BOTH LOCAL AND STATE REQUIREMENTS? There seems to be a little consistency in what "designated employees" report. We have enclosed copies of individual statements for the past two years. For example, we have attached several items regarding Dr. Brendan McAdams which document a few of his known business interests-- none of which, to our knowledge, have appeared in his statements during the eight years he's served on the board. Dr. McAdams also invests in many real estate projects. Other trustees have extensive investments and yet file similarly brief statements.

2. Business Partnership Involving Board Member and Administrators.

- a. Past-president, Brendan Mc Adams, is a member of "South Higuera General Partnership," which includes Superintendent Irv Nikolai, and Assistant Superintendent David Alexander. (See attached forms) After this partnership was formed, Dr. McAdams participated in votes to extend the Superintendent's contract for three additional years, rather than the customary one year, and to raise both administrators' salaries substantially. BASED ON THIS BUSINESS PARTNERSHIP, SHOULD DR. McADAMS DISQUALIFY HIMSELF FROM SUCH DISCUSSIONS AND VOTES?

3. Board Members as Developers

Several trustees have long been involved in major development and real estate projects in addition to their primary careers. These investments continue to be unreported at a time when the district is acquiring property and building schools and other projects. We are concerned that personal interests may have influenced district decisions and actions, as illustrated in the following examples. DO THESE CONSTITUTE CONFLICT OF INTEREST AND, IF SO, HOW SHOULD THEY BE RESOLVED?

- a. Despite repeated public requests that the district enact developer fees to help meet urgent building needs, the board and administration refused to discuss such fees until state law made them inevitable.
- b. The board has, in past years, rejected property other developers have offered to donate to the SLCUSD. One board member has said this was at least partially due to their reluctance to allow the developer an advantage in

zoning requests.

- c. The board refused to require a major housing development to donate land for a school as a condition for city approval. The San Luis Obispo Planning Department and community groups, such as the League of Women Voters, requested that they reconsider this decision. They did not. One partner in that development, at that time, is now board president, Dr. John DeVincenzo. Housing development in that area is seriously impacting district enrollment. When built out, its population alone will require that a new elementary school be built.
- d. The SLCUSD owns only one tract of land in Los Osos, a critically impacted community, where few suitable sites for public facilities are available. The board and administration were more committed to partially developing that property to sell at a profit than to building an elementary school which its Long-Range Facilities Committee ranked as this district's most urgent priority. Only after sustained community protests and investigation did the board finally commit to build the new school, and a delay of at least two years.
- e. This administration and trustees have commissioned several studies and committees to analyze growth trends and development possibilities throughout the district. There is some concern that information available to them prior to public release may have helped in private business investments and decisions. For example, "South Higuera General Partnership" formed after the first such study.

Administrators and trustees have stated that placement of a school favorably impacts development of an area. They also discussed condemning property as eminent domain in areas where trustees, and/or their partners in other investments, may well have real estate investments of their own.

4. The Brown Act

At several times the board has discussed property acquisition and disposal, as well as other matters, in closed session without adhering to the guidelines of the Brown Act. An administrator has indicated the board will be using the eminent domain exclusion to discuss future property acquisition in closed session, as it is feasible that almost any acquisition may potentially lead to condemnation proceedings.

AT WHAT POINT DOES THE QUESTION OF EMINENT DOMAIN OVERRIDE THE NEED FOR PUBLIC ANNOUNCEMENT OF THE LAND AND NEGOTIATORS IN QUESTION? DOES THE BROWN ACT IMPLY OR DESIGNATE ANY LIMITATIONS TO THIS EXCLUSION?

These questions summarize our major concerns regarding possible conflicts of interest within the SLCUSD. We request your analysis of the validity and seriousness of these points. We also ask your direction on appropriate actions in any areas where you determine conflict of interest does exist.

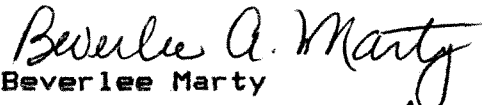
Due to upcoming elections and pending decisions, it is urgent that we receive your legal opinion as soon as possible.

Thank you for your prompt attention.

Sincerely:



Gayle M. Smith



Beverlee Marty



Ellen Tamo Lathrop
Research and Public Information
South Bay Citizens for Community Schools
805/549-8747, 528-4331, 528-6115

CONFLICT OF INTEREST CODE
OF THE

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT

The agency designated above, approved on April 19 19 77 and submitted a Conflict of Interest Code to the Board of Supervisors of the County of San Luis Obispo.

The following Conflict of Interest Code, having been submitted by the agency designated above, was approved on order of the Board of Supervisors, as the code reviewing body, by Board Order No. 11 (I-1) dated May 24, 1977.

MISBETH WOLLAM
Clerk of the Board

By Mary Carpenter
Deputy Clerk

*Amended 11-24-80 by Board Order # A-3
Effective date 4-1-81.*

*Amended 11-21-83 by Board Order # A-8
Effective date 4-1-84.*

CONFLICT OF INTEREST CODE
OF THE
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT

ARTICLE I

GENERAL

Section

100. Purpose and Effect

- (a) Pursuant to the provisions of Government Code Section 87300, the San Luis Coastal Unified School District hereby adopts the following Conflict of Interest Code. This Code shall be interpreted in a manner consistent with the Political Reform Act of 1974, Government Code Section 81000, et seq. (the "Act") and the Regulations adopted pursuant thereto by the Fair Political Practices Commission. The provisions of this Code are in addition to Government Code Sections 87100, 1090-1097, 1125-1127, Education Code Section 1171 et seq., and other laws pertaining to conflicts of interest.
- (b) This Code has the force and effect of law and any violation of this Code shall be deemed a violation of Chapter 7 of the Act, Government Code Section 87100 et seq., and will be subject to the enforcement and penalty provisions provided for in the Act.

101. Definitions. Except as provided in subsections (a) and (b), the definitions contained in the Act and the regulations adopted pursuant thereto are incorporated into this Code.

- (a) The definition of "investment" contained in the Act (Government Code Section 82034) is incorporated herein except that the term "investment" shall not include ownership of less than one-half (1/2) of one (1) percent of the outstanding securities of a business entity whose securities are registered with the Securities and Exchange Commission of the United States Government.
- (b) The definition of "income" contained in the Act (Government Code Section 82030) is incorporated herein, except that "income" shall not include a designated employee's compensation received from the District.

102. Effective Date of Code. This Code shall become effective on June 30, 1977.

103. Severability. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase or word of this Code is for any reason held to be invalid, unconstitutional or unenforceable, such decision shall not affect the validity of the remaining portions of this Code. It is hereby declared that this Code, and each section, subparagraph, sentence, clause, phrase and word thereof, would have been adopted irrespective of the fact that one or more of such portions of this Code be declared invalid, unconstitutional or unenforceable.
104. Statute of Limitations. No action based on a disqualification provision of this Code shall be brought pursuant to Government Code Section 91003(b) to restrain the execution of, or to set aside, official action of the District unless commenced within ninety (90) days following the official action.

ARTICLE II

DESIGNATED POSITIONS AND REPORTABLE FINANCIAL INTERESTS

Section

200. Designated Positions and Designated Employees. The positions within the District identified in Exhibit "A" of this Code are hereby established as "designated positions". Any officer, employee, governing board member (where appropriate) or consultant of the District whose position with the District is a "designated position" in Exhibit "A" of this Code is a "designated employee". A person is a designated employee when the person's position with the District entails the making or participation in the making of decisions which may foreseeably have a material effect on a financial interest.
201. Reportable Financial Interests. In Exhibit "A" of this Code, each designated position is assigned specific disclosure category numbers which correspond to specific financial disclosure categories set forth in Exhibit "B". Each designated employee shall disclose those financial interests required in the Exhibit "B" disclosure categories listed next to his or her designated position in Exhibit "A".
202. Scope of Reportable Financial Interests. Only "financial interests" can be made reportable by a conflict of interest code. For disclosure purposes, the Act divides financial interests into three groups: investments, interests in real property and income. (Government Code Section 87302(b)). Except as modified in Section 101 of this Code, the broad definitions and limitations of the terms investment, interest

in real property and income are found in the Act (Government Code Sections 82034, 82033, and 82030). If a financial interest does not fit within any of these three definitions, a designated employee can not be required by a conflict of interest code to disclose that interest. In addition, the types and scope of investments, interests in real property and income made reportable by a designated employee's disclosure categories may, in many situations, be narrower than the basic definitions found in the Act. To prevent overdisclosure, each designated employee should therefore consult the definitions of investments, interests in real property, and income, as well as his or her specific disclosure categories before filling out the statement of financial interests.

203. Manner of Reporting Financial Interests. Except as provided in subsections (a) & (b), the manner of reporting reportable investments, interests in real property and income shall be pursuant to Government Code Sections 87206 and 87207.
- (a) Designated employees are not required to comply with Government Code Section 87206(e).
- (b) For purposes of Government Code Sections 87207(b)(2) and (3), the disclosure of the names of clients or customers who paid fees to the business entity is required only if it is reasonably foreseeable that financial interests of the client or customer may be materially affected by any District related decisions made or participated in by the designated employee.

ARTICLE III

FILING OF STATEMENTS OF FINANCIAL INTERESTS

Section

300. Duty to File Statements of Financial Interests. It shall be the duty of each designated employee to file statements of financial interests conforming to all applicable requirements of this Code. Such statements shall be on forms provided by the County Clerk upon request.
301. Designation and Duties of Filing Officer; Place of Filing Statements.
- (a) The District herewith delegates authority and responsibility to the County Clerk for receipt of all statements of financial interests and for administration of the duties of the filing officer delineated in Government Code Sections 81008, 81010 and 91013.

- (b) Designated employees shall file any statements required by this Code with the County Clerk who shall retain the original and forward a copy to the District. Both the County Clerk and the District shall make statements accessible to the public in a manner consistent with Government Code Section 81008.
- (c) Upon request, the County Clerk shall supply copies of pertinent sections of the Act, this Code, disclosure forms and instruction manuals for filling out disclosure forms.

302. Times of Filing and Periods Covered by Statements.

- (a) Initial Statements shall be filed by each designated employee within thirty (30) days after the effective date of this Code and shall disclose investments and interests in real property (but not income) held at the time of filing. Persons appointed, promoted, or transferred to designated positions shall file initial statements within thirty (30) days after the date of assuming the position.
- (b) Annual Statements shall be filed during the month of April disclosing reportable investments, interests in real property and income held or received in the period since the closing date of the designated employee's previously filed statement and March 31.
- (c) Leaving Office Statements shall be filed by every person who leaves a designated position specified in Exhibit "A" within thirty (30) days after leaving the position, disclosing his or her reportable investments, interests in real property, and income during the period since the closing date of the previous statement filed pursuant to this Code. The statement shall include any reportable investments, interests in real property, and income held or received at any time during the period covered by the statement, whether or not still held at the time of filing.

ARTICLE IV

DISQUALIFICATION

Section

400. Circumstances Requiring Disqualification

- (a) A designated employee must disqualify himself or herself from making or participating in the making of any decision, or from using his or her official position to influence a

District decision, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the decision's effect on the public generally, on any reportable* financial interest (except gifts of less than \$250.00) or upon any business entity in which the designated employee holds a position of management or is a director, officer, partner, trustee, or employee.

(b) No designated employee shall be prevented from making or participating in the making of any decision:

1. Which relates to his or her compensation from the District, or the terms and conditions of his or her employment or contract with the District; or
2. To the extent his or her participation is legally required for the decision to be made. The fact that an official's vote is needed to break a tie does not make his or her participation legally required for purposes of this section.

401. Manner of Disqualification

(a) If a person required to disqualify pursuant to Section 400 is a member of a decision making board, commission or committee, he or she shall:

1. Give notice of the existence of the conflict at the meeting during which consideration of the decision takes place, the notice to be made part of the official record; and
2. Refrain from participating in the decision or in any way attempting to use his or her official position to influence the decision.

(b) A Superintendent required to disqualify shall do so by:

1. Notifying the Governing Board in writing, describing with particularity the nature of the conflict; and
2. Reassigning the matter to another employee.

* Although not required by this Code, under Government Code Section 87100 and other conflict of interest laws, a public official or employee (whether designated or not) may be required to disqualify himself or herself from making or participating in a decision in situations where a financial interest, although not subject to disclosure by a conflict of interest code, may foreseeably be materially affected by the decision.

- (c) All other designated employees required to disqualify pursuant to Section 400 shall do so by notifying his or her supervisor in writing, describing with particularity the nature of the conflicting financial interest. Upon receipt of such statement, the supervisor shall reassign the matter to another employee.

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT

EXHIBIT A

<u>Position</u>	<u>Disclosure Category</u>
School Board Member	1, 2, 3, 5
Superintendent	1, 2, 3, 5
Assistant Superintendent	4, 5
Business Manager	1, 2, 3, 5
Director of Buildings, Grounds, and Transportation	4, 5
Assistant Director of Buildings, Grounds, and Transportation	4, 5
Food Service Manager	4, 5
Accountant	3, 5

EXHIBIT B

Category No:

1. Interests in real property ⁽¹⁾ located within, or not more than one-half (1/2) mile outside, the boundary of:
 - (a) any land owned or used by the District;
 - (b) any real property which the acquisition of a leasehold or ownership interest, or an option to acquire such an interest, has been considered on any regular or special agenda of the Governing Board of the District during the past year; or
 - (c) any real property which the acquisition of a leasehold or ownership interest, or an option to acquire such an interest, may with reasonable foreseeability be considered in the next one year period by the Governing Board of the District.
2. Investments ⁽²⁾ in, and income ⁽³⁾ from, business entities which in the past one year have contracted with the District or, because of the type of product or service provided, may with reasonable foreseeability contract with the District in the next one year.
3. Investments ⁽²⁾ in, and income ⁽³⁾ from, business entities which in the past one year period have furnished supplies or services to the District as sub-contractors or, because of the type of product or service supplied, may with reasonable fore-

seeability provide such products or services to the District as a sub-contractor in the next one year period.

4. This category consists only of category 2 and 3 investments⁽²⁾ in, and income⁽³⁾ from, business entities whose products or services are of the type utilized by the filer's particular department or division within the District.

5. Income⁽³⁾ of any business entity in which the filer or spouse owns a 10% interest or greater which is derived from a client or customer who with reasonable foreseeability could be materially affected by District decisions made or participated in by the filer. Names of such clients or customers must be reported under this category if the filer's pro rata share of fees from such client or customer was greater than \$1,000 in the reporting period in the case of businesses providing legal or brokerage services, or \$10,000 for all other types of businesses. (Government Code Sections 82030 and 87207(b).)

FOOTNOTES

(Applicable to All Categories. See Referenced Sections of the Government Code for Complete Definitions.)

- (1) Interests in real property of the filer include those of the filer's spouse and dependent children as well as the filer's pro rata share of interests in real property owned by any business entity or trust in which the filer or spouse owns a 10% interest or greater. Excluded are interests in real property with a fair market value of less than \$1,000 or property which is used principally as the place of residence of the filer. (Government Code Sections 82033 and 87206.5.)
- (2) Investments of a filer include those of the filer's spouse and dependent children as well as the filer's pro rata share of investments owned by any business entity or trust in which the filer or spouse owns a 10% interest or greater. Excluded are assets with the fair market value of less than \$1,000 or ownership of less than 1/2 of 1% of the outstanding securities of a business entity whose securities are registered with the Securities and Exchange Commission. (Government Code Section 82034 and Section 101 of this Code.)
- (3) Income includes a filer's community property interest in income of his or her spouse, as well as the filer's pro rata share of income of any business entity or trust in which the individual or spouse owns a 10% interest or greater. Income also includes non-family gifts worth more than \$25. (Government Code Section 82030.)



California Fair Political Practices Commission

September 30, 1987

Gayle M. Smith
South Bay Citizens for Community Schools
Post Office Box 6431
Los Osos, CA 93402

Dear Ms. Smith:

I have referred your letter concerning the trustees of the San Luis Coastal Unified School District to our Enforcement Division for response. The Enforcement Division reviews allegations that officials have violated the Political Reform Act. If you have any questions, you may contact them at (916) 322-6441. In addition, the Legal Division will review the conflict of interest code for the school district to determine if it conforms to statutory requirements and will inform the district of any recommended changes.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
cc: Roger Brown, Chief
Enforcement Division