



California Fair Political Practices Commission

April 13, 1988

Honorable Robert G. Knox
Supervisor, Fourth District
Alameda County
1221 Oak Street, Suite 536
Oakland, CA 94612

Re: Your Request for Informal
Assistance
Our File No. I-88-065

Dear Supervisor Knox:

You have requested advice concerning your duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Your questions relate to past decisions of the Alameda County Board of Supervisors. We have informed you by telephone that we decline to comment on past conduct. However, we can provide the following informal assistance for application to future decisions.^{2/}

QUESTION

From time to time Salomon Brothers acts as the broker in securities transactions for your securities firm. Under the Act, is Salomon Brothers a source of income to you?

CONCLUSION

If Salomon Brothers acts as the broker in a transaction for your securities firm and does not pay a commission for the sale, Salomon Brothers is not a source of income to you. Therefore, you are not required to disclose Salomon Brothers as

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

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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a source of income on your statement of economic interests as a result of these transactions. Furthermore, under the particular facts provided, even if Salomon Brothers would be foreseeably and materially affected by a decision before the board of supervisors, that effect would not require you to disqualify yourself from the decision.

FACTS

You are a securities dealer and you own your own business. You have informed us that when you wish to sell securities on the stock exchange, you do so on a competitive price basis using the services of a firm which is a member of the stock exchange. That firm pays no commission to you for the sale.

You use the services of numerous securities firms, including Salomon Brothers. You do not deal through one securities firm exclusively. In these transactions, you have no knowledge of, or reason to know, the identity of the ultimate purchaser of the securities you are selling.

ANALYSIS

The Act requires every public official to disclose all economic interests, such as investments, real property, or sources of income, which the official may possibly affect by the exercise of his or her official duties. (Sections 87200-87210.) In addition, the Act prohibits any public official from making, participating in, or using his or her 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 the effect on the public generally, on, among other interests, any source of income totaling \$250 or more provided to, received by or promised to the official within 12 months prior to the time of the decision. (Section 87103(c).) Your question is whether, under the facts presented, Salomon Brothers is a source of income which you must disclose on your statement of economic interests and which may require your disqualification from certain governmental decisions.

Section 82030 defines "income" for purposes of the Act. "Income" is broadly defined to include any payment received, including any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, loan, forgiveness or payment of

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indebtedness, reimbursement for expenses, per diem or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. (Section 82030(a).)

There are several exceptions to this definition, including Section 82030(b)(12) which is particularly relevant to this analysis. Section 82030(b)(12) provides that "income" for purposes of the Act does not include:

Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States Government ... if the filer sells the securities ... on a stock ... exchange and does not know or have reason to know the identity of the purchaser.

Thus, if a public official sells registered securities on the stock exchange and does not know or have reason to know the identity of the purchaser, the official has received no "income" for purposes of the Act. Accordingly, the official would have no income to disclose as a result of the transaction. Furthermore, there would be no income which could require the official to disqualify himself from governmental decisions as a result of the transaction.

In your situation, you sell securities for your business or the clients of your business. You sell the securities on the stock exchange. You do not know or have reason to know the identity of the ultimate purchaser. You do know which securities firm acts as the broker in the transaction. Accordingly, your records indicate whether Salomon Brothers or another firm has handled the transaction for you. However, Salomon Brothers is not the ultimate purchaser of the securities.

We conclude that the transactions you have described do not make Salomon Brothers a source of income to you.^{3/} Section 82030(b)(12) provides that the ultimate purchaser of the securities is not a source of income to you when you sell

^{3/} Of course, your business is a source of income to you. Moreover, any clients who pay a fee or commission to your business would be sources of income to you if your pro-rata share of the fee or commission is \$250 or more. (Section 82030(a); Regulation 18704.3; copy enclosed.)

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securities on the stock exchange, so long as you do not know or have reason to know that person's identity. Under the facts you have presented, Salomon Brothers is not the purchaser, but rather acts as a middleman in the transaction. It would be illogical to conclude that the agent of the purchaser is a source of income to you, although the actual purchaser is not.

Accordingly, you are not required to disclose Salomon Brothers as a source of income on your statement of economic interests as a result of these transactions. Furthermore, even if Salomon Brothers would be foreseeably and materially affected by a decision before the board of supervisors, that effect would not require you to disqualify yourself from the decision since Salomon Brothers is not a source of income to you.

It is important to note that under different facts, Salomon Brothers and other securities firms would be sources of income to you. For example, if Salomon Brothers were to pay you a commission for the sale, Salomon Brothers would become a source of income to you. Similarly, if Salomon Brothers were the purchaser of securities you are selling, and you had reason to know or actually knew that fact, Salomon Brothers would be a source of income to you. Finally, if you are involved in the sale of securities which are not registered with the Securities and Exchange Commission, Section 82030(b)(12) would not apply. We would require additional facts to advise you in that situation.

If you have any further questions concerning this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, reading "Kathryn E. Donovan".

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh



BOARD OF SUPERVISORS

Feb 5 1988

ROBERT G. KNOX
SUPERVISOR, FOURTH DISTRICT

February 4, 1988

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

Dear Commissioners:

I am requesting that you review two actions taken by me and their conformity to the Political Reform Act. The matter in question has to do with my relationship with Salomon Brothers, an international investment banking firm, and votes which have involved them. I would like to have you render an opinion as to the appropriateness of these votes and communicate to me any substantive inconsistencies they have with the Political Reform Act.

As a matter of background, I have been an elected official since 1980 and have had my Statement of Economic Interests prepared in consultation with a large national accounting firm. Within the last year, I became aware that a significant error had occurred in our report which triggered a number of other potential problems with the Reform Act. I and my accountants were unaware that the sale of SEC registered securities constituted proceeds and were to be defined as income. I realized, having defined securities sales as income, that I had a financial interest in the firms to which the securities were sold. Salomon Brothers was one of many firms to which securities were sold, but my activities with them were not disproportionate to my transactions with other firms relative to Salomon's general market share.

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In approximately March of 1986, Salomon Brothers came before the Board of Supervisors, along with other firms, seeking to participate in a bond underwriting. I questioned a bid by another group of firms because of what I considered to be significant improprieties and, as a result, appeared to favor Salomon. Staff made a recommendation which resulted in the competing firm receiving the business, but Salomon was given a guarantee for subsequent business. Salomon, however, never received any subsequent business because, some time after this vote, Salomon formally withdrew as a participant in any Alameda County bond issues.

Another event of which Salomon was a participant and for which I am requesting your review, relates to a real estate proposal brought before the County's Retirement Board. This proposal was initially brought to me by Salomon Brothers on behalf of a real estate company, Trammel-Crow, and was referred by me without recommendation to an independent real estate advisor who, in turn, brought the matter back to the Board of Retirement, recommending that the Board of Retirement approve it. The matter was considered by the Finance Committee of the Board of Retirement, which I chair, and was eventually turned down for various legal reasons. If this matter was brought to the Board of Retirement, it was never, to my recollection, voted upon and in any event was never approved.

In my review of my relations with Salomon Brothers, while as I understand it a financial interest did exist because I received proceeds (i.e. income) greater than the statutory amount, I do not believe I have a conflict of interest. Salomon Brothers is a firm which has substantial capitalization and is among the country's 500 largest corporations. A conflict of interest exists when there is material financial effect to the company. Using what I understand to be the current standard, for financial effect to be material, \$1,000,000 or more would have to accrue to Salomon Brothers. In neither of these transactions was that amount exceeded.

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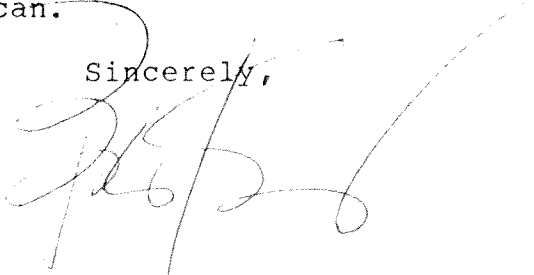
Because the Reform Act is so complicated and there are only a few people in the State who truly understand it, I feel it is best to request your opinion even though the matter has already transpired. If by some chance a material conflict did exist, I feel that I made good faith attempts to take remedial action. I have never kept any secret of my business relationships with various investment banking firms. And, in the two instances cited, I clearly disclosed my relationship with Salomon Brothers at the time of discussion and vote. Moreover, no one has alleged that Salomon Brothers received favoritism or other tangible benefits because of my actions.

Upon learning, through my own investigations, that my Statement of Economic Interests had improperly defined income and that, more importantly, I could potentially have a material conflict of interest, I took immediate corrective action. I have avoided voting on issues relating to investment banking ventures even though I still believe that in most of those instances I would not have had a material conflict. I have, as I believe you are aware, submitted amended statements going back several years.

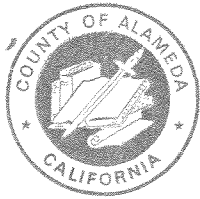
Moreover, AB 2204 (Chacon), which was chaptered in 1987, substantially alters requirements under which the issues I am asking you to review arose.

I would ask that you act on this request as soon as possible inasmuch as I have received several inquiries from the press and other interested parties. Please let me know if you need any other assistance in this matter and I am, of course, pleased to cooperate in any manner I can.

Sincerely,



RGK:gjc



88-065

BOARD OF SUPERVISORS

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ROBERT G. KNOX
SUPERVISOR, FOURTH DISTRICT

February 4, 1988

State of California
Fair Political Practices Commission
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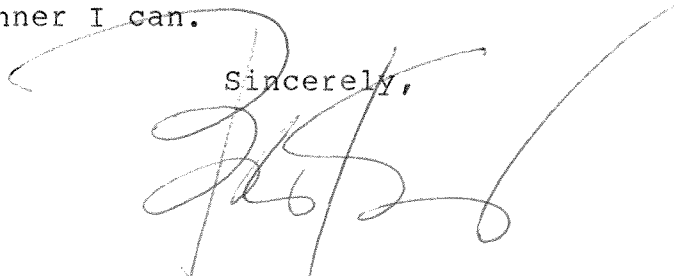
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Sincerely,

A large, stylized handwritten signature in dark ink, appearing to be 'R. G. K.', is written over the word 'Sincerely,' and extends across the middle of the page.

RGK:gjc



California Fair Political Practices Commission

February 8, 1988

Honorable Robert G. Knox
Alameda County Supervisor
1221 Oak Street, Suite 536
Oakland, CA 94612

Re: 88-065

Dear Mr. Knox:

Your letter requesting advice under the Political Reform Act was received on February 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh