



# California Fair Political Practices Commission

November 16, 1988

Paul Carpenter  
Fourth District Member  
State Board of Equalization  
4040 Paramount Boulevard, Suite 103  
Lakewood, CA 90712

Re: Your Request for Advice  
Our File No. I-88-416

Dear Mr. Carpenter:

This is in response to your request for advice regarding your responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states a general hypothetical question. Therefore, we treat it as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

If you acquire an interest in a cellular telephone company, would your participation in decisions made and legislation proposed by the Board of Equalization (the "Board") that affects cellular telephone companies present a conflict of interest under the Political Reform Act?

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<sup>1/</sup> 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.

<sup>2/</sup> 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).)

### CONCLUSION

Under the Political Reform Act, decisions by members of the Board that affect one industry are deemed to have an "effect on the public generally." Therefore, decisions by a Board member that may affect the cellular telephone industry as a whole are exempt from the Act's conflict of interest provisions.

### FACTS

You are a member of the Board of Equalization and have participated in Board decisions and proposed legislation that affect cellular telephone companies. You own an interest in a company that establishes partnerships which file applications with the Federal Communications Commission for cellular telephone company franchises. At this time, none of the partnerships established by your company have obtained a cellular telephone franchise. However, one or more of these partnerships have recently participated in lotteries conducted by the Federal Communications Commission in which 429 rural service area cellular telephone franchises will be awarded. If one of these partnerships is successful in the lottery, it appears that you will then own a financial interest in a cellular telephone company.

### ANALYSIS

Government Code Section 87100 sets forth the general rule concerning conflicts of interest for public officials. It states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 sets forth a general definition of "financial interest" as used in Section 87103. It provides:

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 its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more ....

(Emphasis added.)

Regulation 18703 defines the term "effect on the public generally." In pertinent part, it states:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

(a) In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally.

(Emphasis added.)

From the information you have supplied us, it is possible that your participation in Board decisions, including decisions concerning legislation, that affect cellular telephone companies could have a material financial effect upon the engineering company in which you have an investment.<sup>3/</sup> Even if this were true, however, you have no conflict of interest under the Political Reform Act.

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<sup>3/</sup> Because the question presented to us is resolvable under the "effect on the public generally" issue, we make no determination as to whether Board decisions concerning cellular telephone companies have a foreseeable material financial effect on the engineering company in which you have an investment.

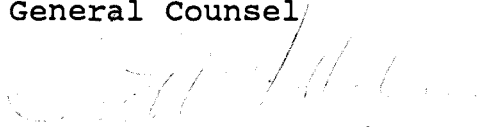
As stated under Section 18703(a) above, decisions by an "elected state officer" that affect an "industry, trade or profession" are deemed to affect a "significant segment of the public" and thus have an "effect on the public generally."<sup>4/</sup> As a member of the Board, you are an "elected state officer."<sup>4/</sup> Furthermore, the decisions in question here affect at least one industry: the cellular telephone industry.<sup>5/</sup> Therefore, even though decisions you make as a Board member may affect the cellular telephone industry as a whole, and you invest in a company that is possibly affected by these decisions, because you are an "elected state officer" your acts are exempted from the conflict of interest provisions of the Political Reform Act.

We caution, however, that Board decisions which foreseeably and materially affect only a cellular telephone company in which you have invested would not affect the industry as a whole. Thus, the "public generally" exception would not apply and your disqualification would be required.

Should you have additional questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

DMG:SH:ld

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<sup>4/</sup> Government Code Section 82021, inter alia, defines "elected state officer" as "any person who holds an elective state office . . . ." Government Code Section 82024 defines "elected state office" as "the office of Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, member of the Legislature and member of the state Board of Equalization." (Emphasis added.)

<sup>5/</sup> Webster's New World Dictionary (2d ed. 1968) at page 719 defines "industry" as "4. a) any particular branch of productive . . . enterprise . . . ."

# Paul Carpenter

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(916) 445-4664

October 25, 1988

Ms. Diane Griffiths, General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, Ca 95804

Dear Ms. Griffiths:


It has recently been suggested that one of my personal investments may have resulted in a conflict of interest in carrying out my Board of Equalization duties. Although I heartily disagree with this accusation, I would like the matter to be explored in order to assure the residents of my District, Board of Equalization employees, and my colleagues that no impropriety exists.

The matter in question concerns my investment in Romulus Engineering, which is listed on my statement of economic interest as relating to "Cellular Telephones." In fact, Romulus is an engineering company which puts together partnerships which file applications with the FCC for cellular franchises. Starting in September, the FCC held lotteries to determine the winners of some 429 rural service area franchises across the country.

I believe my participation in cellular telephone-related cases and legislation is not questionable, since I do not yet own an interest in a cellular telephone company. Should my partners and I be successful in the lottery process, that situation could change. However, at this time I have no financial interest in a cellular telephone company.

I would appreciate it if you would initiate a complete and thorough review of this matter as it relates to conflict of interest law, and contact me with your findings as soon as possible. I would be happy to provide you with any information regarding this matter that you may require. I am eager to see this matter resolved.

Sincerely,

  
Paul Carpenter

PC:apl



# California Fair Political Practices Commission

October 31, 1988

Paul Carpenter  
Fourth District Member  
State Board of Equalization  
4040 Paramount Blvd., Suite 103  
Lakewood, CA 90712

Re: 88-416

Dear Mr. Carpenter:

Your letter requesting advice under the Political Reform Act was received on October 27, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin, 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,

*Kathryn E. Donovan*  
Diane M. Griffiths  
General Counsel

DMG:plh

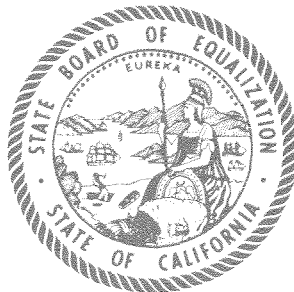
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October 25, 1988

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