



California Fair Political Practices Commission

June 8, 1989

James B. McClenahan
Health Officer, Health Department
108 Court Street
Jackson, CA 95642-2379

Re: Your Request for Advice
Our File No. I-89-272

Dear Dr. McClenahan:

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").¹ Since your request does not involve a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Operation Care is a non-profit organization under contract with the County of Amador (the "county") to provide 24-hour crisis hotline service for the alcohol and drug programs. Does your participation on the Board of Directors of Operation Care cause a conflict of interest because of your official duties as the Health Officer and Administrator of the alcohol and drug program of the county?

CONCLUSION

Your participation on the Board of Directors of Operation Care does not cause a conflict of interest, under the Political Reform Act, with your official duties as the Health Officer and Administrator of the alcohol and drug programs of the county.

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).)

However, other provisions of the law such as Section 1090 of the Government Code or the doctrine of incompatible offices may have some bearing on your situation. Please contact your County Counsel for advice as to these matters.

FACTS

You are the Director and Health Officer of the Health and Human Resources Agency ("Health Agency") of Amador County (the "county"). Alcohol and Drug Services ("Alcohol Department") is one of the departments within the Health Agency. Operation Care is under contract with the county to provide 24-hour crisis hotline service for the alcohol and drug programs. Your signature, as the Health Officer, appears on the Operation Care contract. Over the past several years, the Alcohol Department has provided \$1,500/year to Operation Care. In addition, Operation Care operates a battered woman/safe home program with Calaveras County and runs a counseling/aid office in Jackson, staffed by a paid half-time person. The entire Operation Care budget is approximately \$20,000.

You are a member of the Board of Directors of Operation Care. You do not receive any compensation for your services.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision 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 immediate family,³ 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.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official

³ An official's "immediate family" includes his spouse and dependent children. (Section 82029.)

within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103, (copy enclosed).

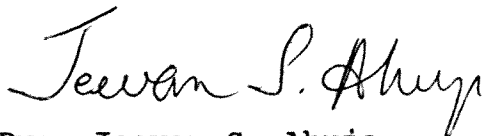
You are a public official. (Section 82048.) Therefore, you may not make, participate in making, or in any way attempt to influence a decision in which you have a financial interest. (Section 87100.) The decision to award the contract to a business entity may create a conflict of interest if you are a director, officer, partner, trustee, employee or hold a position of management in the business entity. (Section 87103(d).) However, the term "business entity" means any organization operated for profit. (Section 82005.) Since Operation Care is a non-profit organization, it is not a "business entity" as that term is used in Section 87103(d). Furthermore, Operation Care is not a source of income to you. Accordingly, your participation on the Board of Directors of Operation Care does not create a conflict of interest because of your official duties as the Health Officer and Administrator of the alcohol and drug programs of the county.

Our advice to you is limited to the provisions of the Political Reform act. Other provisions of law, such as Section 1090 of the Government Code or the general doctrine of incompatible offices may have some bearing on your situation. Please contact your county counsel for advice as to these matters.

I trust this letter has provided you with the guidance you requested. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

HEALTH DEPARTMENT

108 COURT STREET • JACKSON, CA 95642-2379 • (209) 223-6407



FPPC

Apr 28 7 02 AM '89

*attachment missing -
rec'd 5/8/89*

April 24, 1989

Dear Sir:

Amador County is a primarily rural county located in the foothills of the Sierra, with a population of approximately 28,000. Operation Care is a (non-profit) 24 hour crisis line staffed by volunteers, serving the entire county. It also participates with Calaveras County with a battered woman/safe house program and runs a counseling/aid office in Jackson, staffed by a paid half-time person. The entire Operation Care budget is approximately \$20,000.

Amador County has a Health & Human Resources Agency of which I'm the Director and Health Officer. Within the agency are Public Health, Environmental Health, Air Quality, Emergency Medical Services, Hazardous Materials Program, Social Services (Welfare), Jail Health, and Alcohol & Drug Services. Over the past several years Alcohol & Drug Services has funded Operation Care at \$1500 per year.

Please see the enclosed letter from a recent Alcohol Program review. I have felt Operation Care's need for general, policy formation and budget particulars support far outweighed any significant possible conflict of interest, especially given the County's and Alcohol & Drug Program Advisory's Board's regular budget and program reviews. My preference would be to remain on Operation Care's Board, if you concur.

Thank you.

Sincerely,

James B. McClenahan, M.D.
Health Officer

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DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

111 CAPITOL MALL
SACRAMENTO, CA 95814-3279
TTY (916) 445-1942
(916) 322-8079



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RECEIVED

AMADOR COUNTY HEALTH DEPT.

Dr. James B. McClenahan, Director
Amador County Health Department
108 Court Street
Jackson, CA 95642-2379

Dear Dr. McClenahan:

During the Amador County Administrative Review, you mentioned that you are a voting member on the Board of Directors for Operation Care. Operation Care is under contract with the County of Amador to provide 24-hour crisis hotline service for the alcohol and drug programs. This contract expires June 30, 1989.

Your participation on the Board of Directors of Operation Care may place you in conflict with your official duties as the Health Officer and Administrator of the Alcohol and Drug Programs of Amador County. Your signature, as the Health Officer, appears on the Operation Care contract.

I encourage you to seek advice on this matter from either your County Counsel or directly from the Fair Political Practices Commission (FPPC). The FPPC can provide you with technical advice or a legal opinion; their address is: 428 J Street, Suite 800, Legal Division, Sacramento, CA 95814. The FPPC's Legal Division telephone number is: (916) 322-5901.

From our discussion on March 28, 1989, you indicated that you take compliance issues very seriously, and I am sure that you would want to avoid even the appearance of a conflict of interest. If I can be of further assistance on this matter, please contact me at (916) 322-8079.

Sincerely,

Handwritten signature of Kathleen A. Hartshorne in cursive script.

KATHLEEN A. HARTSHORNE
Alcohol Program Analyst
Administrative Review Section



California Fair Political Practices Commission

May 9, 1989

James B. McClenahan, M.D.
Health Officer
Health Department
108 Court Street
Jackson, CA 95642-23799

Re: Letter No. 89-272

Dear Dr. McClenahan:

Your letter requesting advice under the Political Reform Act was received on May 8, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja 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,

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

Kathryn E. Donovan
General Counsel

KED:plh