



California Fair Political Practices Commission

June 9, 1990

Afton E. Crooks
Conflict of Interest Coordinator
University of California
300 Lakeside Drive
Oakland, CA 94612-3550

Re: Your Request for Advice
Our File No. I-90-365

Dear Afton:

On May 7, 1990 you forwarded a pamphlet titled "University of California Political Reform Act Disqualification Pamphlet." The University publishes this pamphlet every two years for dissemination to its designated officials who are subject to the disqualification provisions of the Political Reform Act.^{1/} You have asked if we could review the pamphlet and comment on its proposed revisions.

The pamphlet has been reviewed and a few items need correction. Each item will be discussed in the order of appearance in the pamphlet.

1. The first page of the pamphlet excludes University of California employees and officials at the Los Alamos National Scientific Laboratory from the provisions of the Act. This provision needs to be deleted in its entirety. Rick Schlee of your staff informed me that the Director of the Los Alamos National Scientific Laboratory is an employee or official of the University of California. The disclosure and disqualification provisions of the Act do apply to this person.

^{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.

Mr. Schlee informed me further that all other employees and officials are funded through a federal program.^{2/} Since they are not officials or employees of the University, a specific exclusion to those individuals is not necessary.

2. On page three, the reference to the series of regulations located in 2 Cal. Admin. Code Sections 18702 through 18702.6 needs to be corrected to 2 Cal. Code of Regs. Sections 18702 through 18702.6. The California Administrative Code was retitled to California Code of Regulations effective January 1, 1988.

3. The disqualification requirements for interests in a contract needs to be corrected. The pamphlet currently reads:

You have an interest in a contract when you know or have reason to know that any party to the contract is an individual or entity with whom you, or any immediate family, have engaged in any business transactions on terms not available to members of the public, within 12 months prior to the public, within 12 months prior to the time when the official action is to be taken, regarding:

- (a) any investment or interest in real property, or
- (b) the rendering of goods or services totaling \$1,000 or more.

Government Code Section 87450 provides in part that an official shall not make or participate in making...a governmental decision...if the official or a member of his or her immediate family have been engaged in any business transaction...regarding any investment or interest in real property or the rendering of goods or services totaling \$1,000 within 12 months prior to the time the official action is to be performed.

The pamphlet should be corrected to read:

You have an interest in a contract when you know or have reason to know that any party to the contract is an individual or entity with whom you, or any immediate member of you family, have engaged in any business transactions on terms not available to members of the public regarding:

- (a) any investment or interest in real property, or

^{2/} The conflict of interest code history files substantiate that it was determined that these employees are funded through a federal program and should not be designated in the conflict of interest code for the University of California.

- (b) the rendering of goods or services totaling \$1,000 or more within 12 months prior to the time the official action is to be performed.

4. On page three, the sanctions for violations portion needs correction in three areas. Item 2 should be deleted in its entirety and replaced with: "(2) any designated employee who realizes an economic benefit as a result of a violation of Section 87100 or of the disqualification provisions of a code is liable in a civil action for an amount up to three times the value of the benefit." Section 91005.5 which you referenced applies to civil actions where no specific civil penalty is provided. Section 91005(b) sets out specific penalties for conflict of interest violations.

Section 91003.5 provides that any persons who violate Section 87450 may be subject to discipline by his or her agency, including dismissal, consistent with any applicable civil service, or other personnel laws, regulations and procedures. A new item (4) should be created to add this reference.


In addition to the civil penalties, the Commission can determine, through a hearing, that a violation of the Act has occurred and impose a monetary penalty of up to \$2,000 per violation. (Section 83116). A new item (5) should be created to add this reference as well.

4. The pamphlet lists the name, address and telephone for each campus conflict of interest coordinator. The conflict of interest coordinators are available to answer questions regarding the disqualification and disclosure provisions of the code and the pamphlet urges designated officials to contact their respective campus coordinator to answer questions. You may want to consider adding a short sentence within this block to state that written advice given by the Fair Political Practices Commission is a complete defense in any enforcement proceeding initiated by the Commission and evidence of good faith conduct in any civil or criminal proceeding.

I hope this has been helpful to you. If you have any questions, or if I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Jeanette E. Turvill
Political Reform Consultant
Legal Division