



California Fair Political Practices Commission

August 8, 1990

Dee Latimore-Berry
Seaside City Clerk
City of Seaside
440 Harcourt Ave.
P.O. Box 810
Seaside, CA 93955-0810

RE: Your Request for Advice
Our File No. A-90-487

Dear Ms. Latimore-Berry:

We have received your letter, dated July 13, 1990, seeking written confirmation of the prior telephone advice provided to you by the Commission. Your letter also requested advice on a claim raised by Mayor Lancelot McClair that you may have a conflict of interest in assessing fines pursuant to your duties under the Political Reform Act (the "Act").¹

QUESTIONS

1. Do penalties assessed by the Commission pursuant to Section 83116 offset penalties assessed pursuant to Section 91013 by a city clerk?
2. Does the Seaside City Clerk who seeks to assess fines against the city's mayor for violations of the Act have a conflict of interest?

CONCLUSIONS

1. Penalties assessed by the Commission pursuant to Section 83116 do not offset penalties assessed pursuant to Section 91013 by a city clerk.
2. The Seaside City Clerk who seeks to assess fines against the city's mayor for violations of the Act does not have a conflict of interest under the Act.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

FACTS

Pursuant to Section 91013 the City Clerk for the City of Seaside has assessed fines in the amount of \$4,820 against Lancelot McClair, mayor of the City of Seaside. Mayor McClair is also currently subject to Commission action, Lancelot McClair, et al., FPPC No. 88/501, pursuant to Section 83116.

ANALYSIS

We advised you over the telephone that payments made by Mayor Lancelot McClair for fines assessed by the Commission in Lancelot McClair, et al., FPPC No. 88/501, do not offset fines assessed pursuant to Section 91013 by the City of Seaside. The law is clear on this question. Section 91013(a) provides in part:

If any person files an original statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed" (Emphasis added.)

Mayor McClair is liable for the penalty set forth in Section 91013 in addition to the penalties established under Section 83116 assessed in the Commission action. There is no credit or offset.

Your letter also makes reference to a claim by Mayor McClair that you may be prevented by a conflict of interest from assessing the penalties of Section 91013.² We see no conflict of interest under the Act. Under the Act,

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 87100.)

Thus the Act focuses on the public official's "financial interest" in determining whether there is a conflict of interest. Section 87103 defines "financial interest" to include any source of income or donor of a gift or interests in business entities or

² The claim is made in a memorandum from Mayor McClair to you dated June 28, 1990, enclosed with your July 13, 1990, letter. The memorandum presents few facts or arguments as to why there might be a conflict of interest. The memorandum merely states, "Inasmuch as I am presently interacting with the Fair Political [sic] Practice [sic] Commission on this subject matter, I question a City Clerk's conflict of interest position with the Mayor."

real property. (Section 87103.) We see none of these interests affected by your assessing fines provided by the Act.

I trust this letter has provided you with information which will be of assistance to you. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Mark Morodomi
Counsel, Legal Division

SH:MM:dg