



California Fair Political Practices Commission

December 20, 1990

Helen M. Kanowsky
City Clerk
City of West Sacramento
P.O. Box 966
West Sacramento, CA 95691

Re: Your Request for Advice
Our File No. I-90-639

Dear Ms. Kanowsky:

You have requested assistance regarding the conflict of interest provisions of the Political Reform Act.^{1/} The City of West Sacramento is planning to update its conflict of interest code in the near future. You are asking if we could review the code and suggest any changes or revisions we may be necessary. Since your request is for general assistance, we are treating it as a request for informal assistance.^{2/}

You should understand that since we have no knowledge of the duties and responsibilities of the persons designated, we cannot determine if the assigned disclosure is appropriate or that all persons within the city who are in decision-making capacities are covered by the code.

I have itemized the areas of concern or needed revisions in the order of their appearance in the code.

1. The Resolution appropriately incorporates the provisions of Commission Regulation 18730 as the standard terms of the code. The reference to that regulation, 2 California Administrative Code Section 18730, was recently changed to 2 California Code of Regulations Section 18730. That reference needs to be corrected in the second paragraph of the resolution.

^{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).)

2. The last paragraph of the resolution needs to state where the statements of economic interests are to be filed. If the place of filing is with the city clerk, then the following paragraph would suffice: "All designated employees shall file their statements of economic interests with the City Clerk."

3. In the opening paragraph of Item I, the list of designated positions, it is suggested that the second sentence be revised to read: "The designated positions listed shall disclose their economic interests in accordance with the corresponding disclosure categories..." rather than "interests and investments."

4. All designated positions have been assigned category 1, and depending on the position, categories 2 through 4 may have been assigned as well. Category 1 however is an all inclusive category which requires the disclosure of all financial interests within the City of West Sacramento. For all positions assigned category 1, the assignment of additional categories is unnecessary. Any interests required to be disclosed under categories 2 through 4 is already required to be disclosed under Category 1.

5. There is an asterisk behind the subheading Designated Position*. This asterisk brings the reader to a footnote which advises the reader that the term "Designated Position" includes any other positions as designated by the City Manager. We have a concern with this statement. As it reads it appears that this gives the city manager the discretion to add any position at any time.

Government Code Section 87311 provides that the review and preparation of codes by local government agencies shall be carried out under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views. Further, any changes to a code must be approved by the city council before those changes become effective (Section 87303). We do not believe the city manager may, at anytime, add positions to the code without those persons being given "adequate notice and a fair opportunity to present their views." Further, any amendments to the code must be approved by the city council. It is suggested that this asterisk and its footnote be deleted.

6. The list of designated positions includes the city attorney. Section 87200 of the Act governs the disclosure and disqualification obligations for city attorneys. This position should be deleted from the conflict of interest code.

7. Your code does not provide for the disclosure of economic interests by consultants for the agency. The definition of a designated employee includes consultants. (Section 82019.) A consultant is any natural person who provides under contract, information, advice, recommendation or counsel to any agency. (Regulation 18700.)

The Commission realizes that not all consultants participate in the making of decisions on behalf of public agencies. Rather than amend your code each time you retain a consultant that is in a decision-making capacity, the Commission endorses the use of a specialized disclosure category that provides that the disclosure required of consultants shall be determined on a case-by-case basis by the city manager or city attorney. The city manager or city attorney shall make a determination as to what disclosure, if any, is required by any particular consultant. A copy of this consultant disclosure category is enclosed, and should be incorporated into your code.

8. With the disclosure categories themselves, it is suggested that the monetary thresholds in each be deleted. The monetary thresholds are set out in the model provisions of the code (Regulation 18730). Should a legislative amendment increase or decrease the monetary threshold for reporting interests, the disclosure category portion of your code would be out of date and in need of amendment. The monetary thresholds are set out in the model code as well as the disclosure forms themselves.

The amount of verbiage in each category could be reduced by rewriting each category. For instance, category 1 could read: "All investments and business positions in business entities, sources of income and interests in real property."

Category 2, if you continue to use it, is a little confusing in its present format. It appears that you are asking for investments in business entities which have an interest in real property in the city or which are of the type to contract with the city. Any time you are asking for an investment interest to be disclosed, you should also require the corresponding business positions and income from those sources as well. Category 2 should be rewritten to read: "Investments and business positions in business entities, and sources of income from entities which have an interest in real property within the City or entities which are of the type to do business with the City." You will note that I have deleted the references to "doing business during the year previous to the date of disclosure" as well as to the reference to entities which "are likely to do business with the City." An investment is reportable if it is doing business or has done business in a jurisdiction during the two years prior to the time any statement is filed (Section 82034). The reference to only disclosing entities if the employee believes is "likely" to do business with the City places a judgment call on the employee. If an entity has a two-year track history of doing business with the city, it should be disclosed, regardless of whether the employee believes it could do business in the subsequent year.

Category 3 needs to have business position disclosure added to it and should read: "Investments and business positions in business entities, interests in real property and sources of income subject to the regulatory..."

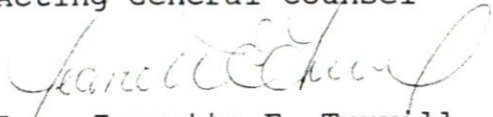
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Category 4 also needs business position disclosure added and would read: "Investments and business positions in business entities, and sources of income which engage in land development..."

I hope this has been helpful to you. If you need further information or clarification, please feel free to give our office a call at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

SH/JET/jt