



# California Fair Political Practices Commission

January 15, 1991

Anne M. Russell  
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1011 Pacific Street  
P. O. Box 1207  
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Re: Your Request for Advice  
Our File No. I-90-690

Dear Ms. Russell:

This is in response to your August 7, 1990 letter requesting advice concerning the conflict of interest provisions of the Political Reform Act ("Act").<sup>1</sup> Your request is one for general assistance. Accordingly, we are treating it as a request for informal assistance.<sup>2</sup>

You have asked the Fair Political Practices Commission (the "Commission") to review the conflict of interest code for the Santa Maria Public Airport District ("district") to determine whether your code needs to be amended and provide you with any suggestions for improvement.

As you are aware, the Commission is not the code reviewing body for the district. Pursuant to Government Code Section 82011, the Commission has authority over the codes of multi-county jurisdictional agencies and state agencies only. The following information is offered to assist you with the process of amending your code and is based solely on the documentation submitted with your request. We are unable to provide assistance with the designation or appropriate assignment of disclosure categories as no job duty statements or organizational charts were submitted.

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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).)

In conducting a cursory review of your code, there are some amendments we suggest be made to update the code to conform to current requirements.

1. Government Code Section 81008 provides that statements of economic interests are public records and should be available for public inspection. In an effort to assist you in making this amendment, I have provided a sample of how your incorporation page should appear. Because the incorporation page of the code incorporates 2 California Code of Regulations Section 18730 and any amendments thereto into your code, it is only necessary to have Exhibit "A" and Exhibit "B" attached to the incorporation page. Therefore, pages 403-405 should be removed.

2. Regulation 18730 was amended to conform it to the provisions of Section 87302, as amended, effective January 1, 1990. Prior to this amendment, income was not an item required to be reported on either the assuming office statement or the initial statement of economic interests. I have enclosed the current version of Regulation 18730 for your reference.

Your conflict of interest code does not require a person filing an assuming office statement, or filing an initial statement pursuant to a newly adopted or amended conflict of interest code, to disclose income received in the previous twelve months. Regulation 18730 as it now reads requires (1) persons assuming office to disclose, in their statement of economic interests, income received during the 12 months prior to the filing of the statement, and (2) persons filing an initial statement, under a newly-adopted or amended conflict of interest code, to disclose income received during the 12 months prior to the effective date of the code.

3. Your code at present does not provide for the disclosure of financial interests by consultants for the agency. The definition of 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, copy enclosed.)

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, you may use this specialized disclosure category that provides that the disclosure required of consultants will be determined on a case-by-case basis by the executive officer of the agency. The executive officer would make a determination as to what disclosure, if any, is required by any particular consultant. A copy of this consultant disclosure category language is attached, and should be incorporated into your code.

The position "Consultant\*" would be the last position designated in the appendix. The asterisk would bring the reader down to the consultant disclosure category at the bottom of that page.

4. Government Code Section 87302 has been amended to require that disclosure categories specifically include the disclosure of business positions. Your disclosure categories need to be amended at each place where investments must be disclosed to now read "Investments and business positions in...." For example, category 1 should read "Investments and business positions in any business entity which...."

5. Appendix "B" of your code includes several limitations in the subparagraphs under the "Note" categories as well as categories 5 and 6. If these limitations were amended statutorily, the district would be required to amend its code to bring it current with the new law. With the exception of subparagraph (1) under category 5 on page 409, we would suggest deleting these notes in each disclosure category. This information is also set out in the disclosure forms.

6. We have a problem with the disclosure required in category 6. That category requires the disclosure of real property and investments held by a business entity only if the filer has a 50% or greater interest in the business entity. The Act provides that such interests would be disclosed if the filer has a 10% or greater interest in the business entity and the property or investment is of the type covered by the disclosure categories of the code. (Section 82034) This general disclosure is already covered under the disclosure of investments and interests in real property. Category 6 should be deleted in its entirety.

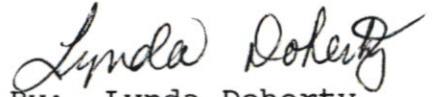
In an effort to assist you in making these amendments, I have provided a sample of how your conflict of interest code should appear. The items discussed above have been incorporated in this sample.

7. We would recommend that you perform a thorough review of the district to ensure that it accurately reflects all persons in a decision-making capacity and that the disclosure and disqualification provisions of the Act have been properly assessed.

If you have any questions, please feel free to contact me at  
(916) 322-5901.

Very truly yours,

Scott Hallabrin  
Acting General Counsel

  
By: Lynda Doherty  
Staff Services Analyst  
Legal Division

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Enclosures