



California Fair Political Practices Commission

January 15, 1991

Andrew Church
ABRAMSON, CHURCH & STAVE
17 East Gabilan Street
Salinas, CA 93901

Re: Your Request for Advice
Our File No. I-90-693

Dear Mr. Church:

This is in response to your November 5, 1990 letter requesting advice concerning the conflict of interest provisions of the Political Reform Act ("Act").¹ Your request is one for general assistance. Accordingly, we are treating it as a request for informal assistance.²

You have asked the Fair Political Practices Commission (the "Commission") to review the conflict of interest code for the California Iceberg Lettuce Commission to determine whether your code needs to be amended at this time and provide you with any suggestions for improvement.

Since the adoption of your code in 1982, additions and amendments to the statutes and regulations make it appropriate to amend your code at this time.

1. Government Code Section 81008 provides that statements of economic interests are public records and should be available for public inspection. I have provided a sample incorporation page which adds reference to this Government Code section. Since 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"

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).)

attached to the incorporation page. Therefore, the first four pages of your code 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. Because the specific nature of the independent contractors' duties are not clear from your letter, it is not possible to determine whether they are consultants under the Political Reform Act. If, after reviewing the enclosed materials in light of their specific duties, you determine they are consultants, you must then determine whether they are making, participating in making, or in any way attempting to use their official positions to influence a governmental decision. (Section 87100; Regulation 18700 (copy enclosed).) The determination of whether the independent contractors are making or participating in making a governmental decision will depend on the specific facts of their working relationship with your Commission. For general guidance, I have enclosed several advice letters which address this issue. If you have any specific questions pertaining to a particular consultant, please feel free to contact our legal division.

Regulation 18700(b) provides that a public official "makes a governmental decision," when he or she appoints a person, obligates or commits his or her agency to any course of action, enters into any contractual agreement on behalf of his or her agency, or determines not to act, unless such determination is made because of his or her financial interest.

Regulation 18700(c) provides that:

A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

4. 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 a natural person who provides, under contract, information, advice, recommendation or counsel to a local government agency. (2 Cal. Code of Regs. Section 18700(a)(2).) The term "consultant" does not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information advice, recommendation or counsel independent of the control and direction of the agency or any agency official, other than normal contract monitoring, and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a)(2)(A)(B).

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 for 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.

5. Government Code Section 87302 has been amended to require that disclosure categories specifically require 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 during the reporting period...."

6. Pursuant to recent legislation, effective January 1, 1991, conflict-of-interest codes for state agencies must include language pertaining to the prohibition on honoraria and the \$250 limit on gifts no later than December 31, 1991. It would be appropriate at this time to include language to this effect in your code. To assist you with this requirement, I have provided sample language which you may choose to use.

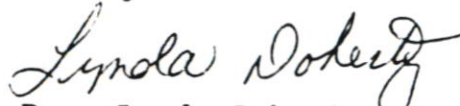
7. For clarity and consistency purposes, I would recommend that the word "management" in category 4 be changed to "business."

8. Based on the information available to us, the designated positions listed in your code appear to be appropriate. However, I would recommend that you perform a thorough review of your agency 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. For instance, if there are "alternate" members of the Commission, they should be designated.

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