



California Fair Political Practices Commission

July 9, 1992

Nancy A. Davis, CMC
City Clerk
City of Arroyo Grande
214 East Branch Street
P.O. Box 550
Arroyo Grande, CA 93421

Re: Your Request for Informal Assistance
Our File No. I-92-113

Dear Ms. Davis:

This is in response to your letter requesting advice on behalf of the City of Arroyo Grande regarding Section 87100.1 of the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since you have not named the public official on whose behalf you are requesting this advice, we are treating your request as one for informal assistance.²

QUESTION

Does Section 87100.1 exempt consultants who are registered professional engineers and licensed land surveyors from the disclosure provisions of the Act?

CONCLUSION

Section 87100.1, which exempts consultants who are registered professional engineers and licensed land surveyors from the disqualification provisions of the Act under some circumstances, does not appear to affect the obligation of a consultant to disclose his or her economic interests.

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. (Section 83114; Regulation 18329(c)(3).)

DISCUSSION

The Act was adopted by the voters of California in 1974. The purpose for the conflict-of-interest provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from any bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. In addition, the Act requires every public official disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.)

Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. Thus, persons who qualify as consultants under the Act are subject to the disqualification requirements of Section 87100 and the disclosure provisions of Sections 87300, et seq. (See, Hsu Advice Letter, No. I-89-485.)

You have asked whether Section 87100.1, added to the Act in 1991, exempts consultants who are registered professional engineers and licensed land surveyors from the disclosure provisions of the Act. Section 87100.1 provides in pertinent part:

(a) A registered professional engineer or licensed land surveyor who renders professional services as a consultant to a state or local government, either directly or through a firm in which he or she is employed or is a principal, does not have a financial interest in a governmental decision pursuant to Section 87100 where the consultant renders professional engineering or land surveying services independently of the control and direction of the public agency and does not exercise public agency decisionmaking authority as a contract city or county engineer or surveyor.

(Emphasis added.)

As stated above, Section 87100 requires disqualification from governmental decisions where an official has a financial interest in the decision. Moreover, Section 87103 provides that an official has a "financial interest" in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate

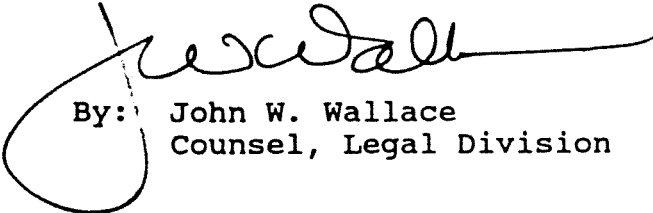
family or on any of the official's economic interests. Thus, the scope of the exception in the statute appears to be expressly limited to the disqualification provisions of the Act and would not affect the obligation of a consultant to disclose his or her economic interests.

Please note that the scope of the exception in Section 87100.1 to the disqualification provisions of the Act has yet to be determined. Commission staff is currently investigating the application of the provision in light of the purposes and policies of the Act.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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³ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.