



California Fair Political Practices Commission

August 28, 1992

John A. Lewis
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220 Montgomery Street, Suite 800
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. I-92-415

Dear Mr. Lewis:

This letter is in response to your request for advice regarding the duties of Assemblywoman Barbara Lee under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Your request is general in nature and seeks general guidance regarding various provisions of the Act. Accordingly, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329.²

QUESTIONS

1. Do the conflict-of-interest provisions of the Act require Assemblywoman Lee to disqualify herself from participating in decisions regarding the University of California, the Lawrence Livermore National Laboratory, or any branch of the University of California?

2. Do the Act's administrative, civil, and criminal remedies apply to Assemblywoman Lee with respect to the above decisions if the pending decisions are "nongeneral legislation"?

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. Does the "public generally" exception apply to legislation that has a material financial effect on the University of California, the Lawrence Livermore National Laboratory, or any of the branches of the University of California?

4. Is legislation that has a material financial effect on the University of California, the Lawrence Livermore National Laboratory, or any of the branches of the University of California of general nature as defined by the California Constitution or otherwise not nongeneral legislation as defined by the Act?

5. Do the provisions of the Act require Assemblywoman Lee to disqualify herself from participating in decisions regarding pending legislation which would delete the authority of the Regents of the University of California to conduct closed sessions when they meet to consider the compensation of university officers or employees, a bill that affected only the Lawrence Livermore National Laboratory, and a bill that affected only one branch of the University of California?

6. What other types of decisions would create a conflict of interest for Assemblywoman Lee?

CONCLUSIONS

1. Under the facts as provided, the conflict-of-interest provisions of the Act do not appear to require Assemblywoman Lee to disqualify herself from participating in decisions regarding the University of California, the Lawrence Livermore National Laboratory, or any branch of the University of California.

2 and 3. The Act provides only for administrative remedies when a member of the Assembly violates its conflict-of-interest provisions. However, because the "public generally" exception may apply to the pending decisions, Assemblywoman Lee may participate in the decisions and the administrative remedies would not apply.

4. The Commission's jurisdiction does not extend to application of the California Constitution. Accordingly, we limit our conclusion to the provisions of the Act. Legislation that has a material financial effect on the University of California, the Lawrence Livermore National Laboratory, or any of the branches of the University of California would not appear to be nongeneral legislation for purposes of the Act.

5. Under the facts as provided, it does not appear that the provisions of the Act would require Assemblywoman Lee to disqualify herself from participating in the pending legislation.

6. Decisions which would have a material financial effect on clients of her business would create a conflict of interest for Assemblywoman Lee unless the "public generally" applies.

FACTS

Barbara Lee is a member of the California Assembly. Assemblywoman Lee is a member of the Assembly Education Committee, but not of the Higher Education Committee. Assemblywoman Lee is also the owner of Lee Associates, a personnel consulting firm. Lee Associates wishes to enter into contracts with the University of California to provide personnel services at the Lawrence Livermore National Laboratories.

You have previously requested our advice on behalf of Assemblywoman Lee regarding decisions involving the California Department of Transportation, a former source of income to her. (Lewis Advice Letter, No. I-90-719.) You once again seek our advice on behalf of Assemblywoman Lee who has authorized your law firm to represent her and to make this request on her behalf.

ANALYSIS

Pursuant to the provisions of Section 87100, a public official may not make, participate in making, or otherwise use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. Assemblywoman Lee is a public official. (Section 82048.)

Economic Interests

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official, on a member of the official's immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

Assemblywoman Lee wishes to contract with the University of California to provide personnel services at the Lawrence Livermore National Laboratories. If she were to enter into such a contract, the University of California would be a source of income to Lee Associates, a business entity of which Assemblywoman Lee is the sole owner. Thus, Assemblywoman Lee would be disqualified from participating in any decisions which will have a reasonably foreseeable material financial effect on the University of California, the Lawrence Livermore National Laboratory, or any of the branches of the University of California unless the "public generally" exception applies, as discussed below.

Remedies

The Act provides for civil, criminal, and administrative penalties for conflict-of-interest violations. Members of the Legislature, however, are only subject to administrative penalties. Moreover, these administrative penalties may only be imposed for violations of the conflict-of-interest provisions of the Act in connection with the decisions specified in Section 87102.5. (Conroy Advice Letter, No. I-92-123.)

Section 87102.5 refers only to the following types of decisions:

(1) Any state governmental decision, other than any action or decision before the Legislature, made in the course of his or her duties as a member.

(2) Approval, modification, or cancellation of any contract to which either house or a committee of the Legislature is a party.

(3) Introduction as a lead author of any legislation that the member knows or has reason to know is nongeneral legislation.

(4) Any vote in a legislative committee or subcommittee on what the member knows or has reason to know is nongeneral legislation.

(5) Any rollcall vote on the Senate or Assembly floor on an item which the member knows is nongeneral legislation.

(6) Any action or decision before the Legislature in which all of the following occur:

(A) The member has received any salary, wages, commissions, or similar earned income within the preceding 12 months from a lobbyist employer.

(B) The member knows or has reason to know the action or decision will have a direct and significant financial impact on the lobbyist employer.

(C) The action or decision will not have an impact on the public generally or a significant segment of the public in a similar manner.

(7) Any action or decision before the Legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a significant segment of the public, from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

Thus, the remedies provided under the Act only apply to the decisions listed above. Please note that subdivisions (a)(3), (4), and (5) of Section 87102.5 apply only to conduct with respect to nongeneral legislation. Legislation is only nongeneral if both of the following apply: (1) it must be reasonably foreseeable that the legislation will have a direct and significant financial effect on one or more identifiable persons, or one or more identifiable pieces of real property; and (2) it must not be reasonably foreseeable that the legislation will have a similar impact on the public generally or on a significant segment of the public. (Section 87102.6(a); Conroy, supra.)

Public Generally

The terms "public generally" and "significant segment of the public" are defined as follows:

- (2) The term "public generally" includes an industry, trade, or profession.
- (3) Any recognized subgroup or specialty of the industry, trade, or profession constitutes a significant segment of the public.
- (4) A legislative district, county, city, or special district constitutes a significant segment of the public.
- (5) More than a small number of persons or pieces of real property is a significant segment of public.
- (6) Legislation, administrative action, or other governmental action impacts in a similar manner all members of the public, or all members of a significant segment of the public, on which it has a direct financial effect, whether or not the financial effect on individual members of the public or the significant segment of the public is the same as the impact on the other members of the public or the significant segment of the public.

Section 87102.6(b)2-6.

As we have previously advised Assemblywoman Lee, the Commission does not provide formal advice or definite answers to hypothetical questions. Accordingly, we are unable to determine whether the decisions to which you refer will have a material financial effect on the University of California requiring the Assemblywoman's disqualification. However, it would appear that the effect of a legislative decision on a state agency such as the University of California flows to all residents of the state. Thus, the "public generally" exception may apply and disqualification would not be required.

In addition, where the effect of a governmental decision flows to any recognized subgroup or specialty of an industry, trade, or profession, a legislative district, county, city, or special district, or more than a small number of persons or pieces of real property, and this public is affected in a similar manner, the Act provides that an official's disqualification is not required. In general terms, the benefit of decisions affecting the University of California flows to the population served by the University. Thus, since the effect of decisions regarding the University of California may extend to more than a small number of persons, Assemblymember Lee would not appear to have a conflict of

interest with respect to decisions regarding the University of California.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



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