



# California Fair Political Practices Commission

March 22, 1993

Kirk Alan Pessner  
Paralegal Administrator  
Political Reports Unit  
Nielsen, Merksamer, Parrinello,  
Mueller & Naylor  
591 Redwood Highway, #4000  
Mill Valley, CA 94941

Re: Your Request for Informal  
Assistance  
Our File No. I-93-077

Dear Mr. Pessner:

You have requested advice concerning the conflict of interest disclosure provisions of the Political Reform Act (the "Act").<sup>1/</sup> Because you have not identified the person on whose behalf you have requested advice, we consider your request to be one for informal assistance pursuant to Regulation 18329(c).<sup>2/</sup>

## QUESTION

A public official owns a 7 percent interest in a business entity. The official's spouse owns a 4 percent interest in the same business entity. For purposes of determining whether sources of income to the business entity must be disclosed, does the official have a 10 percent or greater interest in the business entity?

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

#### CONCLUSION

The official has an 11 percent ownership interest in the business entity. Therefore, the official must disclose sources of income to the business entity if the official's pro rata share of the income from any single source is \$10,000 or more.

#### ANALYSIS

The Act requires state and local public officials to file periodic reports disclosing certain personal financial interests, including sources of income. (Sections 87200-87313.) Section 82030 defines the term "income" and provides:

"Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater....

(Emphasis added.)

When both the official and spouse own an interest in the same business entity, the official must aggregate his or her own interests with the interests of the spouse to determine if the official has a 10 percent or greater interest in the entity. This conclusion is based on two provisions in the Act. First, the official is required to disclose investments held by the spouse as if the interests were held by the official directly. (Section 82034.)

Second, although Section 82030 provides that an official's income only includes the official's community property share of the spouse's income, the subsequent business entity language imposes a separate and distinct reporting requirement without any language limiting the requirement to community property interests. This is supported by the fact that Section 82030 establishes the 10 percent threshold for reporting income to a business entity even if the spouse owns a 10 percent or greater interest and the official has no interest in the entity.

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Therefore, the official described in your letter has an 11 percent interest in the business entity and sources of income to the business entity must be disclosed if the official's pro rata share of the income from a single source is \$10,000 or more.

If you have any questions concerning this letter, please contact me at (916) 322-5662.

Sincerely,

*Carla Wardlow*

Carla Wardlow  
Division Chief  
Technical Assistance Division