



# California Fair Political Practices Commission

November 9, 1993

James Goff  
15335 Las Alameda  
Morgan Hill, CA 95037

Re: Your Letter Dated June 24, 1993  
Our File No. G-93-267

Dear Mr. Goff:

This is in response to your letter of June 23, 1993. On behalf of members of your local citizens organization, Citizens for Orderly and Responsible Development, you have asked whether the following financial arrangement violates the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> The financial arrangement of which you speak concerns the manner of payment of certain city employees. According to your letter, staff members of the planning department of the City of Morgan Hill are compensated by the city from funds generated by new development fees and not from a general fund in which taxpayer money is commingled with development fees.

The issue you raise was the subject of an enforcement action and numerous Commission advice letters and resulted in a regulation. (Regulation 18704.6, copy enclosed.) For purposes of the Act, the issue is framed as follows: Is a person (typically a developer) who pays fees or makes similar payments to a state or local government agency to cover all or a portion of the agency's costs for reviewing or processing land use applications or development approvals a "source of income" to employees and consultants of the agency who are paid from those funds?

As indicated above, on or about October 2, 1993, the Commission adopted Regulation 18704.6 to create procedures and standards for an agency to follow so that project applicants would not be considered a "source of income" to individuals employed by the agency to work on the applicant's project.

During the same time period this regulation was being considered by the Commission, legislation was also pending.

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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 Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Shortly after the adoption of Regulation 18704.6 by the Commission, the Governor signed into law Senate Bill 883 (codified as Government Code Section 87103.6).

As a general rule, any person or business that has made any payment to a public official in the past 12 months is a source of income to that official for the purposes of subdivision (c) of Section 87103. Section 87103.6 provides a limited exception to that rule:

Notwithstanding subdivision (c) of Section 87103, any person who makes a payment to a state agency or local government agency to defray the estimated reasonable costs to process any application, approval, or any other action, including but not limited to, holding public hearings and evaluating or preparing any report or document, shall not by reason of the payments be a source of income to a person who is retained or employed by the agency.

Therefore, any person who makes a payment to a public agency to defray processing costs is not considered a "source" of income and shall not by reason of the payments be a "source of income" to an employee or a consultant who is retained or employed by the agency.

We have enclosed for your convenience a copy of the Meade Advice Letter, No. A-91-533, which discusses the impact of the recently enacted statute on the Commission's regulation. Our conservative advice to requestors is that they adhere to the rules enunciated by the Commission in Regulation 18704.6 until such time as the Commission has the opportunity to reexamine this issue. (Douglas Advice Letter, No. I-92-044.)

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>2</sup>

Sincerely,

Steven G. Churchwell  
General Counsel

*Deanne Stone*

By: Deanne Stone  
Senior Commission Counsel

Enclosures

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<sup>2</sup> 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.