



California Fair Political Practices Commission

February 7, 1994

Tim McNamara
Registrar of Voters
Campaign Disclosure
5201 Ruffin Road., Suite I
San Diego, CA 92123

Re: Your Request for Informal Assistance
Our File No. I-93-487

Dear Mr. McNamara:

This is in response to your request for assistance under the conflict of interest code provisions of the Political Reform Act.^{1/} Since you are not seeking advice on a specific decision before you at this time, your request for advice is considered a request for informal assistance.^{2/}

QUESTION

Can a conflict of interest code require the disclosure of financial interests by candidates for elected offices designated in a conflict of interest code?

CONCLUSION

An agency may require candidates for elected office designated in its conflict of interest code to disclose their financial 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, Sections 18000-18954. 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).)

DISCUSSION

The Act, at Section 87203, requires every officeholder specified in Section 87200 to file annual statements of economic interests disclosing certain financial interests. The type of public official expressly covered by Section 87200 includes county supervisors, district attorneys, county counsels, county treasurers, chief administrative officers and members of planning commissions, among others.

There are, however, other decisionmaking positions within an agency whose disclosure obligations are not directly covered by Section 87200. For those positions, the Act requires every agency, including a county agency, to adopt and promulgate a conflict of interest code. (Section 87300.)^{3/} A conflict of interest code is a document which specifically enumerates each of the positions within the agency, which make or participate in the making of governmental decisions. The code further sets out the specific types of investments, business positions, interests in real property and income which must be reported by the designated positions. The financial interests required to be disclosed are the type of interests which the designated position may affect in his or her decisionmaking. (Section 87302.)

The conflict of interest code for a county would designate all positions with decisionmaking authority, other than those identified above under Section 87200. For example, the conflict of interest code would designate the assistant county counsel, the deputy district attorneys, as well as others. In certain instances, positions which are designated are elected officials, such as board members of water districts, community service districts, school and college districts, fire districts, etc.

Section 87201 requires that "candidates" for an office specified in Section 87200, such as board of supervisor candidates, must file, no later than the final filing date of a declaration of candidacy, a statement disclosing his or her financial interests. The Act does not have a similar provision for "candidates" for elected offices covered by a conflict of interest code.

A conflict of interest code is the legal vehicle to enforce disclosure by decisionmakers within an agency. If a position is not specifically covered by an agency's code, the agency may not enforce the filing of a statement of economic interest on the person in that position. Similarly, if an agency is desirous of

^{3/} The responsibility to develop the list of designated positions with appropriate categories of disclosable financial interests rests with the agency's respective "code reviewing body." The "code reviewing body" for a county is the board of supervisors. (Section 82011(b).)

requiring candidates for elected offices to file statements of economic interests at the time they file a declaration of candidacy, the conflict of interest code would be the legal vehicle to require such disclosure.^{4/}

While there is no express provision in the Act requiring disclosure of economic interests by candidates for designated elected positions, the Act provides that its provisions should be liberally construed to accomplish its purposes. (Section 81003.) One of the purposes of the Act is to insure that assets and income of public officials which may be materially affected by their decisions be disclosed so that conflicts of interest may be avoided. Disclosure by candidates for elective office furthers this purpose by informing the electorate of potential conflicts of interest which may arise if a particular candidate is elected. That the Act specifically provides for candidate disclosure in Section 87201 should be viewed as an affirmation of this fact rather than as a limitation on the scope of candidate disclosure.

Accordingly, the inclusion of the disclosure requirement by candidates for elected positions designated in a code would further the purposes of the Act.

If the county is desirous of requiring the disclosure of financial interests by candidates, the conflict of interest code should be amended to include candidates. The inclusion of candidates in a conflict of interest code is not a new concept. Several elected special districts have included candidate disclosure since 1977.

You have also asked what consequences there may be if an agency inadvertently includes a position covered by Section 87200 in its conflict of interest code.

^{4/} Conflict of interest codes may not, however, be overbroad in their application. A conflict of interest code is not the vehicle which could designate clerical or ministerial positions which do not make or participate in the making of governmental decisions. (In re Alperin (1977) 3 FPPC Ops. 77.) The Act however requires disclosure of financial interests by candidates for offices specifically named in the Act. A similar requirement on elected offices named in a code would appear to be consistent with the intent of the Act.

A person specifically identified in Section 87200 is required to file statements of economic interests in accordance with the direct provisions of the Act. If such a person is also identified in the agency's conflict of interest code, that person should not be expected to comply with both the provisions of the Act and with the provisions of the conflict of interest code as well. For example, the Act was recently amended to include the position of County Treasurer as the type of official to file in accordance with the provisions of Section 87200, et seq. The provisions of the Political Reform Act prevail over the existing provisions of the county's conflict of interest code. The county should amend its conflict of interest code to remove the designation of the county treasurer to alleviate any confusion.

I hope this has been helpful to you. If you have any questions, or need further assistance, please feel free to contact the Commission's Legal Division at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

SGC/JET/jt