



California Fair Political Practices Commission

March 31, 1994

Honorable Sal Cannella
Assemblymember, Twenty-Sixth District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. A-94-089

Dear Assemblymember Cannella:

This is in response to your letter regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act") applicable to Legislators.¹

QUESTION

As chair of the Assembly Public Employees, Retirement, and Social Security (PER&SS) Committee and member of a county retirement plan, will you face a conflict of interest if you participate in legislative decisions which will change the method by which the counties under the plan will fund cost-of-living adjustments for retirees?

CONCLUSION

Pension benefits from a state, local, or federal government agency do not constitute "income" under Section 82030(b)(2). Therefore, the pension benefits you will receive from the county retirement plan will not constitute a disqualifying financial interest of yours. Absent some other disqualifying financial interest as set forth in Section 87103, you may participate in the decisions concerning the pending legislation.

FACTS

You are the chair of the Assembly Public Employees, Retirement, and Social Security (PER&SS) Committee. You are a

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.

member of a "37 Act" retirement plan, referring to counties which have a retirement plan for their employees established under the County Employees' Retirement Law of 1937. (Stats. 1937, Chapter 424.) You expect to receive pension benefits from a county retirement plan established under this law in the future.

This year, there will be a bill before the committee which will change the method by which a "37 Act" county will fund future cost-of-living adjustments (COLAs) for their retirees. The amount and frequency of the COLAs will not change. The bill will provide for an administrative change only.

ANALYSIS

Conflicts of Interest, Generally

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. As a member of the California Assembly, you are a public official. (Section 82048.)

Section 87103 specifies 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 the effect on the public generally, on the official or a member of his or her immediate family or on certain specified economic interests.

Thus, all public officials, including members of the Legislature, will have a conflict of interest in any decisions² which will have a reasonably foreseeable material financial effect on their economic interests. (See generally, Isenberg Advice Letter, No. I-89-343.)

1. Economic Interests

Section 87103(c) provides that a public official is financially interested in a decision if it reasonably foreseeable that the decision will have a material financial effect on any source of income aggregating \$250 or more within 12 months prior to the time when the decision is made.

² Please note, however, that Members of the Legislature are only subject to administrative penalties under the Act, and the penalties may be imposed for violations of the conflict-of-interest provisions only in connection with the decisions specified in Section 87102.5. Moreover, subdivisions (a)(3), (4) and (5) of Section 87102.5, which apply to legislative actions, are limited to decisions which impact nongeneral legislation, which is defined in Section 87102.6.

You have asked whether you may participate in committee decisions concerning legislation which will affect the method of determining COLAs for future pension benefits you will receive. You are concerned that your membership in the retirement plan will trigger a disqualifying financial interest.

Section 82030(b)(2) exempts salary or per diem received from a state, local, or federal government agency from the definition of income. In analyzing public sector retirement benefits within this context, the Commission has concluded that retirement benefits are part of the consideration earned by the employee. (In re Moore (1976) 3 FPPC Ops. 33, 36³; Alquist Advice Letter, A-92-047.) A pension, the Commission concluded, is essentially a type of deferred salary whereby an employee agrees to receive a smaller payment while working in exchange for the security of receiving the remaining portion of his or her compensation after the employee retires.

In concluding that retirement benefits from a local entity are salary, the Commission also determined that this salary from a local entity was excluded from the definition of income under Section 82030(b)(2) and, thus, was not a disqualifying economic interest for purposes of the conflict-of-interest provisions of the Act.

Therefore, pension benefits to be received under the "37 Act" would be excluded from the definition of "income" under Section 82030(b)(2). Moreover, even if your presently received benefits from the retirement plan, you would not have a disqualifying financial interest as set forth in Section 87103(c). Consequently, absent some other disqualifying financial interest, you may participate in the decisions concerning the pending legislation.

I trust this letter has addressed your concerns. Should you have any further questions regarding this matter or a specific decision that you would like advice on, please feel free to contact me at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

³ The Commission specifically discussed pensions as defined in Section 31471 of the County Employees' Retirement Act.