



California Fair Political Practices Commission

April 3, 1995

John J. Vlahos, Esq.
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333 Market Street, Suite 2300
San Francisco, CA 94105-2173

Re: Your Request for Advice
Our File No. I-95-066

Dear Mr. Vlahos:

We respond to your request for advice on behalf of the Peninsula Hospital District regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

Do the provisions of Health and Safety Code Section 32110(d) supersede the conflict-of-interest provisions of the Act?

CONCLUSION

Health and Safety Code Section 32110(d) does not supersede the conflict-of-interest provisions of the Act.

FACTS

The Peninsula Hospital District (the "District") owns Peninsula Hospital, a general acute care hospital located in Burlingame, California. Mills Peninsula Hospitals ("MPH"), a nonprofit, public benefit hospital corporation leases Peninsula Hospital from the District. Two management level officials of the District are also employed by MPH. MPH is a source of income of more than \$250 to these officials annually.

ANALYSIS

The conflict-of-interest provisions of the Act seek to prevent misconduct arising out of the participation of a public

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. All references to Commission regulations are to Title 2, Division 6 of the California Code of Regulations.

official in governmental decisions which may materially affect that official's financial interest. (Section 81002(c).) The Act seeks to prevent both actual impropriety and the appearance of impropriety. (Witt v. Morrow (1977) 70 Cal.App.3d 817, 823.) All public officials in California are regulated by the provisions of the Act. (Section 82048.)

In order to ensure that the provisions of the Act are not negated or invalidated by mistake or design without reasoned debate, the Act is insulated from legislative caprice by the provisions of Sections 81012 and 81013. Section 81012 provides that the Act may only be amended or repealed by one of two specific procedures. Section 81013 provides that the provisions of the Act prevail over any other inconsistent act of the Legislature. These two sections must be read together, as each reinforces the other so as to prevent an amendment to the Act by default through the amendment of other codes. With this in mind, we turn to the analysis of the issues presented in your request for advice.

On their face, Government Code Section 87100 and Health and Safety Code Section 32110(d) do not conflict. Health and Safety Code Section 32110(d) provides that a person may serve in a policy-making management position for a hospital district while simultaneously serving as a policy-making management employee of a hospital serving the same area as the district. Section 87100 of the Act provides that no public official shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know that he has a financial interest.²

Health and Safety Code Section 32110(d) appears to shield the simultaneous holding of two arguably conflicting employment positions from the law of incompatible activities. (See Government Code Sections 1125 et seq.) Health and Safety Code Section 32110(d) is silent on the issue of conflicts of interest arising out of a financial interest in the outcome of a governmental decision, the area in which Section 87100 controls. Therefore, Health and Safety Code Section 32110(d) does not preempt or take precedence over the conflict-of-interest provisions of the Act as it is entirely possible for an individual to hold a position with the District and MPH and merely be conflicted out of specific decisions which affect his financial interests.

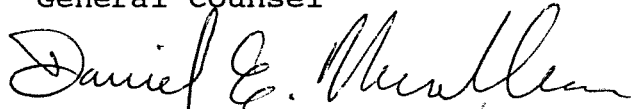
² A public official has a financial interest in a governmental decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other things, any source of income of \$250 or more received by the public official in the twelve months preceding the decision. (Section 87103.)

Moreover, even if we assume for the sake of argument that the Legislature intended that Health and Safety Code Section 32110(d) would override the Act, the provisions of the Act simply cannot be amended or changed in that manner. (See Franchise Tax Board v. Cory (1978) 80 Cal.App.3d 772, 776-777 (an attempt to change the Act through any addition, omission, or substitution of the provisions, whether by amendment, repeal, or by an act independent and original in form, is an amendment requiring conformity with the provisions of Section 81012); Rosenberg Advice Letter, No. I-93-231 (legislation which does not comply with the provisions of Section 81012 can not alter the provisions of the Act).) Therefore, the Act prevails over Health and Safety Code Section 32110(d).

We trust that this advice letter adequately addresses the issues raised in your request. Should you require further assistance with the conflict-of-interest provisions of the Act, please contact the undersigned at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Daniel E. Muallem
Counsel, Legal Division