



# California Fair Political Practices Commission

March 10, 1995

Vincent A. Muzzi, Esq.  
1766 El Camino Real, Suite C  
Burlingame, California 94010

Re: Your Request for Advice  
Our File No. I-95-069

Dear Mr. Muzzi:

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").<sup>1</sup>

## QUESTIONS

1. Do the provisions of Health and Safety Code Section 32110(d) supersede the conflict-of-interest provisions of the Act?
2. How do the conflict-of-interest provisions of the Act apply to an official of a hospital district who receives income from a hospital located within the district and who may make decisions which will affect that source of income?

## CONCLUSIONS

1. Health and Safety Code Section 32110(d) does not supersede the conflict-of-interest provisions of the Act.
2. Generally, a hospital district employee will have a conflict of interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the hospital which is a source of income.

## 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

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<sup>1</sup> 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.

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 official misconduct arising out of the participation of a public 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.

#### Health & Safety Code § 32110(d)

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.<sup>2</sup>

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

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<sup>2</sup> 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.)

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.

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).) Therefore, if the Legislature anticipated that holding simultaneous management positions with both a hospital district and a hospital located within that district would ipso facto lead to a conflict under the Act, and intended that Health and Safety Code Section 32110(d) should preempt the conflict-of-interest provisions of the Act, the Act would still prevail over Health and Safety Code Section 32110(d).

#### Conflicts Under The Act

Accordingly, the conflict-of-interest provisions of the Act do apply to the District's employees who work for MPH, and the income they receive from MPH is potentially disqualifying.<sup>3</sup>

Under Section 87100 and Section 87103, public officials have a conflict of interest in a decision when it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from the effect on the public generally, on any source of income.

An effect is reasonably foreseeable when it is substantially likely to occur. Absolute certainty is not required; however, a mere possibility is insufficient to be considered reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (9175) 1 FPCC Ops. 198.)

The materiality of any effect is determined by reference to Commission Regulations 18702-18702.6. Generally, materiality is a function of the magnitude of the reasonably foreseeable effect.

<sup>3</sup>

In your request, you reference several District decisions and ask for a specific determination of whether or not a conflict of interest existed for specific District employees. It is the Commission's policy not to provide legal advice on past conduct or to provide specific advice regarding the legal obligations of third parties. (Regulation 18329(c)(4).)

For any decision in which a source of income is directly affected, the decision's effects are deemed to be material unless the decision will have absolutely no financial effect whatsoever on the source of income. (Regulations 18702.1(a)(1) and 18702.1(c)(2).) For any decision in which the source of income will be affected only indirectly, please refer to the specific dollar amounts set forth in Regulation 18702.5.

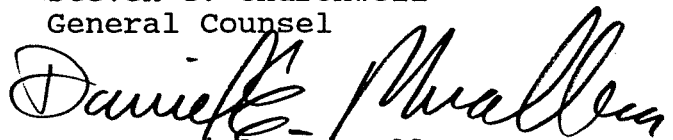
Once it is determined that it is reasonably foreseeable that a source of income will be materially affected by a decision, a public official must apply the standards set forth in Regulation 18703 to determine if he or she may participate in the decision regardless of the effect on the source of income by virtue of the fact that the decision will affect a significant segment of the population of the District in substantially the same manner as it affects the source of income.

If, after viewing the facts through the above analysis, a public official has a conflict of interest in a decision, he or she would be prohibited from making, participating in making, or otherwise using their official position to influence the decision. Please refer to Regulations 18700 and 18700.1 for a complete definition of these terms.

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

A handwritten signature in black ink, appearing to read "Daniel E. Muallem". The signature is written in a cursive style and is positioned over the typed name and title of the signatory.

By: Daniel E. Muallem  
Counsel, Legal Division