

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

July 11, 1995

James F. Meade
Assistant County Counsel
County of Orange
P. O. Box 1379
Santa Ana, CA 92702-1379

Re: Your Request for Informal
Assistance
Our File No. I-95-196

Dear Mr. Meade:

You have requested advice concerning the conflict of interest code provisions of the Political Reform Act (the "Act").^{1/} Because your question is general in nature, we will treat your letter as a request for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTION

You have asked whether a local government agency which has not incorporated Regulation 18730 as its conflict of interest code must amend its code to include provisions reflecting the Act's gift and honoraria prohibitions.

CONCLUSION

A local agency is not required to include the gift and honoraria prohibitions in its conflict of interest code.

^{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 Section 18000, et seq. 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. (Section 83114; Regulation 18329(c)(3).)

ANALYSIS

The Act requires each state and local government agency to adopt a conflict of interest code. (Section 87300.) Section 87302 specifies the provisions which must be contained in a conflict of interest code, including:

- 1) Enumeration of the positions within the agency which involve the making or participation in the making of governmental decisions which may foreseeably have a material financial effect on a financial interest;
- 2) Requirements for persons holding the positions enumerated to disclose those financial interests which may be affected; and
- 3) The circumstances under which persons holding the positions enumerated must disqualify themselves from making or participating in decisions which may foreseeably have a material financial effect on those financial interests.

Any agency subject to the requirement to adopt a conflict of interest code may incorporate the provisions of Commission Regulation 18730 as its code. When Regulation 18730 is amended by the Commission to reflect changes in the statute, those amendments are automatically incorporated into the code for the agency.

When Chapter 9.5 was added to the Act in 1991, it imposed limitations on gifts and honoraria received by local elected officials. Limitations on gifts and a prohibition on the receipt of honoraria were imposed on elected state officials and on designated employees of state agencies. In addition, state agencies were required to amend their conflict of interest codes to reflect the new limitation and prohibition. (Section 89500, et seq.) Regulation 18730 was subsequently amended to include these provisions.

Chapter 9.5 was later amended to include designated employees of local government agencies as well as to make the gift limitation and honoraria prohibition consistent for state and local officials. (Chapter 1105, Statutes 1995.) However, no provisions were added requiring local government agencies to amend their conflict of interest codes to include the gift limitation and honoraria prohibition.

Therefore, you are correct that although local government agencies which have not incorporated Regulation 18730 must amend their codes to reflect the new disqualification threshold for gifts which was added to Section 87103 by Chapter 386, Statutes 1994, they are not required to include the gift limitation or honoraria prohibition as those provisions are not required by

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Section 87302 to be included in a conflict of interest code. However, like you, we recommend that this information be included for the benefit of local designated employees.

Thank you for bringing this matter to our attention. If you have questions or additional concerns, please do not hesitate to contact me at (916) 322-5660.

Sincerely,

Carla Wardlow

Carla Wardlow
Division Chief
Technical Assistance Division