

RAVI MEHTA
CHAIRMAN



Reference to Sampson
Advice Letter
SUPERSEDED
by 18702.1(a)(4)

FAIR POLITICAL PRACTICES COMMISSION

August 8, 1995

Marc Manuel
824 Winslow
No. 161
Redwood City, CA 94063

Your Request for Informal Assistance
Our File No. I-95-250

Dear Mr. Manuel:

This is in response to your letter requesting advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your advice request does not refer to a specific governmental decision, but instead seeks general guidance, we are treating your request as one for informal assistance.²

QUESTION

Do you have a conflict of interest based on your position as an Assembly aide for the California Legislature and your current status as a candidate for the Redwood City Council?

CONCLUSION

Neither your salary from nor employment with the California Legislature will create an economic interest in the State of California which could result in a conflict of interest under the Act.

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 18000-18995. 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).)

FACTS

You stated that you are an employee of Assemblymember Jim Cunneen who is a California Legislator. You are also a declared candidate for the upcoming city council election to be held in Redwood City.

DISCUSSION

The discussion below would be applicable if you are a successful candidate in the upcoming city council election.

Conflicts of Interest

The Act does not prohibit a public official from holding multiple public positions, either within a single agency or different agencies. However, the conflict-of-interest provisions of the Act (Section 87100 et seq., discussed below) do prohibit a public official from participating in a decision that will have a financial effect on his or her economic interests. However, this prohibition is applied on a decision-by-decision basis.

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Section 87103 specifies that a public official has a financial interest 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:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c)
and (d).

For example, your employment with a business entity would result in the business entity becoming an economic interest of yours. However, Section 82005 defines "business entity" as an organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. Since the California Legislature is not an organization or enterprise operated for profit, it is, therefore not a "business entity" as defined by the Act. Thus, your employment with Assemblymember Cunneen will not result in the Assemblymember, by virtue of his status as a legislator, becoming an economic interest of yours. (Section 87103(d); Section 82005; Darcy Advice Letter, No. I-87-296.)

However, entities also become economic interests of an official if they are sources of income to the official. For example, if you received income from a person or business entity, the source of the income would be an economic interest of yours. (Section 87103(c).) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency, however, is not regarded as income for purposes of the Act. (Section 82030(b)(2).) Assemblymember Cunneen is a member of the California Assembly. The Act defines "state agency" to include the Legislature. (Section 82049.) Therefore, assuming you are a salaried employee of the Legislature, you would not have an economic interest in the Legislature by virtue of that income.

Absent some other disqualifying financial interest as set forth in Section 87103, or some direct financial effect on you personally resulting from a governmental decision, you will not have conflicts of interest due to your position with the Legislature. (Regulation 18702.1(a)(4); Sampson Advice Letter, No. I-89-196.) However, please note, as stated above, our advice is limited to the Political Reform Act.

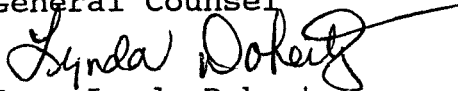
Incompatible Offices

Please note that other laws do restrict the ability of public officials to hold two different public offices simultaneously if the offices are determined to be "incompatible offices." It would be advisable to contact the Attorney General's Office with respect to the doctrine of "incompatible offices" and other provisions of law that might apply to your facts.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel


By: Lynda Doherty
Political Reform Consultant
Legal Division