

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

May 3, 1996

Raymond R. Holland
Private Industry Council of
San Francisco, Inc.,
745 Franklin Street, Suite 400
San Francisco, CA 94102-3117

Re: Your Request for Informal Assistance
Our File No. I-96-102

Dear Mr. Holland:

This is in response to your request for assistance under the conflict-of-interest disclosure provisions of the Political Reform Act (the "Act").^{1/} Since you are merely asking for confirmation or clarification of the Act's disclosure provisions, we are treating your letter as a request for informal assistance.^{2/}

QUESTIONS

1. Does the Act require disclosure of business positions held in a nonprofit or charitable organization?
2. On an annual statement of economic interests filed for the 1995 calendar year, do public officials report interests acquired or disposed of after January 1, 1996?

CONCLUSIONS

1. The Act requires public officials designated in an agency's conflict-of-interest code to disclose positions in "business entities." A "business entity" is defined as an organization or enterprise operated for profit. Accordingly,

^{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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

disclosure of a position held in a nonprofit organization or a charitable organization is not required under the Act.

2. Annual statements of economic interests reflect the interests held by a public official in the prior calendar year. Any interests acquired or disposed of after December 31 of that calendar year would be reported on the official's next statement.

FACTS

You are the vice-president of Planning and Legal Affairs for the Private Industry Council of San Francisco, Inc., a government agency (the "PIC"). Many of the members of the PIC are representatives of private, nonprofit organizations or nonprofit public benefit corporations.

When you distributed the 1995-96 Form 730 - Statement of Economic Interests to the members of the PIC for completion, you obliterated the entire second paragraph of the instruction for Schedule G, the schedule used to report business positions. That paragraph reads: "Positions held in nonprofit or charitable organizations or campaign committees are not reportable." (Schedule G of Form 730, Statement of Economic Interests.) You deleted this instruction because you believe it to be inconsistent with the letter, if not the spirit, of the Political Reform Act.

ANALYSIS

The Act requires every governmental agency to promulgate a conflict-of-interest code. A conflict-of-interest code is a rule or regulation which specifically enumerates positions within the agency which make, participate in making, or use their official position to influence decisions. The code also describes the specific types of investments, business positions, interests in real property and sources of income to be reported. (Section 87300, et seq.)

An investment, business position, interest in real property, or source of income will be reportable under the code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeable be affected materially by any decision made or participated in by the designated employee by virtue of his or her position. (Section 87302(a).) The definition of "business entity" as used above means any organization or enterprise operated for profit. (Section 82005.)

Accordingly, if you have a member who holds a position as an employee, director or officer of a nonprofit organization, or a nonprofit public benefit corporation, that position is not reportable.^{3/}

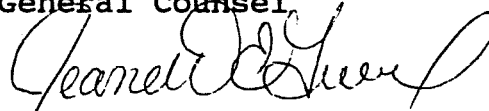
Public officials disclose financial interests at specified times as outlined by the conflict-of-interest code. For instance, the code also requires that new officials of an agency file an assuming office statement within 30 days of assuming office. When an official terminates his or her position, a leaving office statement must be filed within 30 days of leaving. In addition, public officials file statements of economic interests on an annual basis. In addition to specifying when statements must be filed, the conflict-of-interest code also specifies the period of time that financial interests must be reported. For instance, on the assuming office statement, a public official must disclose investments, business positions and interests in real property held on the date he or she assumes office and income received in the 12 months before assuming office.

On the annual statement of economic interests, public officials disclose investments, business positions and real property held, and income received, in the prior calendar year. A public official who acquires or disposes of a particular interest after the last day of the calendar year, but prior to the filing deadline of the annual statement, must report that interest on the next statement filed by that official.

I hope this has clarified the Act's disclosure requirements. If you wish to discuss this, or need further information, please feel free to call the Commission at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division

SGC/JET/jt
Enclosures

^{3/} Although positions in nonprofit entities are not reportable, if any member receives income or gifts from such entities, the member may be prohibited from participating in decisions which have a material financial effect on the nonprofit entity. Commission Regulation 18702.5 (copy enclosed) determines when a decision will have a material financial effect on a nonprofit source of income. If you need assistance in determining when a member may have a conflict of interest, please feel free to contact the Commission's Legal Division.