

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

April 3, 1997

Raymond R. Holland  
Vice President  
Planning and Legal Affairs  
Private Industry Council of San Francisco, Inc.  
745 Franklin Street, Suite 400  
San Francisco, California 94102-3117

**Re: Your Request for Advice  
Our File No. A-97-120**

Dear Mr. Holland:

This letter is a response to both your requests for advice on behalf of the Private Industry Council of San Francisco dated February 27, 1997, regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Is the Private Industry Council of San Francisco a "board" or "commission" for purposes of Section 85705?
2. Must a councilmember for the City and County of San Francisco disclose on his/her statement of economic interests any positions held in a non-profit organization? May the Private Industry Council of San Francisco amend the appendix to the Commission's Form 700 before distributing it to its members to encourage broader reporting than that required by the Act?

### CONCLUSIONS

1. Yes. The Private Industry Council of San Francisco is a board or commission for purposes of Section 85705.
2. No. Section 87302 does not require disclosure of positions held in non-profit organizations. Moreover, the Commission disapproves of anyone changing its forms or appendices.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

## FACTS

Some facts have been incorporated from a previous letter issued to you regarding the Private Industry Council. (*Thatch* Advice Letter, No. I-92-125.)

In 1982, the Federal Job Training Partnership Act [JTPA] was enacted "to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment." (29 U.S.C. Section 1501.) The method of accomplishing these goals was the creation of Private Industry Councils ("PICs").

Consistent with the requirements of the JTPA, the majority of the PIC members are from the private sector and the chairperson of the board is selected from among the private sector members. The members of the PIC of San Francisco are appointed by the Mayor of the City and County of San Francisco pursuant to 29 U.S.C. Section 1512 (d)(1). The PIC of San Francisco is not designated as a "board" or "commission" under the Charter of the City and County of San Francisco.

In recognition of the quasi-governmental status of PICs, it has been previously determined by the Office of the Attorney General and the Commission<sup>2</sup> that members of the PIC are public officials who must comply with the conflict of interest provisions of the Act and that the PICs are governmental entities under Section 82041. (65 Ops.Atty.Gen. 41 (1982).) Subsequent to the opinion of the Attorney General, the State Legislature, in 1985, enacted Government Code Section 1091.2 which excludes members of private industry councils from the prohibitions of Government Code Section 1090, provided that members comply with the provisions of Government Code Section 87100.

## ANALYSIS

### 1. **Question #1**

Section 87100 prohibits public officials from making, participating in making, or otherwise using their official position to influence a governmental decision in which they have a financial interest. The Office of the Attorney General and the Commission have already determined that Section 87100 applies to PICs. In order to determine that Section 87100 applies, it has to be determined that a PIC member is a member of a board or commission with decisionmaking authority and that the PIC is a local governmental agency, or to use the terms of Section 82041, a "board" or "commission" of a local or regional political subdivision. (*See* 65

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<sup>2</sup> In a memorandum dated April 22, 1986, the Commission advised certain PICs that the conflict-of-interest provisions of the Act applied to PIC members. The Commission also requested each PIC to adopt a conflict of interest code pursuant to the provisions of the Act. (*Thatch* Advice Letter, *supra*.)

Ops.Atty.Gen. 41 (1982).)

Section 85705 provides:

“No person appointed to a public board or commission . . . during tenure in office shall donate to, or solicit or accept any campaign contribution for, any committee controlled by the person who made the appointment to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment.”

Since it has previously been determined that a PIC is a public agency, members of a PIC are covered by Section 85705. Moreover, Section 85202, added by Proposition 208, states that “unless specifically superseded by this act, the definitions and provisions of the [Act] shall govern the interpretations of this law.” The fact that the PIC of San Francisco is not designated as a “board” or “commission” under the Charter of the City and County of San Francisco is not determinative. Therefore, members of the PIC of San Francisco are no longer permitted to make campaign contributions to the Mayor of San Francisco or any committee controlled by him or to solicit or accept contributions on behalf of the mayor or any committees controlled by him.

## 2. **Question #2**

The Act does not require a public official to disclose whether she is a director, officer, or employee of a non-profit organization on his/her statement of economic interests.<sup>3</sup> To encourage more disclosure, you wish to change the definition of “business entity” on the appendix to Form 700 to include non-profit organizations. While your motives are admirable, the Commission alone is the public agency charged with prescribing the forms required for reports. (Section 83113.) The Commission disapproves of anyone changing its forms or appendices or redefining a term included in the Act. Please include the proper definition of a business entity in the Commission’s appendix.

As an alternative, you could amend the PIC’s statement of incompatible activities or other similar document to regulate members who serve on non-profit boards, consistent with the Act.

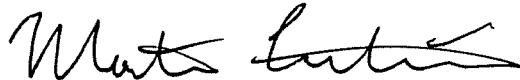
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<sup>3</sup> Moreover, no financial interest exists, as defined in Section 87103. Therefore, a conflict of interest will not occur under the Act merely because an individual is connected to a non-profit. (*Thomasson* Advice Letter, No. A-96-038; *Johnson* Advice Letter, No. 95-219, *Mack* Advice Letter, No. I-95-375 [Copies enclosed.]) If the same non-profit organization is a source of income to a public official, a financial interest exists, that information may be reportable on the statement of economic interests, and the non-profit organization would be a disqualifying source of income. (Section 87103(c).)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink, appearing to read "Marte Castaños", written in a cursive style.

By: Marte Castaños  
Staff Counsel, Legal Division

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