



FAIR POLITICAL PRACTICES COMMISSION

November 17, 1997

Theresa Nagel
County Clerk
Lassen County Courthouse
220 South Lassen Street
Susanville, CA 96130

**Re: Your Request for Advice
Our File No. A-97-466**

Dear Ms. Nagel:

You have asked for advice concerning the conflict of interest provisions of the Political Reform Act (the "Act").¹ The Commission cannot offer specific advice regarding which employees must be designated under a county's conflict of interest code. The Commission is empowered to offer general advice and technical assistance pursuant to Section 87312. Although we provide this advice, please note that this advice is not binding on the County or on the Board of Supervisors as the County's code reviewing body.

QUESTION

Should Deputy Public Defenders be included in the County of Lassen's Conflict of Interest Code?

CONCLUSION

Persons classified as Deputy Public Defenders appear to "make" or "participate in making" governmental decisions which may foreseeably have a material effect on a relevant financial interest. Therefore, Deputy Public Defenders should be included in the County's Conflict of Interest Code.

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

FACTS

You have provided a job description for the Deputy Public Defender which indicates that duties, performed with direction from the Public Defender, may include, but are not limited to, the following:

- Interview indigent persons accused of violations of criminal law, providing them with legal counsel and advice;
- Interrogate witnesses of criminal acts and investigate the scenes of crimes;
- Prepare legal defense in cases in which the Public Defender has been appointed counsel;
- Receive and evaluate declarations of conflict and requests for investigation, expert services, preparation of transcripts of preliminary hearings and other special services; make recommendations regarding same to the Public Defender;
- Appear in court and try cases, presenting evidence and conferring with the judge or prosecution regarding modification, withdrawal or changing of charges; present opening statements, interrogate and cross-examine witnesses, argue points of law and make final arguments or summations;
- Research questions of law, draft and prepare legal motions as required; and
- Perform related duties as assigned.

ANALYSIS

The designation of employees under an agency's conflict of interest code is left to the discretion of each individual agency and its respective code reviewing body. (Sections 87300-87310.) Section 82011 indicates that the board of supervisors is the code reviewing body with respect to the conflict of interest code of any county agency, other than the board of supervisors, with jurisdiction wholly within the county. Therefore, as noted above, the Commission cannot offer specific advice regarding which employees must be designated under a county's conflict of interest code. The Commission is empowered to offer general advice and technical assistance pursuant to section 87312. Although we provide this advice, please note that this advice is not binding on the County or on the Board of Supervisors as the County's code reviewing body.

Government Code section 87300 requires every agency to adopt and promulgate a conflict of interest code. Conflict of interest codes are required to identify designated employees, and assign to those designated positions appropriate categories of financial disclosure. Each conflict of interest code must specifically enumerate the positions within the agency that are

involved in making or participating in making governmental decisions which may foreseeably have a material financial effect on any economic interest, and further sets forth the types of investments, business positions, income and real property made reportable by those designated employees. (Section 87302.)

The conflict of interest provisions of the Act apply only to "public officials," including "designated employees." (Section 87100.) A "public official" is defined by the Act to include every member, officer employee or consultant of a state or local government agency. (Section 82048.) The term "designated employee" means any officer, employee, member or consultant of any agency who makes or participates in the making of agency decisions which may foreseeably have a material effect on any financial interest. (Section 82019.)

A public official makes a governmental decision whenever the public official votes on a matter, appoints a person, obligates or commits the agency to a course of action, or enters into any contractual agreement on behalf of the agency. (Regulation 18700(b).) Additionally, a public official participates in a governmental decision when, acting within the authority of the official's position, the public official negotiates, advises, or makes recommendations to the decision-maker without significant substantive review with respect to the actions enumerated in Regulation 18700(b). This includes conducting research, making any investigation, or preparing or presenting any report, analysis or opinion which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision. (Regulation 18700(c).)

Deputy Public Defenders are attorneys appointed by the court to provide legal counsel and advice to indigent persons accused of violations of criminal law. The Deputy Public Defenders confer and negotiate with judges and prosecution, ultimately binding the agency to a course of action in court. Deputy Public Defenders also make recommendations to the Public Defender regarding requests for investigation, expert services, transcript preparation and other special services related to their cases. Based on the information provided in the Lassen County Deputy Public Defender's job description and examples of duties performed, it appears that persons in this position make or participate in making governmental decisions which could foreseeably and materially affect any economic interest.

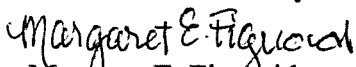
The Commission has included attorneys as designated employees in virtually every code which it has reviewed. Moreover, attorneys generally have been included among the broadest disclosure categories for the agency in question. This is because attorneys generally have broad powers to affect decisions which could foreseeably and materially affect their financial interests. These powers include the authority to represent and bind the agency to a course of action in court litigation, to counsel the agency on litigation and to advise the agency on the wisdom and legal effects of its general policies. (*Taylor Advice Letter*, No. A-78-149.)

You have not provided facts as to the specific nature of the Deputy Public Defenders' duties or their recommendations made to the Public Defender. Should you find that the attorneys in question possess the power to represent and bind the agency to a course of action or participate in governmental decisions as discussed above, we recommend that they be designated employees in their agency's conflict of interest code.

If you have any questions on this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel


By: Margaret E. Figeroid
Political Reform Consultant