



FAIR POLITICAL PRACTICES COMMISSION

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June 20, 2000

Daniel D. Purnell
Executive Director
City of Oakland, Public Ethics Commission
One Frank H. Ogawa Plaza, 4th Floor
Oakland, California 94612-2031

**Re: Your Request for Advice
Our File No. A-00-098**

Dear Mr. Purnell:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Does the City of Oakland's Public Ethics Commission have jurisdiction to enforce compliance with the disclosure provisions of the city's conflict of interest code?

CONCLUSION

No. As the filing officer for the city's conflict of interest code, it is the duty of the City Clerk of Oakland to ensure compliance with the city's code and report apparent violations of the Political Reform Act to the appropriate agencies.

FACTS

The City of Oakland is a chartered city. The city adopted an ordinance providing that the city public ethics commission shall oversee compliance with the conflict of interest regulations as

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

they pertain to city elected officials,² officers, employees, and members of boards and commissions. The city had previously adopted by ordinance the conflict of interest code contained at Regulation 18730 and incorporated it by reference as the conflict of interest code for the city pursuant to Section 81000 et seq.

ANALYSIS

Section 87300 of the Government Code requires each agency, including the City of Oakland, to adopt a conflict of interest code pursuant to the provisions of the Political Reform Act ("Act"). (§ 87300.) Pursuant to this obligation, the City of Oakland adopted an ordinance which in turn adopted the standard conflict of interest code contained in Regulation 18730. (Oakland Ord. 11562, Section 1.)

Section 87500 and Regulation 18730, as incorporated by the City, requires statements of economic interests be filed with the code reviewing body or the agency itself. (Reg. 18730, subd. (4).) In this case, the code reviewing body is the city council. (§ 82011, subd.(c).) In addition, looking to the ordinance that adopted the conflict of interest code, we see the City declared the filing officer to be the Oakland City Clerk in 1993 for purposes of the Act's statement of economic interests filing requirements. (Oakland Ordinance 11562, Section 2.) In 1997, the City also adopted Ordinance 11961, establishing the function, duties, power, jurisdiction and terms of the members of the Public Ethics Commission ("PEC"). While Section 2 of that ordinance speaks generally of the PEC's duty to "oversee compliance with the Conflict of Interest regulations as they pertain to [the] City of Oakland..." the ordinance also declares that it was not the intent of the City, in adopting the latter ordinance, to "duplicate or overlap the ... duties... heretofore or hereafter assigned to any other City board or commission or to a City department." (Oakland Ordinance 11961, Section 2.) As a result, we do not read the 1997 ordinance to mean that the City attempted to amend its conflicts of interest code to make the PEC the filing officer for statements of economic interests.³ Accordingly, we conclude that the filing officer for statements of economic interests filed pursuant to the City of Oakland's conflict of interest code continues to be the Oakland City Clerk.

² Neither the City Clerk nor its ethics commission have jurisdiction to enforce the Act's provisions against members of the council, the city attorney, and other certain officials enumerated in Section 87200.

³ Even if the city intended to amend its conflicts of interest code in 1997, however, such an attempt must satisfy the requirements of Section 87311, which requires the council to give appropriate notice that an amendment to its conflicts of interest code is contemplated. The proposed amendment of a conflict of interest code by a local agency must be carried out under procedures which guarantee the agency's employees, officers and the public adequate notice and a fair opportunity be heard. (§ 87311.) Given the lack of reference in the 1997 ordinance either to the ordinance adopting the conflicts of interest code or to the designation of a filing officer for statements of economic interests (as provided for by the council in 1993), and the language of the 1997 ordinance expressly stating an intent "not" to duplicate or overlap other departmental responsibilities, we conclude the requirements of Section 87311 were not met.

In answering your query as to who has "jurisdiction to enforce" compliance with the City's code, we refer you to Regulation 18115, a copy of which is enclosed, which describes the duties of the filing officer that receives statements of economic interests pursuant to Section 87500. Among other things, it is the duty of the filing officer to review information on the statements to ensure compliance with the law and notify a filer of his or her obligations to comply with the law. (Reg. 18115, subd. (a)(3).) Also, it is the filing officer's obligation to report apparent violations of the Act to the appropriate agencies. (Reg. 18115, subd. (a)(6).) In a charter city such as Oakland, it is the elected city attorney or district attorney that may act as the civil or criminal prosecutor with respect to any violations of the Act occurring within the city. (§§ 91001, 91001.5.) Finally, the Act empowers the filing officer to assess penalties for late filings of statements. (§ 91013.) As such, the filing officer might well be regarded as the first line of defense in "enforcing" compliance with the Act's provisions. It is the filing officer who receives the statements, reviews them to ensure they have been filled out properly, notifies filers of their failure to file the statements, and assesses penalties and refers violations to the city attorney, district attorney or FPPC. In this way, it can be said that the filing officer has "jurisdiction" to enforce compliance with the city's conflict of interest code. As the City has designated the City Clerk as the filing officer for the statements of economic interests, the City Clerk has first responsibility for assuring compliance with the city's conflict of interest code.

While the City may choose to supplement these provisions with an ethics commission of its own, the City is not empowered to alter its obligations under the law nor reduce the obligations under the Act of its designated filing officer. If the City wishes to vest the responsibilities of a filing officer solely within the purview of its ethics commission, it may do so by amending its code to designate the commission as the filing officer for the statements of economic interests. (§ 82009.5.)

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

Sincerely,

Luisa Menchaca
Assistant General Counsel

By: 
C. Scott Tocher
Staff Counsel, Legal Division

LM:CST:tls
Enclosure