



FAIR POLITICAL PRACTICES COMMISSION

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March 8, 2001

Michael Berest
Court Executive Officer
Superior Court of California
County of Mariposa
Post Office Box 28
Mariposa, CA 95338

**Re: Your Request for Informal Assistance
Our File No. I-01-040**

Dear Mr. Berest:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ As your questions are general in nature and do not pertain to specific governmental decisions, we are treating your request as one for general assistance. (Regulation 18329(b)(c).)²

The Fair Political Practices Commission advises only on the requirements of the Political Reform Act, and therefore, we encourage you to consider whether the doctrine of "Incompatible Activities," or Government Code section 1090, which prohibits government officials from having an interest in contracts with their own agency, are triggered by your facts. The Attorney General's office has jurisdiction over both of these areas of law.

QUESTIONS

You have recently entered into a general partnership. The partnership's business is a copy and print center. Services provided not only include photocopying, but also laminating,

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

² Informal assistance does not provide the requestor with immunity provided in an opinion or formal written advice (Section 83114; Regulation 18329(c).)

binding, and T-shirt transfers. You have leased a Xerox color copier for which you pay a monthly leasing fee, as well as a charge per copy. You ask:

1. If you provide copy or print services to your court, but do not charge the court what you would regularly charge customers, can you be reimbursed the amount you have paid Xerox for the per copy charges?
2. If you do provide copy or print services to your court, can you have the court pay for the cost of supplies (i.e., photocopy paper, laminating pouches, binding combs) used in completing the order? (The understanding would be any supplies so purchased would only be used for orders of the court; they would not be used to run anyone else's orders).
3. Are there any limitations on the persons from whom you, personally, can solicit business? Can you solicit business from other governmental agencies? Can you solicit business from other courts? From businesses located in the same county as your court? Can you ever solicit business from or give advertising to court employees? Can you ever solicit business from or give advertising to your judges? (The understanding here is that court stationery would *never* be used in any solicitation letter).
4. Can your name appear in solicitation letters if they in no way indicate your position with the court?
5. Can your name appear on business cards or on a web site for the business?
6. Can your picture and/or brief biography (omitting your current position) appear on advertising or on a web site for the business?

CONCLUSIONS

- 1- 2: The Act would not prohibit these contracts. However, you are prohibited from making, participating in making, or influencing governmental decisions relating to these contracts, as discussed below. We refer you to Government Code section 1090, which may also regulate these contracts.
- 3-6. With the restrictions noted below, you are free to solicit business from whomever you wish. Please note that sources of income of \$500 or more are potentially disqualifying economic interests under the Act. You may also wish to obtain advice concerning "Incompatible Activities of State Officers and Employees" (Government Code § 19990) and Government Code 1090. These are not Political Reform Act provisions.

ANALYSIS

A public official may not make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which the official knows or has reason to know, that he or she has a financial interest. (Section 87100). The Commission has adopted a standard eight-step analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700, subdivisions (b)(1) – (8).)³

1. Public Official

The conflict-of-interest provisions apply only to public officials. (Section 87100). As Court Executive Officer for the Mariposa Superior Court, you are a public official. (Section 82048.)

2. Conduct Covered

The Act's conflict-of-interest provisions apply only where a public official is making, participating in making, or is in any way attempting to use his or her official position to influence a governmental decision in which he or she knows or has reason to know the official has a financial interest. (Section 87100.)

The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a government decision, and which also provide certain exceptions. (Regulations 18702-18702.4.) A public official "makes a governmental decision," when the official, acting within the authority of his or her office or position, votes on a matter, appoints a person, obligates or commits his or her agency to any course of action, enters into any contractual agreement on behalf of his or her agency, or determines not to do any of these things, unless such determination is made because of his or her financial interest. (Regulation 18702.1(a)(1)-(5).)

A public official "participates in making a governmental decision," when, acting within the authority of his or her position the official:

“(a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A);

“(b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:

³ We have provided an analysis of only steps 1 and 2 because the facts you have provided do not indicate that you will be making, participating in making or influencing a governmental decision. If, in the future, you feel you might be influencing a governmental decision you may write in again for more information on the other 6 steps of the analysis.

“(1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or

“(2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A).” (Regulation 18702.2)

You do not indicate in your letter that you will be “making” or “participating” in the making governmental decisions pertinent to your outside business. Thus, we will not discuss these definitions further.⁴

However, the Act also prohibits an official from using his or her official position to influence a decision. The Commission applies two rules to determine whether a public official is using or attempting to use his or her official position to “influence” a governmental decision. With regard to a governmental decision which is *before an official's own agency*, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer. (Regulation 18702.3(a).) When you negotiate with your own agency to provide services for a fee, you would be influencing a decision before your own agency.

For decisions before an agency other than the public official's own agency (or an agency appointed by or subject to the budgetary control of the official's agency),⁵ the Commission applies a narrower prohibition. An official will only be “influencing” a decision if the official purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of that agency.

However, the Commission has established several exceptions to this rule, one of which permits an otherwise disqualified official to appear in the same manner as any other member of the general public before the official's own agency in the course of its prescribed

⁴ This letter is based only on the facts as they are presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

⁵ Generally, the Commission has treated different city and county departments as different agencies. (*Stout Advice Letter*, No. I-88-313).

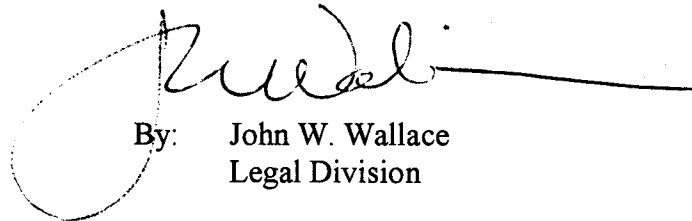
governmental function to represent his personal interests in a business entity wholly owned by the official or members of his or her immediate family.⁶ (Regulation 18702.4(b).)

As noted above, sources of income to your business are potentially disqualifying economic interests. Enclosed for your review is a pamphlet entitled, "Can I Vote? Conflicts of Interest Overview" which addresses potential problems which may arise from your business endeavor.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "J. Wallace", with a long horizontal line extending to the right.

By: John W. Wallace
Legal Division

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⁶ Therefore, even though you might be disqualified from communicating with your agency with regard to the decisions, if you wholly owned the business in question, you would be able to appear in the same manner as any other member of the general public before your own agency, in the course of its prescribed governmental function to represent your personal interests in your business entity. (Regulation 18702.4(b).) This does not appear to apply to your facts.