



FAIR POLITICAL PRACTICES COMMISSION

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March 13, 2003

Refugio Espinoza
2843 Rayburn Ridge
Katy, Texas 77450

Re: Your Request for Advice
Our File No. A-02-312

Dear Mr. Espinoza:

This letter is in response to your request for advice regarding provisions of the Political Reform Act (the "Act").¹ Please note that this advice confers immunity only to the extent that the facts provided to us are accurate, and that all material facts have been disclosed. (*In re Oglesby* (1975) 1 FPPC Ops 71; Govt. Code § 83114.)

QUESTION

Do the Act's conflict of interest provisions bar you from receiving an ownership interest in a CPA partnership?

CONCLUSION

The Act's conflict of interest provisions do not preclude you from accepting an ownership interest in a CPA partnership. It is possible, however, that your interest in this business might give rise to conflicts of interest in certain governmental decisions, which you must recognize and address as the circumstances may require.

FACTS

You are a resident of Texas, and an employee of the California Franchise Tax Board, an Associate Tax Auditor designated as such under disclosure category seven of the FTB's conflict of interest code. You anticipate that a family member may transfer to you an ownership interest in a CPA partnership, which is not licensed or registered to do business within the State of California. You do not anticipate that you will assume any

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

managerial role in this partnership, or take on decisionmaking responsibilities for its day-to-day operations.

ANALYSIS

The Act does not bar public officials from the ownership or acquisition of any economic interest. Instead, the Act's conflict of interest rules bar a public official from taking part in any governmental decision that would have foreseeable, material financial effects on the official's economic interests – whatever those interests might be.

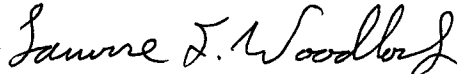
From your account of the facts, it is possible that payments accruing to you from your ownership interest in the partnership may *not* be included in the Act's definition of "income," which provides at § 82030(a) that: "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under the Act.²

However, § 87103 defines economic interests to include: "Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management." (Section 87103(d).) Assuming that an ownership interest in the CPA partnership would amount to a partnership interest, that business entity would become an economic interest that could give rise to a conflict of interest, if you are ever faced with a governmental decision (in your capacity as an employee of the FTB) that would have a foreseeable, material financial effect on the partnership. In such a case, you might be disqualified from participation in that particular governmental decision.

You have not identified any potential governmental decision in which you might have a conflict of interest. For your future reference, the Commission has adopted a standard eight-step analytical process for determining whether a public official has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700, subdivisions (b)(1)-(8).) We enclose a publication entitled "Can I Vote? Overview of the Conflicts Laws," to assist you in identifying any conflicts of interest you may face during the course of your employment with the Franchise Tax Board.

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

Sincerely,
Luisa Menchaca
General Counsel

By: 
Lawrence T. Woodlock
Senior Counsel, Legal Division

Enclosures
LTW:jg

² See also regulation 18230, copy enclosed.