



FAIR POLITICAL PRACTICES COMMISSION

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March 27, 2009

Michelle R. Kusiolek
Deputy Clerk
County of Yuba
915 8th Street, Suite 107
Marysville, CA 95901-5273

Re: Your Request for Advice
Our File No. I-09-046

Dear Ms. Kusiolek:

This letter responds to your request for advice regarding the preservation of reports provisions of the Political Reform Act (the "Act").¹ Please note that our advice is based solely on the Act. We therefore offer no opinion on the application, if any, of other laws which could be applicable, such as the California Public Records Act (Government Code Section 6250-6270), or a local ordinance concerning record retention. Because your question seeks general guidance and does not reference any specific proceedings, we are treating your request as one for informal assistance.²

QUESTION

Does the Act prohibit you from returning Statements of Economic Interests (Form 700) to the individuals who filed them when those individuals were not required to file the Form 700?

CONCLUSION

If an individual who filed a Form 700 with your agency holds a position that is not listed in a conflict-of-interest code because the duties of the position do not include making or participating in making governmental decisions for your agency, you may return the Form 700 to the individual and you do not need to keep a copy of the form.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

If an individual who filed the Form 700 with your agency is not listed in a conflict-of-interest code and the individual makes or participates in making governmental decisions for your agency, it is recommended that you accept and retain the form, treating it as though it was filed by a designated employee. Also, the agency should amend its conflict-of-interest code to include this person's job classification if persons in that classification are in fact making or participating in government decisions that foreseeably and materially affect financial interests.

FACTS

On February 13, 2009, you requested written advice as to the Act's preservation of reports requirements for filing officers. In particular, you asked whether you can return Statements of Economic Interest (Form 700) to individuals when the individual who filed the report was not required to file the Form 700.

ANALYSIS

Duty to File

Public officials are required to file a Statement of Economic Interests (Form 700) when their position is specified in Section 87200, or when the duties of the position include making or participating in the making of decisions which may foreseeably have a material effect on any financial interest and, as a result, their position is designated in an agency's conflict-of-interest code (Section 87302).

Duties of the Filing Officer

Section 82027 defines a filing officer as the person or agency which receives and retains original Statements of Economic Interest (Form 700). Each agency must assign a specific individual to perform specified duties under the Act (Regulation 18227). As the filing officer for Yuba County, you are required to perform a number of duties with regard to the Form 700, including supplying the form to officials, determining whether statements have been filed and conducting reviews of those statements, notifying the filer if proper statements have not been filed, notifying the filer of any errors or omissions on the form, reporting violations of the Act to appropriate agencies, and keeping a log of all statements filed with the agency (Regulation 18115).

Preservation of Reports

The Act requires retention of original reports and statements for not less than seven years and copies of reports and statements for not less than four years. The Act also permits a filing officer to retain a copy on microfilm or other space saving devices after an original report or statement has been on file for two years. (Section 81009.) The Act does not specifically address retention of a Form 700 filed by an individual who does not hold a position designated in the agency's conflict-of-interest code. However, one of the purposes of the Act is to require assets

and income of public officials which may be materially affected by their official activities to be disclosed. (Section 81002.) Therefore, we provide the following guidance.

When a position is not designated in an agency's conflict-of-interest code because the duties of the position do not include making or participating in decisions which may foreseeably have a material effect on any financial interest, it does not appear that there would be any public benefit from the retention of the filing. Therefore, retention of the Form 700 would serve no public purpose and can be returned to the individual.

When the individual makes or participates in decisions which may foreseeably have a financial effect on his or her economic interests, but the individual's position is not listed in the conflict-of-interest code, the Form 700 filing should be retained in accordance with Section 81009. This type of filing is generally considered a "courtesy filing" and recognizes the importance of making the disclosures available to the public pending inclusion of the position in the agency's conflict-of-interest code. Also, the agency should amend its conflict-of-interest code to include the job classification of this employee if he or she, and other persons in that classification, are in fact making or participating in agency decisions that have a foreseeable material effect on financial interests.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Sandy Johnson
Political Reform Consultant

SJ:jgl