



FAIR POLITICAL PRACTICES COMMISSION

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April 27, 2009

Randy Martinez
375 Vista Roma Way #103
San Jose, CA 95136

**Re: Your Request for Informal Assistance
Our File No. I-09-057**

Dear Mr. Martinez:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your inquiry is general in nature and does not involve any particular governmental decision, we are treating your request as one for informal assistance.² Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest, Government Code Section 1090 or Public Contract Code Section 10410.

Also, Government Code Section 19990, which is not part of the Act, requires each state agency to develop a statement of incompatible activities, which includes specific enterprises or employment "clearly inconsistent, incompatible, in conflict with, or inimical to" the duties of the agency's officials and employees. As we do not offer advice beyond the confines of the Act, we urge you to consult your agency's counsel and statement of incompatible activities to ensure that your activities do not violate these or any other laws or restrictions outside the Act or are not otherwise incompatible with your responsibilities to the agency.

QUESTIONS

1. Can you, as a designated employee of the State Compensation Insurance Fund ("SCIF") operate a teaching business?

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 Please note that informal assistance does not provide the requestor with immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), enclosed.)

2. Can you solicit SCIF clients for your business or give your business cards to SCIF clients?
3. Can you, when advertising to get students for this class, tell or advertise that you work for SCIF when presenting your credentials for teaching the class? Can you put down in a biographical sketch for the class that you are currently employed with SCIF?

CONCLUSIONS

1. The Act does not prohibit you from operating a private business. However, under certain circumstances you would be prohibited from receiving honoraria, as discussed below, or you may have a conflict-of-interest in your current public duty with SCIF resulting from your proposed private business.
2. The Act does not prohibit you from soliciting SCIF clients for your business or giving them your business cards. However, as noted, other laws or restrictions outside the Act may apply.
3. The Act does not prohibit you from informing others, by whatever means or for whatever purpose, that you work for SCIF. However, as noted, other laws or restrictions outside the Act may apply.

FACTS

You are a Senior WCCA with the State Compensation Insurance Fund in San Jose and in that position are required to file a statement of economic interests under SCIF's conflict-of-interest code. You have been employed with SCIF since 1987. Currently, you work as a field investigator and fraud liaison with SCIF. You investigate all aspects of suspicious Workers' Compensation claims, especially claims where your insured contends that the claim is fraudulent or disputes whether the claimant is eligible for Workers' Compensation benefits. You also present cases for prosecution to various District Attorneys in your district officer's service area.

You propose to open a teaching business, in consultation with Metropolitan Adult Educational Program ("MAEP"), to teach a class on Workers' Compensation. As you stated in a telephone conversation on April 16th, the MAEP is an institution spread out over Santa Clara County that offers non-credit courses for adults, as well as many other programs. It has existed since 1883 and is an accredited educational institution.

Teachers are paid on a set hourly rate for teaching the course and may be given bonuses if enough students sign up for the class.³ You wish to target small business owners and those who want to open or are thinking about opening their own business. You would talk about the rules, regulations and requirements for new business owners in regards to Workers' Compensation.

ANALYSIS

Would income received from your proposed teaching business constitute an honorarium?

Section 89502(c) provides that "no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests." You are a designated employee of SCIF, meaning that you are required to file a Statement of Economic Interests and report specified sources of income or gifts on that form. Therefore, you cannot accept an honorarium from any of these sources. Section 89501(a) defines the term "honorarium," in pertinent part, as follows:

"(a) For purposes of this chapter, 'honorarium' means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering."

Regulation 18931.1 also provides, in pertinent part, that: "For purposes of Government Code Sections 89501 through 89506, 'speech given' means a public address, oration, or other form of oral presentation." This definition of the "speech given" for purposes of the honorarium ban at Section 89502 is broad enough to include the paid lectures you describe, unless they are made in the normal course of practice in a bona fide business, trade or profession.

An honorarium does not include earned income for personal services if the services are provided in connection with an individual's business (including nonprofit entities), or employment in a bona fide business, trade or profession (other than a speech making business), and the services are customarily rendered as a part of the business. (Section 89501(b)(1) and Regulation 18932.)

Your services may satisfy the teaching exception to the honorarium ban. A person is presumed to be participating in the profession of teaching if any of the following apply:

³ If you were paid on a per student basis and you could use your public position to influence your private gain, then this would raise a conflict-of-interest issue under the Act. But, since these facts are not presented here, we do not analyze them.

“[T]he individual is under contract or employed to teach at a school, college, or university which is accredited, approved or authorized as an educational institution by the State of California, another state, the federal government or an independent accrediting organization, the individual is paid to teach a course which is presented to maintain or improve professional skills and knowledge and where the course provides continuing education credits for members of the profession, the individual is paid for teaching individuals who are enrolled in an examination preparation program such as a state bar examination review course.” (Regulation 18932.)

An official is presumed to be engaged in the bona fide profession of teaching if he or she is employed to teach at an accredited school. (Regulation 18932.2(a).) You are considering teaching in consultation with a local adult education provider, MAEP. MAEP is accredited. Therefore, you would be presumed to be engaged in the bona fide profession of teaching. Thus, this exception would apply.

Conflict of Interest under Section 87100

The Act’s conflict-of-interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

Here, you did not provide us enough facts to perform a conflict-of-interest analysis. Therefore, we do not analyze it. If you would like for us to provide you with such an analysis, please provide more facts so that we can determine whether a conflict-of-interest exists.

Provisions Outside the Act

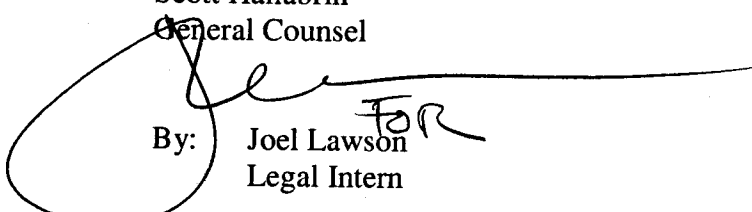
As stated above, Section 19990, which is not part of the Act, allows each state agency to develop a statement of incompatible activities, which includes specific enterprises or employment “clearly inconsistent, incompatible, in conflict with, or inimical to” the duties of the

agency's officials and employees. As we do not offer advice beyond the confines of the Act, we encourage you to consult with your agency's counsel and statement of incompatible activities to ensure that your activities do not violate conflict-of-interest laws outside the Act or are not otherwise incompatible with your responsibilities to the agency.

If you have other questions on this matter or would like to give more facts to enable us to give you a more detailed response to your inquiry, please contact the Legal Division at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

By:  FOR
Joel Lawson
Legal Intern

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