



## FAIR POLITICAL PRACTICES COMMISSION

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August 12, 2010

Elizabeth G. Pianca  
Deputy County Counsel  
County of Santa Clara  
70 West Hedding Street, 9th Floor  
San Jose, CA 95110-1770

**Re: Your Request for Informal Assistance  
Our File No. I-10-123**

Dear Ms. Pianca:

You have requested advice concerning the conflict-of-interest disclosure provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your inquiry is general in nature, we will treat your letter as a request for informal assistance pursuant to Regulation 18329(c).<sup>2</sup>

### QUESTIONS

Santa Clara County is in the process of updating its conflict-of-interest code. You are inquiring if the following individuals have to file "leaving office" statements of economic interests.

1. Persons in positions that are no longer designated in the city's code because the duties of the position have changed.
2. Persons in positions that are no longer designated in the city's code because they were designated in error.

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<sup>1</sup> 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.

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

## CONCLUSIONS

1. Persons in positions that are no longer designated in the city's code because the duties of the position have changed must file "leaving office" statements of economic interests.
2. Persons in positions that are no longer designated in the city's code because they were designated in error are not required to file "leaving office" statements of economic interests

## FACTS

The county is conducting a comprehensive biennial review of its conflict-of-interest code. Approximately 1,718 of the county's approximately 15,300 employees currently serve in designated positions and are required to file Statements of Economic Interests. Through its biennial review, the county has determined that certain designated positions listed in its code do not make or participate in the making of governmental decisions that may foreseeably have a material effect on a financial interests. These designated positions were incorrectly listed in the code during a prior biennial review; the employees serving in these positions should not be filing statements.

The county has also determined, through its current biennial review, that the job duties and responsibilities for certain designated positions, which had previously been appropriately listed, have changed as of July 1, 2010. Based on these changes, these positions should no longer be listed in the code because they do not make or participate in the making of governmental decisions that may foreseeably have a material effect on a financial interest.

## ANALYSIS

One of the purposes of the Act is to ensure that public officials disclose their economic interests. (Section 81002(c).) Public officials who make or participate in the making of governmental decisions are required to file statements of economic interests whereby they disclose information regarding their economic interests. (See Sections 87200 et seq. and 87300 et seq.) The Act requires local government agencies, including counties, to adopt conflict-of-interest codes that specifically enumerate the positions within the agency that make or participate in the making of decisions that may foreseeably have a material effect on any financial interest. Agencies are required to amend their codes when changes are necessitated by changed circumstances. (Section 87300, 87306 et seq.)

Section 82019 defines "designated employee" as follows:

"(a) 'Designated employee' means any officer, employee, member, or consultant of any agency whose position with the agency:

"(1) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the

Constitution, unless the position is elective or solely secretarial, clerical, or manual.

“(2) Is elective, other than an elective state office.

“(3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

“(4) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

“(b)(1) ‘Designated employee’ does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

“(2) ‘Designated employee’ does not include a federal officer or employee serving in an official federal capacity on a state or local government agency. The state or local government agency shall annually obtain, and maintain in its files for public inspection, a copy of any public financial disclosure report filed by the federal officer or employee pursuant to federal law.”

Section 87302 specifies that a designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office. Regulation 18722(b) clarifies:

“The date that a person permanently leaves office, for the purposes of Government Code sections 87204 and 87302, is the date that the person is no longer authorized to perform the duties of the office, and stops performing those duties, including making, participating in making, or attempting to use his or her official position to influence any governmental decision.”

Therefore, an individual whose position is no longer designated in a code, due to a change in his or her job duties is deemed to have left a position that is making or participating in the making of governmental decisions and is required to file a leaving office statement of economic

interests. (See e.g. *Lawrence* Advice Letter, No. I-97-054.)

In contrast, when an individual is in a position that does not make or participate in the making of governmental decisions, but whose position was incorrectly listed in the code (i.e. persons in that position never made or participated in the making of governmental decisions), no "leaving office" statement is required. These persons are not leaving a designated position.

Section 87309(c) provides that a code shall not be approved if it "[f]ails to adequately differentiate between designated employees with different powers and responsibilities."

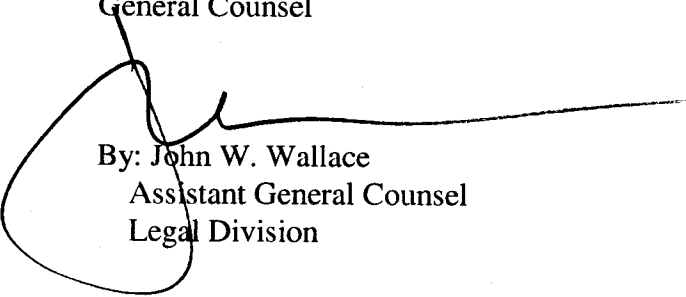
"This provision is intended to ensure, first, that a conflict of interest code require financial disclosure *only* from employees required to be designated and, second, that a code relate disclosure to the specific duties of such designated employees. Thus, a code reviewing body would fail to fulfill its obligation under Section 87309(c) if it allowed designation of positions in a code which, to quote the language of Section 87302(a), do not entail the 'making or participation in the making' of governmental decisions. It would be equally improper for a code reviewing body to require disclosure of interests which may not foreseeably be affected materially by decisions made or participated in by designated employees." (*In re Alperin* (1977) 3 FPPC Ops 77.)

Having determined that some employees should never have been designated in the first instance, to require any further disclosure would conflict with Section 87309. Thus, no leaving office statement is required for these individuals.

If you have questions concerning this letter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin  
General Counsel



By: John W. Wallace  
Assistant General Counsel  
Legal Division

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