



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 17, 2017

Tara L. Taguchi
Deputy City Attorney
Green de Bortnowsky, LLP
23801 Calabasas Road, Suite 1015
Calabasas, CA 91302

Re: Your Request for Informal Assistance
Our File No. I-17-062

Dear Ms. Taguchi,

This letter responds to your request for assistance on behalf of the City of Victorville regarding your required AB 1234 training which includes provisions of Political Reform Act (the "Act")¹ and Section 1090. Please note that our assistance is limited to the provisions of the Act and Section 1090.² We do not review portions of the training that pertain to laws outside of our jurisdiction (see Regulation 18371), and we do not have any enforcement authority with respect to Section 53235 or other provisions of AB 1234. Because your inquiry is general in nature, we are treating your request as one for informal assistance.³

With respect to the other laws covered by the training (e.g., Penal Code, Gov. Code, Sections 6250, 8314, 36516, 53232, 54954, case law, Cal. Const., Code of Civ. Proc., United States Code, Cal. Attorney General Opinions, Cal. Pub. Con. Code) you may want to contact the Attorney General's Office for their feedback. Please note that the Attorney General's Office has its own requirements for AB 1234 training.⁴

Discussion

Section 53235(a), enacted by Assembly Bill No. 1234 (2005-2006 Reg. Sess.), requires certain local agency officials to receive training in ethics. Regulation 18371 provides that "the topics enumerated [below] . . . are considered to be the core content of the 'ethics law' component" that pertain to the Act, and regarding which, the Commission will provide consultation. The course

¹ The Political Reform Act is contained in Government Code Sections 81000 and 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 Section 1090 is not in the Act. However, in 2013, Assembly Bill 1090 granted the Commission the authority to provide written advice on Section 1090.

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

⁴ http://oag.ca.gov/sites/all/files/agweb/pdfs/ethics/eth_loc_guide_final.pdf

should include instruction on each of the following topics if relevant to the official's public position:

- (1) Conflicts of Interest under the Act (Gov. Code, Sections 87100, 87103).
- (2) Conflicts of Interest and Campaign Contributions (Gov. Code, Section 84308).
- (3) Limitations on the Receipt of Gifts (Gov. Code, Sections 86203, 89503, 89506).
- (4) Honoraria Ban (Gov. Code, Section 89502).
- (5) Conflicts of Interest When Leaving Office (Gov. Code, Sections 87406.1, 87406.3, 87407).
- (6) Mass Mailing Restrictions (Gov. Code, Section 89001).
- (7) Economic Interest Disclosure Under the Act (Gov. Code, Section 87200 et seq.).

The standard we apply reviewing the training is twofold: (1) has the training covered the required topics, and (2) has the training sufficiently and effectively put your officials on notice of their responsibilities under the covered laws.

While you have provided extensive written materials that accurately address many of the complex ethics laws, there are a few general Act requirements that were not addressed.⁵ Therefore, we have attempted to add information to your materials that will provide a substantive recitation of the specific laws that were omitted.

General Considerations

1. Aside from the omissions enumerated below, the draft training materials are comprehensive and a generally accurate recitation of the ethics laws. However, we note that the materials are quite dense and may not be easily accessible for non-attorneys. For example, when the FPPC and AG developed the interactive ethics course for local officials, we made a concerted effort to highlight the major concepts, rationales, hypothetical contexts, and case studies that councilmembers commonly face in performing their duties. One of the main intentions of the course is to alert a local official to situations when he or she should consult an attorney to decipher the complex ethical laws triggered by the situation.⁶

Specific Suggestions

We suggest the following changes. Explanations will generally be in text or in a footnote.

Page 2, Guide Section I.B.2.a and b:

Footnotes 6 and 7 to section I.B.2.a and I.B.2.b have been transposed. The footnotes need to be modified to accurately reference the correct Act and Regulations.

Page 4 and 5, Guide Section I.B.2.a.1 and 2:

⁵ Of course, we do not know if this is resource material or the content to be presented during a training.

⁶ The interactive training course can be accessed using the following URL - <https://oag.ca.gov/ethics>

In your discussion of the materiality standard applicable to real property, it may be useful to note that under certain circumstances, Regulation 18702.2 defers to Regulation 18702.1 (the materiality standard applicable to business entities). This shift in the analysis occurs in subdivisions (a)(5) and (11).

Page 5, Guide Section I.B.3⁷:

Reference to Regulation 18702.3(b) restates Regulation 18702.3(b). It should discuss the different rule applicable to “income from the sale of personal or real property.” Subdivision (b) of the regulation provides:

Income from the Sale of Personal or Real Property: For income from the sale of personal or real property belonging to the official, or the official's spouse if the property is community property, the financial effect of the decision is material if the official knows or has reason to know that the source of income is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding, or has an interest in any business entity or real property that will be financially affected under the standards applied to a financial interest in Regulations 18702.1 or 18702.2, respectively.

Page 6, Guide Section I.B.2:

Footnote 17 indicates that Regulation 18705.5 was repealed. It is more accurate to indicate that the Regulation has been renumbered and the specific dollar threshold removed.

Page 7, Guide Section I.B.3.:

As a general comment, the actual leaving the room is an important requirement when an official has a conflict of interest and may need to be emphasized a bit more in this discussion.

Page 7, Guide Section I.B.3.b:

Paragraph (b) references the term “economic interest.” The disqualification regulations have been updated to change “economic interests” to “financial interests.” Thus, Regulation 18705 no longer refers to “economic interests.” While there are still some areas (and regulations) that do not reflect this change, we just wanted to make you aware of it in the context of disqualification.

Page 8, Guide Section I.B.3.c:

Footnote 23 should read Regulation 18707(a)(3)(B) rather than Regulation 18702.5(d)(2).

⁷ Please note that there are two Guide Sections were incorrectly labeled I.B.2. This section should be re-designated I.B.3.

Page 9, Guide Section I.B.4:

Footnote 26 should be revised or removed because the citation to the Act provision does not support the assertion. Gov. Code, Section 84308(a)(3) defines “officer” as it applies to the provision.

Page 12, Guide Section I.B.8:

Contemplate incorporating the Act’s additional revolving door prohibitions found in Gov. Code, Sections 87406.1 and 87407. The pertinent sections read as follows:

Section 87406.1. Post-governmental Employment Restrictions for Districts.

(b) No former member of a district board, and no former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after leaving that office or employment, act as an agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

Page 28, Guide Section II.B.13:

There is a companion regulation to § 18901 which covers less common conduct. Adopted in 2009, Regulation 18901.1, prohibits campaign related mailings sent at public expense. Regulation 18901.1 prohibits the sending of a tangible item such as a written document to a recipient at his or her residence, business or post office box, if the item sent expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or when taken as a whole and in context, unambiguously urges a particular result in an election, and public moneys are paid for the costs of distributing the item or for designing, producing, or printing, or formulating the contents of the item, and more than 200 substantially similar items are sent during the course of the election. The regulation, in part, is based on *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, and *Stanson v. Mott* (1976) 17 Cal.3d 206.

We hope this information is of assistance. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

A handwritten signature in blue ink that reads "Ryan P. O'Connor". The signature is written in a cursive style.

By: Ryan P. O'Connor
Counsel
Legal Division

RPO:jgl