

9/30/76

Memorandum 76-89

Subject: Conflict of Interest Code

The Fair Political Practices Commission (FPPC) has designated February 10, 1977, as the deadline for submission of the Law Revision Commission's Conflict of Interest Code under the Political Reform Act of 1974. This memorandum discusses various problems that arise in the process of drafting a Conflict of Interest Code and presents several alternatives for satisfying the requirements of the Political Reform Act. Attached hereto is a staff draft of a Conflict of Interest Code which is discussed point by point later in the memorandum. Selected provisions of the Political Reform Act and selected provisions of FPPC Regulations are appended to the draft code.

The following exhibits are also attached to this memorandum:

- Exhibit I Garvey & Nielson, Proposition 9, 51 Cal. St. Bar J. 198 (1976)(discussing various problems encountered in the conflict of interest provisions).
- Exhibit II FPPC Regs. §§ 18750 and 18751 (as revised)(dealing with the procedure for adopting a code and the procedure for seeking an exemption from the requirement to adopt a code).
- Exhibit III In the Matter of Thomas W. Oglesby, 1 FPPC Ops. 71 (July 2, 1975)(disqualification under § 87100).
- Exhibit IV In the Matter of Tom Thorner, 1 FPPC Ops. 198 (Dec. 4, 1975)(disqualification under § 87100).
- Exhibit V Conflict of Interest Codes, Their Purpose and Preparation (manual prepared by FPPC).
- Exhibit VI Form 720, Statement of Economic Interests.

ALTERNATIVES

As you consider this memorandum and the various items attached to it, the alternatives under Chapter 7 of the Political Reform Act should be kept in mind.

1. Adopt Conflict of Interest Code

- (a) Adopt a code substantially in the form of the attached staff draft (which follows the FPPC model) or in a form following one or more of the major alternatives discussed below (which vary from the FPPC model and other proposed codes).
- (b) Determine that, pursuant to Government Code Section 87310 the "duties of a designated employee are so broad or indefinable" that such employee is subject to the general requirements of Sections 87200-87207 rather than any special requirements of a Conflict of Interest Code.

2. Request Exemption

Under FPPC Regulations Section 18751 (see Exhibit II) an agency may be exempted from Government Code Section 87300 requiring the adoption of a Conflict of Interest Code on the grounds that the agency has no "designated employees" within the meaning of Sections 82019 and 87302(a).

PROCEDURE

A Conflict of Interest Code must be adopted pursuant to the Administrative Procedure Act (APA). The decision to request an exemption from the requirement of adopting a code is not subject to the APA. The APA requires (1) 30 days' notice of the proposed adoption of the regulation (in this case, the code) by publication in a newspaper of general circulation, (2) filing with the rules committees of both houses of the Legislature, (3) mailing to anyone requesting notice, and (4) delivery to the Office of Administrative Hearings for publication in the California Administrative Register. Govt. Code §§ 11423, 11424.

If the Commission decides at the November meeting to adopt a Conflict of Interest Code (rather than request an exemption) for submission to the FPPC by February 10, 1977, we will want to give notice under the APA in November or December, 1976, so that the code can be tentatively adopted in December or January. The FPPC staff suggests that the Conflict of Interest Code be adopted tentatively so that any changes required by the FPPC may be made without the necessity of a new notice under the APA. See Govt. Code § 11425 (hearing may be continued from time to time); FPPC Regs. § 18750(b)(attached as Exhibit II).

If the Commission believes that the better course is to request an exemption pursuant to FPPC Regulations Section 18751, we need not give

notice under the APA, but will prepare the supporting documents for submission to the FPPC in December or January. If the request is eventually denied, the deadline for adoption of a Conflict of Interest Code is postponed. See FPPC Regs. § 18751(h).

Additional steps in the procedure for final adoption and approval of a code or submission of a request for exemption are described in FPPC Regulations Section 18750.

CONFLICT OF INTEREST CODE

The following is a section by section discussion of the staff draft of a Conflict of Interest Code which is attached hereto. The draft is based in large part on the model code prepared by the FPPC staff, the model code prepared by an ad hoc committee of the League of California Cities and the County Supervisors Association of California, and several other codes proposed by various state agencies. The discussion notes various alternative approaches to the problem of drafting a code for the Law Revision Commission.

As you consider the draft code, the standards of Government Code Section 87309 should be kept in mind:

87309. No Conflict of Interest Code or amendment shall be approved by the code reviewing body [the FPPC] or upheld by a court if it:

(a) Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;

(b) Fails to provide to each affected person a clear and specific statement of his duties under the Code; or

(c) Fails to adequately differentiate between designated employees with different powers and responsibilities.

The two crucial sections of the Conflict of Interest Code are Section 13 which designates the positions subject to the disclosure and disqualification provisions of the code and Section 21 which attempts to delineate the areas of decision-making to which the disclosure and disqualification provisions are tied.

Chapter 1. General Provisions

§ 11. Other provisions applicable. Subdivision (a) restates the substance of Government Code Section 87102. This requirement is not limited by provisions in the Conflict of Interest Code pertaining to the

sorts of interests required to be disclosed and that may be a basis for disqualification. However, the enforcement provisions applicable to violations of Government Code Section 87100 are restricted to the injunction remedy provided by Government Code Section 91003 (which also authorizes the award of costs, including reasonable attorney's fees, to the prevailing party).

Subdivision (b) states a restriction on the activities of the Commissioners and the staff provided by the statute that established the Commission.

The Incompatible Activity Statement is given to employees of the Commission when they assume their positions.

§ 12. Definitions. Most sections of the draft code are followed by crossreferences to defined terms and other relevant provisions. The sections of the Government Code and FPPC Regulations referred to are included in Appendix 1 and Appendix 2, respectively, of the code. Subdivision (b) is included because of the definition of "Commission" in Government Code Section 82012 to mean the Fair Political Practices Commission.

§ 13. Designated positions and employees. This section, which designated the positions that entail the making or participation in the making of decisions which may foreseeably have a material financial effect on a reportable interest. Section 13 designates Commissioners appointed by the Governor, employees on the legal staff, and the Administrative Assistant as holders of designated positions. It excludes legislative members of the Commission pursuant to Government Code Section 82019. The Legislative Counsel, an ex officio member of the Commission, is omitted because he does not participate in the Commission decisions. Independent consultants are excluded on the strength of FPPC Regulations Section 18700(a)(2). See Appendix 2. Secretaries are excluded pursuant to FPPC Regulations Section 18700(d)(1).

The determination made in Code Section 13 is essential. If the Commission concludes that it is foreseeable that a position in this agency entails the making of a decision that may have a material financial effect on a reportable interest, then a Conflict of Interest Code must be drafted; if the Commission concludes that it is not foreseeable, then there are no designated employees and a request for an exemption from

the requirement of submitting a code should be directed to the FPPC. The only guidance to the position of the FPPC on the matter of foreseeability is to be found in the two FPPC Opinions attached as Exhibits III and IV and in the following recent policy statement:

"Foreseeably"

This policy statement is intended to clarify the meaning of "foreseeably" as used in Government Code §82019(c), and Chapter 7, Title 9, of the Government Code.

Government Code §§ 82019(c) and 87302(a) require an agency to apply the term "foreseeably" to determine what position should be "designated" in a Conflict of Interest Code. Because of the difficulty of applying this term abstractly, no regulation clarifying the term has been issued. The Thorner case, 1 FPPC Opinion No. 75-089 (copy attached), does provide some guidance as to the meaning of "foreseeably". Though Thorner dealt with "foreseeably" in a context involving disqualification, a Thorner-type analysis can be used to determine whether decisions made or participated in by persons in positions being considered for "designation" will "foreseeably" affect a financial interest.

In general, that which a reasonable person would predict, anticipate, or expect beforehand, can be said to be "foreseeable". The term requires the application of reasonable judgment to assess the degree of likelihood that a decision made or participated in will affect a financial interest. Where the likelihood is sufficiently great that a reasonable person would predict or anticipate an effect on a financial interest, the effect of the decision is foreseeable. Clearly, in the context of designating positions with a Conflict of Interest Code, "foreseeably" means greater probability than "conceivably", yet less probability than "certainly".

The question involved in drafting a code for the Commission-- whether the responsibilities of a given position entail, the making or participation in the making of decisions which "may foreseeably have a material effect on any financial interest"--is more general than the particular factual problems presented in the two opinions. There is no clear test for determining in advance, or even with the benefit of hindsight, what is foreseeable. The FPPC recognizes that the determination of foreseeability is a factual one. 1 FPPC Ops. 198 at 205. In the opinions attached hereto, the FPPC applied a reasonable person standard to the factual situation before it. See 1 FPPC Ops. 71, at 80, 1 FPPC Ops. 198, at 205-209.

It should be noted, however, that exemption of the Commission from the requirement of promulgating a Conflict of Interest Code would not exempt the Commissioners or the staff from the general disqualification provision of Government Code Section 87100.

Chapter 2. Disclosure

§ 20. Assignment of designated employees to disclosure categories.

Section 20 is based on the scheme of the model code approved by the staff of the FPPC.

§ 21. Reportable interests in disclosure categories. Section 21 attempts to implement the requirement of Government Code Section 87302(b). Following the FPPC model, it requires the disclosure of managerial positions although Section 87302(b) refers only to "investments, interests in real property and income." There is no apparent reason for this omission in Section 87302(b). It would be possible to comply with the letter of the law by not requiring the disclosure of managerial positions. However, since such positions provide a basis for disqualification under Chapter 3 of the code (implementing the requirements of Government Code Sections 87302(c) and 87103), it makes some sense to require their disclosure in Chapter 2 of the code.

Subdivision (a) attempts to reconcile the nature of Commission business with the requirements of Government Code Sections 87302(b) ("Conflict of Interest Code shall set forth . . . the specific types of investments, interests in real property and income . . ."), 87302(c) ("Specific provisions setting forth any circumstances . . ."), and 87309(b) ("a clear and specific statement of his duties under the Code"). Interests must be reported under disclosure category A when it is reasonably foreseeable that the interest may be affected materially by a decision made in the course of consideration of a topic on the calendar of topics for Commission study (as stated in the most recent Annual Report and in any subsequent concurrent resolution), assuming the eventual enactment of any Commission recommendation which results or might have resulted from the consideration of such topic.

If this standard is not specific enough and we cannot develop a more specific and acceptable standard, then the alternative is to assert under Government Code Section 87310 that the duties of Commissioners and the legal staff are "so broad or indefinable" that the specificity requirement cannot be complied with. Then the code must require designated employees to file statements covering all investments, interests in real property, and income made reportable under Government Code

Sections 87206 and 87207. In other words, the reportable interests are not tied to any standard of foreseeability nor to any particular responsibilities of the person's position.

The standard proposed in subdivision (a) is necessarily vague. The disclosure statement is intended to reveal financial interests that foreseeably may be materially affected through the year following the filing of the statement. Accordingly, the scope of the statement should anticipate the next year of Commission business. The application of this standard in January 1976 would have required an individual Commissioner to attempt to reasonably foresee whether any of his financial interests (as defined by the code) may be materially affected by a decision that may be made in the course of considering the following topics: (1) nonprofit corporations, (2) creditors' remedies, (3) condemnation law and procedure, (4) evidence, (5) partition procedure, (6) liquidated damages, (7) modification of contracts, (8) transfer of out-of-state trusts to California, (9) governmental liability, (10) child custody and related matters, (11) parole evidence rule, (12) prejudgment interest, (13) class actions, (14) offers of compromise, (15) discovery in civil cases, (16) possibilities of reverter and powers of termination, (17) Marketable Title Act and related matters, (18) arbitration, (19) escheat, unclaimed property, (20) inverse condemnation, (21) lease law, and (22) unincorporated associations.

An alternative would be to refer to topics under active consideration. According to the Annual Report, this would include topics (1) through (10) in the above list.

We could attempt to limit the scope of subdivision (a) by stating that no decision regarding procedural rules is to be considered a decision that may foreseeably have a material financial effect on a financial interest. However, we do not believe that this is a very helpful limitation.

It must be remembered in applying the reportable interest standard provided in subdivision (a) that a decision includes voting on a matter, committing an agency to a course of action, and determining not to do these things (except where disqualification is required). See FPPC Regs. § 18700(b). Also remember that the "distinguishable from its effect on the public generally" qualification does not apply to disclosure of financial interests.

Subdivision (b) of Code Section 21 attempts to delineate the reportable interests of designated employees with the power to contract for the agency. It requires that a designated employee report interests in any business entity that has contracted in the last two years or may foreseeably contract in the future either with the Commission directly or with the state for the Commission. This standard is derived from the model codes and the codes of other agencies. It raises some serious problems, however, because neither the Commissioners nor the designated staff members have any way of knowing which business entities contract with the state for the Commission since most of our supplies come from the Supply Catalog issued by the Central Stores, a part of the Office of Procurement of the Department of General Services, and the Supply Catalog does not list brand names. However, the critical word in subdivision (b) is probably the word "material." In a recently issued policy statement, the FPPC gave as an "example of a position which might not be designated for reasons of lack of materiality [is] one involving purchase on behalf of the agency of small quantities of supplies, particularly if the suppliers are large so that the purchases of the agency are unlikely to be 'material'". Given the magnitude of the purchases of this agency, it is unlikely that any of them will have a material effect on any business entity in which the designated employee has an investment or holds a position of management. This can be said with confidence even for the most recent major contracts for the IBM typewriters and the lease of office space with Stanford. Note also that subdivision (b) includes the hiring of staff and consultants (see FPPC Regs. § 18700(b)) and that a spouse may be a source of income by operation of community property laws (see Govt. Code § 82030(a); 1 FPPC Ops. 193 at 208).

Commissioners are included as designated employees in category B because the Commission is the final authority on contract matters, and in the past has made the decision on major procurement contracts and on the hiring of consultants.

It may be possible to omit subdivision (b) because it appears that there would be no real possibility of a material financial effect. See FPPC Regs. § 18702.

§ 22. Contents of disclosure statements. The language of Code Section 22 is nearly identical to the language of other codes, which in turn are based on Government Code Sections 87206 and 87207. Government Code Section 87302(b) requires the manner of disclosure to be "substantially equivalent" to the manner provided in these sections. Some sample forms (other than managerial position forms) are attached as Exhibit VI.

There is a brief discussion of the separate treatment of fees received for legal services (see Code § 22(c)(2)) in Garvey & Nielson, Proposition 9, 51 Cal. St. Bar J. 198 at 205, 237-238, attached as Exhibit I. See FPPC Regs. § 18740 and Comment, attached as part of the Appendix to the code draft.

Chapter 3. Disqualification

§ 30. Disqualification. Code Section 30 ties the requirement of disqualification from participation in making decisions to the interests made reportable under Chapter 2. Note that it is reportable interest, not interests actually reported. The exclusion of sources of gifts less than \$250 results from the difference between Government Code Section 87103 (which is incorporated by Section 87302(c)--the Conflict of Interest Code disqualification requirement) and Section 87207(a)(1) (which is incorporated in effect by Section 87302(b)--the Conflict of Interest disclosure requirement).

Subdivision (b) may be unnecessary since it does not appear that, under the interpretation given "legally required participation," it would ever be applicable to the Commission or the staff. See Govt. Code §§ 87101, 87302; FPPC Regs. § 18701.

It should also be noted that the qualification relating to a material financial effect distinguishable from its effect on the public generally apparently applies to the disqualification requirement by virtue of the incorporation of Government Code Section 87103 by Section 87302(c). Hence, in theory, an interest may be reportable under Chapter 2 of the code, but not be a ground for disqualification if its effect on the designated employee's financial interests would foreseeably be material but would not be distinguishable from its effect on the public generally.

Respectfully submitted,

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Garvey & Nielson, Prop. 9, 51 Cal. St. Bar J. 198 (1976))

EDITOR'S NOTE: This is the second of two articles on Proposition 9. The first appeared in Vol. 50, No. 4, p. 254.

(1976) U.S. ___, ___ 55 U.S.L.W. 4127, invalidating the federal expenditure limits.

Conflict of Interest

The Conflict of Interest provisions of the Act, although substantially unchanged from the 1974 provisions (with one major exception of particular interest to attorneys),³ are causing attorneys increasing concern because of their scope, the vagueness of the basic concepts of "materiality" and "foreseeability" in a conflict situation, and the increased complexity of the disclosure rules. As public officials subject to these provisions are finding, errors can be quite costly.⁴

The Conflict of Interest Chapter of the Act is divided into three parts: General Prohibition, Disclosure and Conflict of Interest Codes.

Prohibitions on Participation

The General Prohibition section, substantially unchanged from the law in effect in 1974, prohibits a public official on any level of state and local government "from making, participating in making, or attempting to use an official position to influence a governmental decision in which such official knows or has reason to know that he has a financial interest."⁵ The term "public official" refers not only to elected officials, but every member, officer, employee or consultant of any state or local government agency. It also includes any person contracted to provide information, advice, recommendation or counsel to a state or local government agency and any unsalaried member of an advisory board of commission with decision-making power (Section 87100).⁶

By Joanne Garvey and Vigo Nielsen

"[T]he existing system, without political reform, is a danger to democracy. We have a situation in which money dominates politics. . . People deny that money has so much influence, and yet they only deny that when they are talking about political reform proposals. Nobody denies it as a matter of common sense."¹

A recurring theme in the Political Reform Act of 1974 (also known as Proposition 9 and hereinafter the "Act") is the reduction of the influence of money on government and politics. Our first article ((1975) 50 State B.J. 254) focused on two areas which have attracted the most attention, campaign contributions and lobbying. These represent essentially external influences on the political process, and the Act's approach has been to require disclosure under the theory of Justice Brandeis:

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.²

The Act accents two other areas in which money is inextricably bound up with the governmental process: conflicts of interest and campaign expenditure limitations. This second article discusses Chapter 7, the Conflict of Interest provisions, which by their complexity and expanding application should be of increasing concern for attorneys, and Chapter 5, the rules governing expenditure limitations on candidates for statewide office, proponents attempting to qualify statewide ballot measures and committees supporting or opposing qualified statewide ballot measures. However, much of Chapter 5 of the Act will probably fall by virtue of the recent Supreme Court ruling in *Buckley v. Valeo*,

¹Reporting the identity of an attorney's clients if his or her pro rata share of the fees from such client is \$1,000 or more in any year. A more detailed description of this requirement occurs later in the text.

²Two county supervisors are being sued for the value of those assets and incomes not properly reported. One of the assets allegedly omitted includes the personal residence of the supervisor which is of substantial value.

³Government Code Section 87100 (All references hereinafter to California Government Code).

⁴2 Cal. Administrative Code 18700 (a) (hereinafter "Reg."); and Section 82048. "Consultant" includes any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, but does not include the provider of independent research where such person has no authority beyond the provision of such information (Reg.

¹Interview with Dan Lowenstein, Chairman of the Fair Political Practices Commission, October 1975 Campaign Law Reporter, 9.

²Other People's Money 62 (National Home Library Foundation Ed. (1933)).

An official has a financial interest in a decision if it is (a) reasonably foreseeable that the decision will have a (b) "material financial effect, (c) distinguishable from its effect from the public generally": 1) on any business entity or real property in which the public official has a direct or indirect investment worth more than \$1,000; 2) on any source of income, other than loans by commercial lending institutions in the regular course of business, aggregating \$250 or more in value received by or promised to the public official within twelve months prior to the time a decision is made; or 3) on any business entity in which the official is a director, officer, partner, trustee, employee or holds any position of management (Section 87103).⁷

The difficulty of the concepts of "materiality" and "foreseeability" is illustrated by two recent FPPC Opinions.

Restricted Voting

In the *Matter of Thomas W. Oglesby, City Manager of Antioch*,⁸ the City Council of Antioch acts as the Redevelopment Agency. One councilman owns his real estate office and two rental properties within the redevelopment project area,⁹ and he participates in the county multiple listing service. The FPPC ruled that the councilman is disqualified from participation in the decision to adopt any redevelopment plans. It based its opinion on the following analysis that: 1) the purpose of the redevelopment plan was to redevelop blighted areas of the community to raise values both within and without the area; 2) increased sales or leases of properties within or without the area would result in in-

creased real estate commissions; 3) probable upgrading of the downtown area would also result in a greater number of property transactions in surrounding neighborhoods; and 4) both of these possibilities of material financial effect on the real estate business are reasonably foreseeable. Similarly the official position of the councilman on the agency would make available to him inside information which could result in a financial benefit to his business. Although the FPPC presumed that he would not use such information for private purposes, potential customers might seek him out on the belief that he would be privy thereto.

In the *Matter of Tom Thorner, on behalf of the Marin Municipal Water District*,¹⁰ the FPPC ruled that a director of the Marin Water District which has a moratorium on new water connections cannot participate in discussions leading to, or including, a vote on whether to lift the moratorium where the director is an officer, salaried employee and stockholder of a local corporation that supplies building materials, appliances and fuels in the area. The FPPC ruled that the decision to lift the moratorium would increase building activity which in turn would provide a significant opportunity to the corporation to increase its sales within the district. The financial effect was both material and readily foreseeable, although the corporation had several competitors within the area, and almost any business would have improved prospects for growth or development if the moratorium were lifted, the corporation, as a supplier of the construction industry was a business which would be particularly benefited.¹¹

When to Abstain?

A more difficult analysis was then required in connection with the series of ques-

⁷8700 (a) (2). However, the FPPC staff recommendation (not adopted by the FPPC at this date) for Opinion 75-159 concludes that a project architect to a local government who, under contract, exercises significant governmental authority with respect to agency decisions with respect to public works project is a "public official" within the meaning of Government Code §87100.

⁸Investments of an individual include a pro rata share of the investments of any business entity or trust in which the individual or the individual's spouse owns, directly, indirectly or beneficially, a 10 per cent interest or greater. Section 82034.

⁹1 FPPC Opns. 71 (No. 75-083, July 2, 1975).

¹⁰These properties had an assessed value of less than \$20,000, and the assessed value of the property within the project area was approximately \$19,000,000.

¹¹1 FPPC Opns. 198 (No. 75-089, Dec. 3, 1975).

¹²The material financial effect of a decision which is "distinguishable from the public generally" has been given a narrow interpretation by the FPPC to date. For example, in Opinion 75-089, the Opinion pointed out that the term "public generally" could not be interpreted to refer to a group as small as all the persons or entities in the building materials industry. A similar approach was taken in the Antioch decision. Even a relatively small interest in a listed company is sufficient: in FPPC Opin-

tions dealing with the Water District Board's participation in the request for variances for building where this same director's corporation had entered a bid in the project. Although competitors might also have bid, the director was barred from participating, the FPPC held. Similarly, where a contractor who usually did business with the director's corporation had been awarded a bid for such a project, the FPPC ruled that the director could not participate in the hearing for a variance since it was "reasonably foreseeable" that such contractor would continue to purchase from the director's business. However, where such a contractor was bidding, but had not been awarded the bid, nor had he entered into any contractual relations with the director's corporation for supplies, the director could participate in the variance hearing since the requirement of two elements, a successful bid followed by the contractor's selection of the corporation as its supplier, had elements of remoteness not otherwise present.

Another Case

The Water Board also had a member whose husband was employed as an engineer with a major construction firm. The FPPC held that even if the construction firm were to win contracts in the area (the likelihood being somewhat minimal since the construction firm had constructed only one project in the district in the past ten years), any benefit to the company would have no direct relation to the income of the engineer (and hence to the director, through her community property interest) since he was paid a straight salary. Accordingly, although the lifting of the moratorium might have a material financial effect on this director's source of income, such an

effect would not be reasonably foreseeable.

As shown by these two FPPC opinions, it may be extremely difficult for public officials to decide when they must disqualify themselves from participation in a decision because of conflicts of interest.

Further Clarification

Even if a decision has a "reasonably foreseeable material" effect on the public official's financial interest, its effect must still be "distinguishable from its effect on the public generally" to require disqualification. If the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public, no disqualification is required (Reg. 18703). Regulation 18703 specifically allows elected state officers such as the governor and legislators to vote on matters that affect their own industry, profession or trade and also allows members of advisory and regulatory boards (such as the agricultural marketing boards) which require participation by certain industry, trade or profession members to vote on matters affecting them.¹²

The FPPC's broad interpretation of this disqualification provision may cause problems for those attorneys (who may be included in definition of public official as "consultants") who advise public bodies in situations where the advice will result in more legal business for that law firm (proceeding with litigation, certifying the legality of a bond issue, etc.). A public agency may be required to retain a different law firm than the one recommending the course of action to be taken (Reg. 18700 (a)).

Unlike other provisions of the Act, the only remedy for violation of this conflict prohibition section is an injunction to set aside an official action as void.¹³ However,

ion No. 75-36, the mayor of the City of Carlsbad owned 500 shares of San Diego Gas and Electric Company common stock as well as an interest in the trust which owned another 10,000 shares. The direct ownership of the shares was worth more than \$1,000 as was the interest in the trust although the percentage of ownership in the company was minimal. The FPPC ruled that the mayor could neither vote nor chair a meeting dealing with the certification of an environmental impact report where a subsidiary of the company, as part of a joint venture with other corporations, had acquired 500 acres of property outside of the existing limits but within the jurisdiction of the City Council.

¹²After January 1, 1979, an industry, trade or profession as it relates to a specific commission will constitute the "public generally" only if the statute is specifically amended by the Legislature to so find (Reg. 18703).

¹³Sections 87102 and 91003. Official actions include orders, permits, resolutions and contracts, but do not include state legislation. The court is required to balance any injury that may be suffered by innocent persons who rely on official action.

any violation of a conflict of interest code adopted by a state or local agency as mandated by Proposition 9 which can also contain prohibition provisions can result in criminal and civil penalties, as discussed below.

Ironically the enforcement provisions of the Act have their own built-in conflict. The city attorney is included among the civil prosecutors under the Act, but in many cases is also the attorney who gives compliance advice to the city council and other board members.¹⁴

Disclosure by Public Officials

The second part of the Conflict of Interest Chapter, Disclosure, may create particular problems for lawyers, not only those who hold major elected offices, but also those who serve on local boards and commissions, because the disclosure rules in certain circumstances may require the disclosure of the names of clients. The statutory disclosure requirements under the Act are only applicable to elected state officers, members of board of supervisors, city managers, chief administrative officers of counties, mayors, chief administrative officers and members of city councils, and to candidates for any of these offices (Section 87200). However, the Act requires the adoption of conflict of interest codes which will require similar disclosure provisions for other public officials. Subject officials, including candidates for these offices, must disclose all relevant assets and, in addition, incumbents must annually disclose income, not only during office, but also upon leaving office (Section 87201 et. seq).

Assets to be disclosed are the person's "interests in real property" and "investments"

¹⁴Unlike the other enforcement provisions of the Act, a person seeking an injunction need not first notify the civil prosecutor although the court in its discretion may require the plaintiff to file a complaint with the FPPC. In addition to criminal penalties, Section 91005 (b) provides a civil remedy against any designated employee who realizes any economic benefit as a result of a violation of a disqualification provision of the Conflict of Interest Code in the amount of up to three times the value of the benefit. An individual may sue to recover this amount, but is subject to first requesting in writing that the civil prosecutor commence the action (See Section 91007). Only if the civil prosecutor, in this case a city attorney, fails to agree to bring the action within 40 days or fails to act within 40 days thereafter may the plaintiff proceed. The FPPC is considering endorsing legislation to remove the city attorney as civil prosecutor.

in excess of \$1,000 and with ties to the jurisdiction with which the official is connected (Sections 82033, 82034). Real property is deemed to be "within the jurisdiction" with respect to a local government agency if any part of the property is located not only within, but also not more than two miles outside, the boundaries of the jurisdiction or within two miles of any land owned or used by local government agencies (Section 82035). Some of the larger metropolitan cities own property far removed from their actual boundaries, and local government officials must be particularly sensitive to this question. Elected state officials must list any real property within the state. An interest in real property also includes leasehold interests or options to acquire an interest, and a pro rata share of any property of a business entity of trust in which the individual or spouse owns directly or indirectly or holds a beneficial interest of 10 per cent or greater (Section 82033).¹⁵

An investment in a business entity or any affiliate must be reported if the entity has an interest in real property in the jurisdiction, does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time each statement or other action is required under Proposition 9 (Section 82034). It may be difficult for a shareholder who has a relatively minimal interest (\$1,000) in a large corporation to know whether such a corporation is doing business or has done business within the jurisdiction. Accordingly, the probable effect of this section will be to require a listing of all such investments as the safer course of action.

In addition to the listing of investments, incumbents are required to file an income

¹⁵Under the disclosure provisions of the predecessor Moscone Act, an interest in a residence was not required to be disclosed but no such exclusion exists under the Act. However, although the nature and address of real property is required to be filed in the case of a residence, the filer need not make a statement as to the fair market value of such residence (Section 87206 (d)). In the newspaper account of a recent lawsuit against a local public official, the plaintiffs allegedly contended that the official should not have voted to accept the recommendation for a freeway route. The plaintiffs contended that the official was in a conflict position because her home was by the alternate (and nonrecommended) route for such freeway.

statement listing the name and address of each source of earned income aggregating \$250 or more in annual value, or gifts of \$25 or more in value, together with a general description of the business activity, if any, of each source and, disclose whether it was greater than \$1,000 or greater than \$10,000. The statement also requires a description of the consideration, if any, for which income was received, and in the case of a gift, the amount and the date on which the gift was received.¹⁶

However, the income statement probes further. Where the income of a business entity which includes a sole proprietorship is required to be reported, the statement must not only contain the name, address and general description of the business activity of such entity, but in the case of any business entity which provides legal or brokerage services the name of every person who paid fees to the business entity if the filer's pro rata share of the fees from such person is equal to or greater than \$1,000 in any year.¹⁷ For all other business entities the name of a client, patient or customer is disclosed only if the filer's pro rata

share is equal to or greater than \$10,000 for any calendar year.

Special Concern for Attorneys

Concern has arisen among many members of the bar as to whether such disclosure requirements not only violate rules with respect to privilege, but also infringe upon the statutory duty of attorneys under Business and Professional Code Section 6068 (c) to keep confidential the secrets of a client. One suit, *Hayes v. Wood*,¹⁸ has already challenged this provision. Although the number of lawyers who are elected officials covered by this mandatory disclosure section is relatively small (less than 10 per cent of the 2,323 elected officials are covered), the section would also affect any lawyer-spouse of an elected official, as well as the law firm of such an official if such official's interest met the minimum requirements of the statute. Similarly, the numbers of covered officials could increase if the conflict of interest codes adopt the same disclosure provisions.

To alleviate some of these concerns, the FPPC has proposed a regulation which would permit an application by an official for an exemption (i) if disclosure of the name of a client would result in divulging a confidential communication made to such official by a client in the course of employment, (ii) where disclosure of the name of a client would violate any statutorily recognized privilege, or (iii) where the reporting official has no knowledge of the names of clients and after exercise of reasonable diligence is unable to obtain them.¹⁹

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¹⁶Income does not include campaign contributions reportable under Chapter 4 of the Act, salary and reimbursement for expenses or per diem from the state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization; gifts of informational material such as books, pamphlets, reports, calendars or periodicals; gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization with no claim for a charitable deduction; gifts from relatives; inheritances; interests, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or insurance policy, certain payments under insurance policies or any bond or debt instrument issued by any government or government agency; and dividends, interest or other return in a security registered with the Securities and Exchange Commission of the United States (Section 82030). Officials must report the value of home entertainment, such as dinner with friends, if this is not reciprocated within the filing period (usually one year) (Reg. 18727).

¹⁷Section 87207 (b) (2). However, the income of an individual under the definition only includes a pro rata share of any income of a business entity which the individual or the individual spouse owns, directly, indirectly or beneficially, a 10 per cent interest or greater (Section 82030 (a)). Accordingly, an attorney-official with a partnership interest (or shareholdings in a professional corporation) of less than 10 per cent need not report the income from such business entity.

¹⁸*Hayes v. Wood*, Mendocino Superior Court No. 36319. Defendant Barry Wood is a Ukiah City Councilman and has a private law practice. In filing his disclosure statement he refused to divulge the names of any of his clients on the basis of confidentiality and privilege. The suit was brought by the Ukiah City Attorney, the Attorney General and the Fair Political Practices Commission. The FPPC has been denied standing to sue, however.

¹⁹See Proposed Regs. Section 18730 (a). Submitted by FPPC staff on August 6, 1975 but no action taken in 1975. The proposed section provides for a hearing after written application in which all evidence presented shall be of public record unless the FPPC (or a hearing officer appointed for this purpose) finds that executive session is necessary to allow the applicant to provide sufficient evidence to assure the proper findings are made. An applicant may choose to waive an appearance and proceed by a sworn affidavit or statement.

PROPOSITION 9

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However, the FPIC has not acted on this proposed regulation and whether the suggested procedure would solve the problems of privilege and confidential communication seems questionable. The attorney-client privilege belongs to the client and even a partial waiver for purposes of a hearing, without the client's consent, may be improper.

Such disclosure also raises a serious question of invasion of the right to privacy. The California Supreme Court, in *City of Carmel by the Sea v. Young*, (1970) 2 Cal. 3d 259, labeled a predecessor law with a similar provision requiring disclosure of the names of clients as an overly broad intrusion into the private financial affairs of a person seeking to hold public office. The provision covered every public officer and every candidate for state or local office. The Court specifically held that:

We are satisfied that the protection of one's personal financial affairs and those of his (or her) spouse and children against compulsory public disclosure is an aspect of the zone of privacy which is protected by the Fourth Amendment and which also falls within that penumbra of constitutional rights into which the government may not intrude absent a showing of compelling need and that the intrusion is not overly broad. (At page 268.)

In 1973 the Legislature enacted Government Code Section 3600 et seq., the *Moscone Conflict of Interest and Disclosure Act*, which was upheld in a subsequent case, *County of Nevada v. McMillan*, (1974) 11 Cal.3d. 668. The court distinguished *Carmel by the Sea* on the basis that the Moscone Act was limited to certain designated officials (similar to those listed in Section 87200 of the Act), that no interest need be disclosed which could not be affected materially by any action or failure to act or decision taken by such public official (an interest in real property within the jurisdiction or in a business entity, source of income or position of employment within the jurisdiction would be regarded as an interest which could be affected by the official in the scope of his official duties), and the term "source of income" in Moscone was specifi-

cally "clarified" by a 1974 amendment to mean the business entity or activity itself of the official which earned or produced the income, not the individual or entity who actually made payment to the public official's business or firm. The court found that these limitations met the constitutional standards set forth earlier in *Carmel by the Sea*.

Proposition 9 differs from the Moscone Act in two of the three particulars cited by the court: first, although reportable investments and interests in real property are limited to those within the jurisdiction, *sources of income* are not so limited; second, sources of income include the name of every person who paid fees over a certain amount to the business entity. Moreover, if conflict of interest codes adopted to cover the rest of public officialdom slavishly follow all of the requirements of the present Article 2, the Act will no longer really be limited to those officials designated in Article 2, the only remaining similarity with the Moscone Act.

The *McMillan* court in 1974 did not have to reach the question of the invasion of the right of privacy of a client who may not wish to disclose the fact that he or she is consulting a lawyer. Some cases have held that an official waives any right of privacy by entering the political arena, but whether clients of lawyers and brokers are less entitled to privacy than clients of other types of business, including doctors, raises a question not heretofore considered by the courts.²⁰ The singling out of

²⁰Although the Illinois Supreme Court in *Stein v. Howlett*, (1972) 52 Ill.2d 570, specifically upheld an Illinois statute similar to the Act against a challenge, among others, on the basis of invasion of the right of privacy, the Illinois Act does not require the disclosure of names of clients. However, a provision similar to the Act's was upheld in *Fritz v. Gorton*, (1974) 83 Wash.2d 275, on the basis that the right of the electorate to know is no less a fundamental right than the right of privacy, that a candidate who entered a public arena voluntarily presents himself as a subject of public interest and scrutiny, and this right of the people to be informed does not intrude upon personal matters as opposed to financial ones. The Washington court, however, did raise the question as to whether the required disclosure might impose an extraordinary burden on those who are engaged both in public service and the private business of their professions, and whose associates and immediate families are subject to disclosure. The court also questioned whether an unpredictable number of elected officials may resign and forego public service with a sad irony

client disclosure by lawyers or brokers at lower income limits than other businessmen raises equal protection questions as well.

One further consideration which was not before the court in earlier cases is the fact that the right of privacy has recently been added to the enumerated protected interests of Article I, Section 1 of the California Constitution. The *Hayes v. Wood* case may answer these questions if it reaches the California Supreme Court, and there are expected to be many other opinions issued by the FPPC to further clarify this very difficult area of conflict of interest.

Conflict of Interest Codes

The Act's only prescribed disclosure requirements for state, county and city elective officials and administrative officers of counties and cities have been described above. But, the Act also requires that each department of state and local government adopt a conflict of interest code for its policy making officials (Section 87300). These codes must be similar to the disclosure requirements mandated in the Act,²¹ and each must be approved by the reviewing body which is the city council for city departments, the board of supervisors

that the laudable purposes of the initiative might precipitate significant or widespread resignations from public office of many outstanding, honest and competent officials. See also *Montgomery County v. Walsh* (Court of Appeals of Maryland, 1975) 336 A.2d 97 upholding a Maryland ordinance on the basis that the right to privacy is limited to personal matters other than financial ones; but see *Burrows v. Superior Court*, (1974) 13 Cal.3d 238.

²¹The required scope of the disclosure provisions under conflict of interest codes is unclear. Section 87302(b) includes among the requirements the filing of annual statements by "designated" employees disclosing reportable investments, investments in real property and income. The code must set forth each position or category of positions, showing the specific types of investments, interest in real property and income which are reportable and the manner of reporting each item. An investment, interest in real property, income, or source of income must be made reportable under the code if the business entity in which the investment is held, the interest in real property, or the income or income source may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his position. The manner of reporting reportable items shall be substantially equivalent to the requirements for those under the mandatory disclosure requirements. It remains to be seen whether the foregoing means that the same depth of disclosure found in the statutory conflict sections will be required for codes. See discussion in text commencing at footnote 25 for possible constitutional problems.

for county departments, and the FPPC for state and other bodies (Section 87303). The League of California Cities and the County Supervisors Association have proposed a model code which in general has received the approval of the FPPC. The FPPC has also scheduled a set of deadlines in early 1976 for state and local bodies by which each must complete its code and present it to the reviewing body.²²

Expenditure Limits on Campaigns

As a result of Watergate and the surrounding scandals, the impetus for political reform is most marked in the area of campaign expenditures. Chapter 5, Expenditure Limitations, goes beyond disclosure and directly limits the amount of money which can be spent in certain campaigns. This chapter places a series of limitations on expenditures by statewide candidates, by circulators of statewide petitions, and by committees supporting or opposing state measures. The present vitality of these provisions is now in doubt because of the recent U.S. Supreme Court decision, *Buckley v. Valeo*, supra. The *Buckley* decision invalidates the limitations on expenditures by candidates, their campaigns, political parties, and by independent individuals and groups on behalf of candidates. Section 608(c) of the Federal Election Campaign Act of 1971, as amended in 1974, the section which places limitations on overall campaign expenditures by federal candidates and was declared unconstitutional by the Court, is similar to the provisions of Chapter 5 with respect to expenditures by statewide candidates. In reaching its decision in *Buckley*, the Court pointed out that the mere growth in the cost of federal election campaigns in and of itself provided no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns:

The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government but the people - individually as citizens and candidates and collectively as

²²FPPC Resolution adopted on February 3, 1976.

associations and political committees - who must retain control over the quantity and range of debate on public issues in a political campaign (At page 51-52 of slip opinion).

The decision of the *Buckley* Court should not be considered unusual in view of previous decisions that have almost uniformly declared unconstitutional limits placed on expenditures by political candidates.²³ As originally adopted, Proposition 9, which is also similar to certain of the legislation declared invalid by other state courts, stated that each statewide candidate, which includes the candidate's controlled committees, is limited in expenditures during the five months prior to an election to a basic amount multiplied by the voting age population and adjusted for cost of living.²⁴ Accordingly, the future of these provisions in the Act is very dim indeed.

Expenditure Limits On Statewide Petitions and Measures

Circulators of statewide petitions are limited to expenditures of \$.25 multiplied by

²³In *Abercrombie v. Burns*, (D.C.D. Hawaii, 1974) 377 F.Supp. 1400, the court voided limits on candidate's news media expenditures as being greater than necessary to promote the principle of equality of opportunity to participate in the political process, but upheld limitations on total campaign expenditures.

In *Bare v. Gorton*, (1974) 84 Wash.2d 380, the court declared unconstitutional campaign spending limitations for both candidates and ballot propositions as vague and a direct restraint on free speech. The court held that freedom of speech and the press involved more than the bare right to speak and publish.

In the most recent state court case, *Deray v. Myers*, Ore., 535 P.2d 541 (1975), the court struck down candidate campaign limits as not striking at the dangers of politically motivated burglary, spying, declamation, or other Watergate evils, but simply limiting the expenditure of money for communication purposes in a political campaign. See also *ACLU v. Jennings*, (D.C.D. 1973), 366 F.Supp. 841, vacated as moot sub nom. *States v. ACLU*, (1975) 95 S.Ct. 2646.

²⁴Section 85100. For a primary and general election for Governor, seven and nine cents, respectively, multiplied by the voting age population and for a primary or general election for any statewide elective office other than Governor, three cents multiplied by the voting age population. For a State Central Committee of a political party and its committees, one cent multiplied by the voting age population (Section 85102). The permitted amounts are reduced by 10 per cent for any incumbent seeking reelection to the same statewide office (Section 85101). Independent committees are limited to expenditures of \$10,000 unless they have been granted a higher ceiling by the FPPC.

the number of signatures required for qualification and adjusted for cost-of-living changes (Section 85201). Expenditures do not include unreimbursed expenses incurred by a circulator incidental to a circulation of the petition or expenditures for advertising or speech regarding the measure unless directly incidental to the circulation of the petition (Section 85200).²⁵

This limitation is under challenge by a committee which unsuccessfully attempted to qualify a tax limitation initiative in 1975 and claims that the failure was based on the expenditure limitation and the failure of the FPPC to adopt timely regulations.

The FPPC does not think that the *Buckley* decision or its predecessors apply to the qualification of ballot measures and that these provisions in the Act can be successfully defended. It argues that the Act's effect is to prevent paid circulators and to decrease the power of special money interests to put legislation on the ballot. To sustain this position, the FPPC must overcome the position of *Buckley* that the First Amendment prevents the restriction of the "speech of some elements in our society in order to enhance the relative voice of others. . ."²⁶ But on February 23,

²⁵Reg. 18550, which in its most recent amended form only limits expenditures of the proponents and of others distributing petitions in legally sufficient form. In addition to other remedies and penalties, a court can order the Secretary of State not to submit to the voters any measure where it is shown by clear and convincing evidence that such measure would not have qualified but for violation of the article (Section 85202).

²⁶In *Buckley v. Valeo*, "It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by §608 (c) (1)'s expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure 'the widest possible dissemination of information from diverse and antagonistic sources,' and 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *New York Times Co. v. Sullivan*, *supra*, at 266, 269, quoting *Associated Press v. United States*, 354 U.S., at 484. The First Amendment's protection against governmental abridgement of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. *Eastern R. Conf. v. Noerr Motors*, (1961) 365 U.S. 127, 139" (Slip opinion, p. 41). See also *Bare v. Gorton*, *supra*, at footnote 23.

1976, the Sacramento Superior Court ruled that limitations on expenditures prior to qualification are invalid, but controls on paid circulators could be valid (*Committee for a Two-Thirds Vote on Taxation v. Eu*, Sacramento Superior Court, No. 258866 (1976)).

Expenditure Formula

Once a statewide measure has qualified for the ballot, the Act imposed aggregate expenditure limits in support or opposition of such measure: (i) \$08 multiplied by the voting age population and adjusted for cost-of-living changes or (ii) \$500,000 plus the FPPC approved budgets on the opposite side of the issue, whichever was lower (Section 85303; Regs. 18580-90). Any committee which intended to make expenditures in excess of \$10,000 was required to file not later than twenty-eight days prior to the election for permission to spend more (Section 85302). The FPPC had developed a preallocation formula by regulations and was enforcing this provision (Reg. 18590).

Citizens for Jobs and Energy, a campaign committee opposing the Nuclear Power Plant Initiative (Proposition 15) on the June 1976 ballot, filed suit on December 8, 1975, in the California Supreme Court for a Writ of Mandate against the FPPC to vacate its regulations on ballot measure expenditure limitations and enjoin the FPPC from in any other way limiting ballot measure expenditures (*Citizens for Jobs & Energy v. FPPC*, ___ Cal. 3d ___ [Doc. #SF23391]). The Court granted a hearing and issued, on its own initiative, a stay order. On February 9, 1976, the FPPC agreed to the stay order in light of *Buckley* which had been decided on January 30, 1976.

ed the expenditure limitations including those on the candidate and such candidate's family,²⁷ it did uphold the public financing sec-

²⁷The Court pointed out that although the expenditure limitation on candidates and members of a candidate's family was unconstitutional, the contribution limitation of \$1000 set forth in Section 608 (b) (1) was valid:

Although the risk of improper influence is somewhat diminished in the case of large contri-

tions of the Federal Elections Campaign Act which require those candidates who accept such financing to limit their expenditures. The Court pointed out in Footnote 65 to its opinion that Congress may condition the acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations.

Accordingly, although the *Buckley* decision may have eliminated expenditure limitations, it has also left a means by which they can be reimposed, namely by acceptance of public funding. In addition, *Buckley* has upheld disclosure requirements for campaign contributions²⁸ and limits on campaign contributions,²⁹ the latter not presently covered under Proposition 9.

Fair Political Practices Commission

The breadth of authority delegated to the FPPC has been questioned by some, but the role of FPPC in implementing the Act may actually stave off constitutional challenges.³⁰

butions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors (Fit. 59 at p. 48 of slip opinion).

²⁸But it did not entirely foreclose, upon a proper showing, the protection of controversial organizations whose contributors might suffer threats of harassment (See pages 68-69 of slip opinion).

²⁹The 1974 Amendments limited both contributions and expenditures. The Court decided that a contributions ceiling did not limit the quantity of political expression (slip opinion, pp. 17-33). The Court defined money given by one person to another for the donee's expenditure, or the donor's direct expenditures with the consent or cooperation of the donee, as *campaign contribution*. But, if the expenditure is truly independent from the direction or cooperation of the beneficiary then it is a *campaign expenditure* and there are no limitations. Consequently, it is reasonable to expect that the reformers who placed Proposition 9 on the ballot will now attempt to impose contribution limitations for California statewide campaigns and ballot measure committees.

³⁰*California Bankers Association v. Younger*, Sacramento Superior Court, No. 252166, *Institute of Governmental Advocates v. Younger*, Los Angeles Superior Court No. C110057, and *Socialist Workers Party v. Pines*, Los Angeles Superior Court, No. C115029 have each challenged the Act. Each trial court has ruled against the plaintiffs. Under the Act, the FPPC has the primary responsibility for its administration and implementation. In furtherance of this, the FPPC may adopt, amend, and rescind rules and regulations in accordance with the Administrative Procedure Act, prescribe forms for reports, statements, notices and other documents, prepare and publish manuals and instructions and provide assistance to agencies and public officials in administering the title (Sections 83112, 83113).

In 1975 the FPPC adopted over thirty regulations in an effort to clarify admittedly ambiguous sections of the Act and has issued about fifty advisory opinions.¹¹ It has established detailed complaint procedures¹² and has joined in numerous lawsuits. The FPPC has also investigated a number of complaints, but to date has publicly only found violations and issued fines in connection with one legislative special election in December, 1975. Finally, the FPPC is proposing a number of clarifying and simplifying amendments to the Act after its year's experience.

Advisory opinions can be of particular

¹¹The Los Angeles Superior Court dealt a first blow to the FPPC by invalidating its advisory opinion that tried to define "arranging" for campaign contributions by a lobbyist to include merely his advising the client on campaign contributions. The court ruled that rendering such advice was constitutionally protected and enjoined the FPPC (*Institute of Governmental Advocates v. Younger, et al.*, Los Angeles Superior Court, (C110052, November 10, 1975). The Court of Appeals and the California Supreme Court each denied the FPPC's writ of mandate and the trial decision is now on appeal.

¹²Regs 18360 and 18362.

assistance to attorneys. Under Section 83114, no person who acts in good faith on an opinion issued to him by the Commission is subject to criminal or civil penalties for so acting.

Effect of Reform

In the approximately one and one-half years since its enactment the jury remains out on the scope and effect of the Act. The Act now shares with the so-called Tax Reform Act of 1969 the popular title of "Attorneys and Accountants Relief Act."

If many of the amendments to the Act proposed by the FPPC are enacted, this may change. But with or without legislative clarification and although its subject, political reform, has ostensibly been outside the general practice of most attorneys, more and more attorneys will find themselves and their clients caught up in its complexities. Whether the Act will, as its proponents contend, restore confidence in government, or whether it will, as some fear, drive good people from political participation, remains to be seen.

FOR FILING ADMINISTRATIVE REGULATIONS WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11350.1)

RECEIVED FOR FILING

MAR 25 1976

Office of Administrative Services

ENDORSED

APPROVED FOR FILING (Gov. Code 11380.1)

MAR 25 1976

Office of Administrative Services

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION (Agency)

Date of adoption, amendment, or repeal:

March 17, 1976

By: Daniel H. Lowenstein

Chairman

(Title)

RECORDED & FILED

In the office of the Secretary of State of the State of California

MAR 30 1976

At 2:30 o'clock P.M. MARGH FONG DU, Secretary of State

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ORDER ADOPTING REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, to implement, interpret or make specific Sections 87300, et. seq. of the Government Code, the Fair Political Practices Commission hereby adopts its regulation in Division VI, Title 2, California Administrative Code, as follows:

Adopt Section 18750

Chapter 7; Article 3: Conflicts of Interest Codes

18750. Procedures for Review of Conflict of Interest

Codes by the Fair Political Practices Commission

(a) The Fair Political Practices Commission shall establish by resolution a deadline for the submission of

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a proposed Conflict of Interest Code for each state agency, city council, county board of supervisors, or local government agency with jurisdiction in more than one county for which it is the "code reviewing body." Unless otherwise modified, the term "agency" as used in this Section shall refer to a state agency, city council, county board of supervisors, or local government agency with jurisdiction in more than one county. Each agency shall be notified of its deadline at least 60 days prior to the deadline established for that agency.

(b) After completion of its own hearing pursuant to Government Code Section 87311 and its tentative adoption of its Conflict of Interest Code, each agency shall submit an original and two copies of its proposed Code to the Fair Political Practices Commission by the established deadline.

(c) A proposed Conflict of Interest Code of an agency shall be deemed to be received for purposes of review pursuant to Government Code Section 87303 on or before the deadline date if submitted to the Fair Political Practices Commission earlier than the deadline date.

(d) The proposed Code shall satisfy the requirements of Government Code Section 87300, et seq. The Code

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shall be accompanied by:

(1) A declaration of the chief executive officer of the agency declaring that the agency has satisfied the notice and hearing requirements preliminary to formulation of the Code pursuant to Government Code Section 87311;

(2) A summary of the hearing held by the agency with appropriate identification of any areas of controversy and the manner of their resolution;

(3) The original or one copy of all written submissions made to the agency regarding the proposed Code, unless the person making the written submission requests its omission from the record of the agency hearing;

(4) In the case of state agencies and local government agencies with jurisdiction in more than one county, materials describing generally the reasons for the designations and the disclosure responsibilities of officers, employees, members or consultants of the agency; and

(5) The names and addresses of all persons who participated in the public hearing of the agency on the proposed Code or of all persons

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who, on or before the date of the agency hearing, requested notice from the agency of the date for hearing on the adoption of the Code by the Fair Political Practices Commission.

(e) Within 40 days of receipt of the proposed Code by the Fair Political Practices Commission pursuant to subsection (c) of this Section, the Executive Director or his or her designee shall:

(1) Notice the proposed Code for a hearing before the Fair Political Practices Commission to be held no later than the seventieth day following receipt of the Code pursuant to subsection (c) of this Section, or

(2) Return the proposed Code to the agency with written recommendations for revision. Any agency which objects to the recommendations for revision may request a full hearing pursuant to subsections (o)-(q) of this Section.

(f) Procedure for notice and content of notice of Commission review of a proposed Code is established by Government Code Sections 11423 and 11424.

(g) If the proposed Code is returned to the agency pursuant to Government Code Section 87303(c), a new deadline shall be established by the Fair Political Practices Commission upon a recommendation of the

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Executive Director or his or her designee. The revised deadline shall be no later than 60 days after the Code is returned to the agency.

(h) All persons wishing to comment on any provision of the proposed Code may submit in writing to the Fair Political Practices Commission a concise statement of their objections to the proposed Code at least 10 days prior to the hearing of the proposed Code.

(i) Upon the recommendation of the Executive Director or his or her designee, the proposed Code may be placed on the Fair Political Practices Commission Summary Code Review Calendar for Commission action pursuant to Government Code Section 87303, if no significant controversy exists with respect to the proposed Code.

(j) Any interested person or his or her duly authorized representative may request the removal of a proposed Code from the Summary Code Review Calendar and request the opportunity to be heard at a full hearing on the proposed Code before the Fair Political Practices Commission in accordance with subsections (o)-(q) of this Section by:

(1) Petitioning the Executive Director or his or her designee in writing, with a copy

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to the affected agency, for removal of the proposed Code from the Summary Code Review Calendar at least 10 days prior to the date noticed for Summary Hearing on the Code, or

(2) Appearing in person or through his or her duly authorized representative at the scheduled Summary Hearing on the proposed Code.

(k) A proposed Code will be removed from the Summary Code Review Calendar and scheduled for a full hearing upon the request of any Commissioner or of the Executive Director or his or her designee.

(l) If any Code placed on the Summary Code Review Calendar is approved by the Fair Political Practices Commission without amendment, it shall be signed as approved and returned to the agency. In the case of state agencies the Code, as approved by the Fair Political Practices Commission, shall be transmitted by the agency to the Office of Administrative Hearings, pursuant to Government Code § 11380. The agency shall either:

(1) Request that the Office of Administrative Hearings publish the Code in its entirety within the agency's Title of the California Administrative Code; or

(2) Request that the Office of Administrative Hearings print an appropriate reference to the agency's Code in its Title of the California Administrative Code.

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(A) Each agency's Code which is filed pursuant to subsection (l)(2), above, shall be maintained in the office of the chief executive officer of the agency, who shall make an appropriate number of copies of the Code available for public inspection and reproduction during regular business hours commencing the thirtieth day following the approval of the Code by the Fair Political Practices Commission. No conditions whatsoever shall be imposed upon persons desiring to inspect the Conflict of Interest Code of the agency, nor shall any information or identification be required from such person. Copies shall be provided at a charge not to exceed ten cents (\$0.10) per page.

(B) The Fair Political Practices Commission shall maintain copies of each agency Code for public inspection and copying at its offices at 1100 K Street, Sacramento, California.

(m) If a Code placed on the Summary Code Review Calendar is revised by the Fair Political Practices Commission and approved as revised, any person may, within thirty days, submit in writing to the Fair Political Practices Commission objections to the approval of the Code. If written objection is received, the Code shall be rescheduled for full hearing

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pursuant to subsections (o) - (q) of this section. If no written objection is received to the revision and approval of the Code under this paragraph, the Code shall be signed as revised and approved and returned to the agency and, in the case of state agencies, filed by the agency, as revised and approved, pursuant to subsection (l) (1) or (2), above.

(n) If a Code placed on the Summary Code Review Calendar is returned to the agency for revision and resubmission, it shall be resubmitted within sixty days.

(o) A proposed Code not placed on the Summary Code Review Calendar shall be reviewed at a full hearing. On the date and at the time and place designated in its notice pursuant to subsection (f) of this section, the Fair Political Practices Commission shall afford any agency or interested person or his or her duly authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing. Oral testimony shall be encouraged; however, oral statements may be limited at the discretion of the Chairman. The Fair Political Practices Commission shall consider all relevant matter presented to it during the public hearing, or appearing on the record of such hearing, prior to approving or revising and approving the proposed Code, or returning the proposed Code to the agency for revision.

(p) During any public hearing held pursuant to this regulation, the Fair Political Practices Commission or its duly authorized representative shall have authority to

FOR FILING ADMINISTRATIVE REGULATIONS
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(Pursuant to Government Code Section 11300.1)

administer oaths or affirmations, and may continue or postpone such hearing from time to time and at such place as it shall determine.

(q) After a full hearing as provided hereinabove, the Commission shall:

(1) Approve the proposed Code as submitted and return the Code to the agency for action consistent with the terms of paragraph (l) (1) or (2) above; or

(2) Revise the proposed Code and approve it as revised consistent with the terms of subsection (l) (1) or (2), above; or

(3) Return the proposed Code to the agency for revision and resubmission within sixty days.

* * * * *

This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING
JUL 23 1976
Office of Administrative Hearings

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

ENDORSED
FILED
In the office of the Secretary of State
of the State of California
JUL 23 1976
At 4:10 o'clock P.M.
MARION FONG EU, Secretary of State

ENDORSED
APPROVED FOR FILING
(Gov. Code 11360.2)
JUL 26 1976
Office of Administrative Hearings

FAIR POLITICAL PRACTICES COMMISSION
(Agency)

Date of adoption, amendment, or repeal:

July 8, 1976

By: *Daniel H. Lowenstein*

Chairman
(Title)

DO NOT WRITE IN THIS SPACE

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ORDER ADOPTING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, to implement, interpret or make specific Sections 87300, et seq. of the Government Code, the Fair Political Practices Commission hereby adopts its regulation in Division VI, Title 2, California Administrative Code, as follows:

Add 2 Cal. Adm. Code Section 18751

Chapter 7; Article 3: Conflict of Interest Codes

18751. Procedure for Requesting Exemption from Government

Code Section 87300, Requiring Adoption and Promul-

gation of a Conflict of Interest Code (87300, et seq.)

(a) An agency may submit a request to the Fair Political Practices Commission for exemption from the

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provisions of Government Code Section 87300 requiring adoption and promulgation of a Conflict of Interest Code. The term "agency" as used in this section means any state agency or local government agency with jurisdiction in more than one county.

(b) A request for exemption shall be approved by the Commission only if it finds:

(1) That if the agency requesting the exemption were to adopt a Conflict of Interest Code, there would be no "designated employees," within the meaning of Government Code Sections 82019 and 87302(a), subject to its provisions; or

(2) That the agency is, or soon will be, inoperative and nonfunctioning.

(c) A request for exemption under subsection (b) (1) shall be signed by the chief executive officer or a legal representative of the agency and shall be accompanied by:

(1) A list of every position in the agency, including each officer, employee, member and consultant with the agency;

(2) A copy of the job description for each position listed in subsection (1) above;

(3) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;

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(Pursuant to Government Code Section 11380.1)

(4) Identification of the person or body to whom the agency reports;

(5) A copy of the last annual or regular report submitted by the agency to the person or body to whom the agency reports;

(6) A detailed justification of the request for exemption including an explanation of why none of the positions listed in subsection (1) above, are designated employees. In preparing this justification, particular note should be taken of Government Code Section 82019.

(d) A request for exemption under subsection (b) (2) shall be signed by the chief executive officer or a legal representative of the agency and shall be accompanied by:

(1) A copy of the statutory or legal authority under which the agency ceased, or soon will cease, to operate or function;

(2) The date, time and place of the last meeting of the agency;

(3) Identification of the positions and names of any staff who continue to work for or represent the agency, whether salaried or unsalaried; and

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(4) A detailed explanation of the reasons the agency is, or soon will be, inoperative and nonfunctioning.

(e) An original and two copies of the request for exemption with attachments shall be submitted to the Commission.

(f) Within 90 days after receiving the request for exemption, the Commission shall:

(1) Approve the request;

(2) Deny the request; or

(3) Return the request for additional information and resubmission within 60 days. Upon resubmission, the Commission shall, within 60 days, either approve the request for exemption or deny the request.

(g) When a request for exemption is approved, the Commission shall issue an exemption letter and transmit it to the requesting agency.

(h) When a request for exemption is denied, the Commission shall issue a letter denying the request for exemption, transmit it to the requesting agency, and establish a new deadline by which the agency requesting the exemption shall submit a proposed Conflict of Interest Code to the Commission.

(i) In considering a request for exemption, unless otherwise provided herein, the Fair Political

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(Pursuant to Government Code Section 11380.1)

Practices Commission shall be governed by the provisions
of 2 Cal. Adm. Code Section 18750.

* * * * *

This regulation will not create any new or increased
costs to local government pursuant to Section 2231 of the
Revenue and Taxation Code.

We are asked whether these facts disqualify Mr. Whatley from participating in the decision to adopt the redevelopment plan under Government Code Section 87100.^{1/}

CONCLUSION

Based on the facts we have been provided, taken as a whole, Mr. Whatley should be disqualified from participating in the decision to adopt the redevelopment plan.

ANALYSIS

I

Before turning to the merits of the question presented, we must consider the threshold question whether we have jurisdiction to issue an opinion in this matter. The question on the merits arises under Sections 87100, et seq., the conflict of interest provision of the Act. Unlike other portions of the Act, violation of the conflict of interest provision does not subject the violator personally to criminal or civil penalties; the sole remedies for violations are injunctions and orders setting aside the official actions taken in violation of the Act. Sections 87102, 91003.

The authority of the Commission to issue formal opinions is contained in Section 83114, which provides as follows:

Any person may request the Commission to issue an opinion with respect to his duties under this title. The Commission shall, within fourteen days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The Commission's opinions shall be public records and may from time to time be published.

(Emphasis added.)

^{1/}All statutory references are to the Government Code unless otherwise noted.

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On the assumption that a violation of Sections 87100, et seq., gives rise to no criminal or civil penalties under the Act,^{2/} it might be argued that the Commission's opinion will have no effect and is therefore not authorized by Section 83114.

Such a conclusion is not dictated by the language of Section 83114. The section provides that "any person" may request an opinion respecting his duties under the Act. The immunity conferred by a Commission opinion is set forth in a separate sentence. There is nothing in the section suggesting that opinions can be issued only when immunity is conferred. The argument against the Commission's jurisdiction assumes that immunity is the only reason for the Commission's opinions. In fact, immunity is but one of several purposes. Commission opinions provide a valuable service to persons seeking them irrespective of immunity. It may be presumed that most persons at most times would wish to comply with the law, even in the absence of any sanction whatsoever. That is all the more the case when an injunction or order setting aside an official action is a possibility. Even if the Commission's opinion does not provide immunity against such remedies, the opinion is an administrative interpretation that would be given some weight by the courts, and the mere existence of the opinion would probably tend to discourage the seeking of such remedies. Equally important, the issuance of opinions is an essential tool for the Commission in carrying out its responsibility for the "impartial, effective administration and interpretation" of the Act under Section 83111.

For the foregoing reasons, we conclude that the Commission has jurisdiction to issue opinions under Section 83114 interpreting Sections 87100, et seq.^{3/} We turn to the merits of the question presented.

^{2/} It is not necessary for us to consider, and we intimate no views as to whether the setting aside of an official action under Section 91003(b) constitutes a "civil penalty," against which a person who relies in good faith on our opinion is immune. If this question were answered in the affirmative, then the jurisdiction of the Commission to issue opinions interpreting Sections 87100, et seq., would be beyond question.

^{3/} The fact that the Commission has such jurisdiction does not, of course, require the Commission to exercise its jurisdiction in all cases. In the present opinion, for example, we set forth conclusions regarding the effect of the Act on redevelopment programs. Most cities and counties have available the able services of city attorneys or county counsel, and ordinarily these local officials are best equipped to evaluate the local
(Continued on Page Four)

II

Redevelopment has been authorized by California law since 1945.^{4/} The purpose of the statutes is to protect and promote sound development and redevelopment of blighted areas. The benefits from redevelopment are found to accrue to all inhabitants and property owners of the communities in which they exist. See Health and Safety Code Sections 33035 and 33037.

A redevelopment agency becomes empowered to transact business when a resolution is adopted by the legislative body of the community. Members may be appointed to the agency or the legislative body itself may choose to be the agency. In order to designate an area for redevelopment it is necessary first that the community have a planning commission and that it have a general plan which fulfills the requirements of the State Planning Act. The planning commission selects a "project area" which is an area of the community which is blighted. A project area may include lands, buildings or improvements which are not so blighted as to be detrimental to public health, safety or welfare but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part.

If a substantial number of low and moderate income families are to be displaced by the redevelopment project, a representative project area committee must be appointed, including residential owner-occupants, residential tenants, businessmen and members of existing organizations within the project area.

A redevelopment plan must be prepared by the agency and submitted to the planning commission for its report and recommendation. If a project area committee exists, the plan must be submitted to that committee. The agency must hold a public hearing before it approves the redevelopment plan. The agency then submits the plan to the legislative body which also holds a public hearing after which it may adopt, by ordinance, the official redevelopment plan for the project area. The agency and the legislative body, with the consent of both, may hold a joint public hearing on this

^{3/} (continued) realities and practical impact of a proposed plan. Although such local rulings lack the uniformity that would result if the Commission decided all cases, factual analysis of each redevelopment situation would be beyond the capabilities of the Commission and its staff, particularly at this early stage of the Commission's existence.

^{4/} The Community Redevelopment Law is found in Health and Safety Code, Division 24, Part 1, Sections 33000, et seq.

plan. Where the legislative body is also the agency, action to approve and adopt the plan need be taken only by the legislative body.

After the adoption of the plan, participation in the redevelopment of property in the project area by the owners of all or part of such property is encouraged. The agency has authority to acquire by negotiation or other means, real property in the project area. If members or officers of the agency own property, this property may be acquired only by eminent domain proceedings. Feasible methods for relocation of displaced persons are required. Real property acquired by the agency in any project area may be leased or sold. Such sale or lease must be approved by the legislative body by resolution adopted after public hearing.

At any time, the redevelopment plan may be amended after a public hearing. Limitations are placed on legal actions attacking the validity of the redevelopment plan to the period 60 days after the adoption of the ordinance.

The financing method used by redevelopment agencies is based upon the assumption that the assessed value of the property in the redevelopment area will increase. The taxes imposed by all taxing jurisdictions in the area will be limited to that assessed value existing at the effective date of the ordinance adopting the plan. The portion of levied taxes each year in excess of that amount is allocated to the agency. This means the agency is not limited to the taxing rate of the city but includes the revenues raised by all taxing jurisdictions, including school districts and other special districts. This revenue is normally pledged to pay principal and interest on indebtedness incurred by the agency.

The redevelopment procedure involves numerous decisions by public officials, whether agency members or legislative body members. These include the original adoption of the redevelopment plan, any later amendment to the plan, and decisions regarding sale or lease of property within the project area.

III

The basic conflict of interest restriction of the Political Reform Act is set forth in Sections 87100 and 87101 which provide as follows:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, ...aggregating two hundred fifty dollars (\$250) or more in value...; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103.

The Community Redevelopment Law contains its own provision with respect to conflict of interest. No restriction is imposed on the ownership of property within the redevelopment area by an officer or an employee of the agency. Such an interest must be disclosed, and therefore by implication it is permitted. In addition, if the agency desires to acquire any interest of an officer or employee, it must be acquired by eminent domain.^{5/} There is no provision regarding a member's business interest which will be affected by the project.

^{5/} No agency or community officer or employee who in the course of his duties is required to participate in the formulation of or to approve plans or policies for the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in such property, he shall immediately make a written disclosure of it to the agency and the legislative body which shall be entered on their minutes. Failure to so disclose constitutes misconduct in office.

IV

The facts which have been provided to us ^{5/} suggest two types of economic interests which might be held to disqualify Mr. Whatley from participating in a decision to adopt the proposed redevelopment plan: First, his ownership of three lots within the

5/ (continued)

This section shall not prohibit any such officer or employee from acquiring an interest in property within the project area for the purpose of participating as an owner or re-entering into business pursuant to this part provided that such officer or employee has owned a substantially equal interest as that being acquired for the three years immediately preceding the selection of the project area.

Health and Safety Code Section 33130

Notwithstanding any other provisions of law, an officer, employee, consultant, or agent of the agency or community, for personal residential use, may purchase or lease property within a project area after the agency has certified that the improvements to be constructed or the work to be done on the property to be purchased or leased have been completed, or has certified that no improvements need to be constructed or that no work needs to be done on the property. Any such officer or employee who purchases or leases such property shall immediately make a written disclosure to the agency and the legislative body, which disclosure shall be entered on the minutes of the agency. Any such officer or employee shall thereafter be disqualified from voting on any matters directly affecting such a purchase, lease, or residency. Failure to so disclose constitutes misconduct in office.

Health and Safety Code Section 33130.5

An agency shall not acquire from any of its members or officers any property or interest in property except through eminent domain proceedings.

Health and Safety Code Section 33393

6/Facts have been provided to the Commission in writing by officials of the City of Antioch, and in testimony before the Commission by Mr. Whatley and by the City Attorney Gerald Sperry. The Commission does not act as a finder of fact when it issues legal opinions. Our opinion is applicable only to the extent that the facts provided to us are correct and that all of the material facts have been provided.

redevelopment area, one as the headquarters for his own business and two as investments;^{1/} and second, his business as a real estate broker active in the redevelopment area. We have been urged by several witnesses who testified at our hearings in this matter to conclude that one or the other of these types of interest should constitute a per se disqualification from voting to adopt a redevelopment plan. We decline to adopt such a per se rule, because we believe the present case does not require such a rule, and adoption of rules of such wide-ranging scope should, if appropriate at all, follow a more comprehensive consideration of the problem than the Commission has yet undertaken.^{2/}

A rule that ownership of any real property for business or investment purposes within the redevelopment area constituted automatic grounds for disqualification would conflict with the Community Redevelopment Law which, as has been shown, impliedly permits property ownership within the area. If there is a conflict between that law and the Political Reform Act, it must, of course, be resolved in favor of the Political Reform Act. A later statute prevails over an earlier one, Coker v. Superior Court, 70 C.A.2d 199 (1945), and the Political Reform Act expressly provides that it will prevail over conflicting enactments of the Legislature. Section 81013. Nevertheless, correct principles of statutory construction require that if reasonably possible the statutes should be read harmoniously to avoid a conflict and to give meaning to both statutes.

The repugnancy between two statutes should be very clear to warrant a court holding that the later in time repeals the other when it does not in terms purport to do so. This rule has peculiar force in case of laws of special application which are never to be deemed repealed by general legislation except upon the most unequivocal manifestation of intent to that effect.

City of Los Angeles v. Leland,
11 C.A. 302, 305-6 (1909)

^{1/}Mr. Whatley also owns two lots as investments which are outside but within a few blocks of the boundaries of the redevelopment area, and which might be affected by the redevelopment project.

^{2/}A Conflict of Interest Division within the staff of the Commission will be established and operational by mid-August, 1975, and will be expected to develop expertise in such matters. The Commission has instructed its staff to give comprehensive consideration to the application of Sections 87100 and 87103 to redevelopment agencies and suggest regulations to the Commission if it appears that adoption of such regulations would be helpful and appropriate.

redevelopment area, one as the headquarters for his own business and two as investments;^{7/} and second, his business as a real estate broker active in the redevelopment area. We have been urged by several witnesses who testified at our hearings in this matter to conclude that one or the other of these types of interest should constitute a per se disqualification from voting to adopt a redevelopment plan. We decline to adopt such a per se rule, because we believe the present case does not require such a rule, and adoption of rules of such wide-ranging scope should, if appropriate at all, follow a more comprehensive consideration of the problem than the Commission has yet undertaken.^{8/}

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Where possible, all parts of a statute should be read together and construed to achieve harmony between seemingly conflicting provisions rather than holding that there is an irreconcilable inconsistency.

Code of Civil Procedure, Section 1858; Nemyss v. Superior Court, 38 Cal.2d 616, 621 (1952); In Re Marriage of Walton, 28 C.A.3d, 108, 117 (1972).

No specific provision of the Political Reform Act directly prohibits ownership of property for business or investment purposes within the project area by an official who votes to adopt the redevelopment plan. Resolving the Antioch question does not require us to determine whether the general language of Sections 87100 and 87103 dictates such a result, notwithstanding the contrary provisions of the Community Redevelopment Law. Nor does a resolution of the Antioch question require us to determine whether a real estate broker who practices in the redevelopment area is automatically precluded from participating in the adoption of the redevelopment plan. We believe that the ownership of several lots in and around the redevelopment area for business or investment purposes and the real estate brokerage each raise significant questions under the Political Reform Act, and the cumulative effects on both types of economic interests which are reasonably foreseeable are sufficient under the circumstances present here to require disqualification under Section 87100.

Judicial guidance to the interpretation of conflict of interest language similar to that of the Political Reform Act is as yet limited to the case County of Nevada v. MacMillen, which considered parallel language in the Moscone Governmental Conflict of Interests Act, 11 Cal.3d 662 (1974):

A "substantial" conflict or a "material" effect upon economic interests is a conflict or effect which could undermine the foregoing goal [an independent, impartial and honest government] by providing an economic incentive for deciding a particular official matter without regard to its merits, or with regard to its effect upon the official's pocketbook.

Id. at 673-74.

Mr. Whatley's real estate business is the type of financial interest contemplated by Section 87100, because it falls within

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each of the paragraphs of Section 87103. He has an investment worth more than \$1,000 in the business; he owns real property above the specified value; his business is a source of income above \$250; and it is a business in which he holds a position of management.

The proposed redevelopment plan will have a foreseeable material financial effect on the Councilman's real estate business. Such a business earns its income from commissions normally based on a percentage of the value of property. When property value increases, the amount of the commission increases.

One of the major goals of a redevelopment plan is increasing property values, in particular within the project area and less directly within the entire community. In redeveloping the blighted areas of the community, all property becomes more valuable, particularly that which has been redeveloped. With regard to the specific plan under consideration in Antioch, the creation of a new civic center will undoubtedly increase the value of property located nearby.^{9/} Improved freeway access will raise the value of the property in the vicinity of the new off-ramp. The widened highway presumably provides a benefit to surrounding property. Street improvements have an obvious and immediate impact on the property in the assessment area. Finally, the preparation of a plan for commercial and industrial sites will, to the extent it is successful, affect property values to various extents throughout the city.

All the parts of the proposed plan before us will result in increased property values. That is the plan's contemplated and proper purpose. The eventual sale or lease transactions involving any properties within or outside the area will result in increased commissions, proportional to the increased values, to Mr. Whatley. There is also a likelihood that the increased attractions added to the downtown area and the upgrading of other neighborhoods by new access and street improvements will result in greater numbers of property transactions. Both these possibilities constitute a reasonably foreseeable material financial effect on Councilman Whatley's real estate business, since both the size and the number of commissions generated by real estate sales in the area are likely to increase. In addition, if the redevelopment plan is adopted, it is possible that Mr. Whatley's official position on the Redevelopment Agency would make available to him inside information which could result in a financial benefit to his real estate business. Even if he did not, as we presume he would not, use confidential information gained from his official activities for private business purposes, potential customers might believe

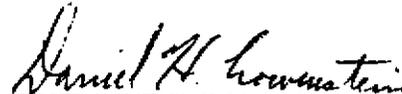
^{9/}The site at present is an abandoned lumber shed.

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he would be privy to such information and thus more effective as a real estate agent.

Without deciding whether these foreseeable effects on Mr. Whatley's real estate business would be sufficient by themselves to require disqualification, we believe they are sufficient when considered in conjunction with Mr. Whatley's ownership of several properties in or near the area.^{10/} A general increase in property values in the area because of the project would have a direct and immediate effect on Mr. Whatley's ownership interest in these properties. We are of the opinion that the decision whether to adopt or reject the redevelopment plan is one that will, foreseeably, have a reasonably material financial effect, distinguishable from its effect on the public generally, on the business and real estate investment of Mr. Whatley, and therefore is a decision in which he may not participate.

Approved by the Commission on July 2, 1975. Concurring: Brosnahan, Carpenter, Lowenstein and Miller. Commissioner Waters was absent.


Daniel H. Lowenstein
Chairman

^{10/} Mr. Whatley's properties are held for business or investment purposes. If the property were held for residential purposes the questions raised under the Political Reform Act would, arguably, be less severe.

EXHIBIT IV

1 PFPD OPINIONS 198

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
Opinion requested by)	No. 75-089
Tom Thorner, on behalf of)	December 4, 1975
the Board of Directors,)	
Marin Municipal Water District)	

BY THE COMMISSION: We have been asked the following questions by Tom Thorner on behalf of Directors Jack MacPhail and Pamela Lloyd of the Board of Directors of the Marin Municipal Water District (hereinafter "MMWD"):

(1) May directors of a municipal water district holding interests in business entities which may be affected by the district's decision in response to requests for variances from a moratorium on new water connections participate, under the circumstances described below, in the decisions on those requests?

(2) May these same directors participate in discussions of the Board of Directors on the feasibility of lifting the moratorium, or vote on the lifting of the moratorium?

The relevant facts, as set forth in Mr. Thorner's opinion request, are as follows:

The Marin Municipal Water District is a municipal water district with a governing board of five directors. It presently has an existing moratorium on new water connections. The Board of Directors is required, from time to time, to hear and to rule on two different types of requests for variances from the moratorium:

- (a) Requests for new water connections;
- (b) Requests for extensions of the certificate of occupancy deadlines for grand-fathered services subject to buildout deadlines, but otherwise exempt from the moratorium.

The Board also hopes to begin discussions in the near future on when, how and on what basis the moratorium can be lifted,

which discussions are expected to lead eventually to a vote on whether the moratorium should be lifted and, if so, when.

Director Jack MacPhail is the executive vice-president, a salaried employee and a minority stockholder of McPhail's, Inc., a closely held family corporation. He and his family control 50 percent of the outstanding stock in the corporation.

McPhail's does business almost entirely within Sonoma and Marin Counties, and does over half of its business within the MWD. It has gross sales of between \$5,000,000 and \$10,000,000 annually, and earns an annual after-tax profit of less than two percent on sales. The business of McPhail's consists of: (a) the sale of ready-mix concrete and building materials, such as bulk aggregates, rebar steel, cast patio materials, decorator rock, and sacked materials (sand, cement, lime, concrete mix, vermiculite, etc.), both to contractors and at retail; (b) the sale of major appliances, such as washers, dryers, dish-washers, stoves, refrigerators, television sets, etc., both to builder-jobbers and at retail; (c) the sale of fuels, propane, heating oil and road oil, principally at retail; and (d) the sale of heating, air conditioning and sheet metal products, both at wholesale and at retail.

McPhail's has numerous competitors in all of these areas, except ready-mix concrete, where it has only three major competitors. Its estimated relative market share within the MWD of the foregoing products is: ready-mix concrete -- less than 33-1/3 percent; building materials -- less than 25 percent; major appliances -- less than 20 percent; fuels -- over 50 percent of bottled gas, but less than two percent of the total market since most homes are served natural gas by Pacific Gas and Electric; heating, air conditioning and sheet metal products -- less than five percent.

Whenever an applicant for water for any project comes before the Board of Directors of the MWD, Mr. MacPhail may be facing one of the following situations:

- (a) McPhail's has no known connection with the project, but may later bid on or supply to the project ready-mix, building materials, appliances and/or fuel;
- (b) McPhail's is preparing or has made a bid to supply one or more of its products, but no award has been made;
- (c) A contractor, who is a regular customer of McPhail's and who normally buys principally

or only from McPhail's, is preparing to bid or has bid on the project and, if awarded the contract, probably will purchase some of McPhail's products for the job;

- (d) The type of contractor described in (c) already has been awarded the contract but has not yet purchased or agreed to purchase any of McPhail's products for the project;
- (e) McPhail's is supplying some of its products to the project, but the dollar value of the products supplied compared to McPhail's total sales may be small.

Mr. Thorner also has indicated that the MMWD is almost totally residential and that "probably 95% of these applications for variances are for single-family homes and most of the rest are for apartments." (Hearings before the Fair Political Practices Commission, October 2, 1975, transcript at p. 142.)

On the moratorium question, a vote to lift the moratorium would probably increase building activity within the MMWD and, therefore, would result in a substantial economic benefit to McPhail's. However, there will be no foreseeable special benefit to McPhail's in relation to its competitors.

Director Lloyd's husband is employed by Dinwiddie Construction Company as a project engineer. Dinwiddie is a private, closely held corporation specializing in the construction of large commercial structures (\$1,000,000 and up) in the San Francisco Bay area and the Los Angeles Metropolitan area. Its gross volume runs between \$40,000,000 and \$80,000,000 yearly and it has been consistently profitable.

At the present time, Dinwiddie is completing construction of the Fireman's Fund Building, the largest building within the MMWD. Dinwiddie obtained this job by virtue of its low bid in competitive bidding. Dinwiddie's only other jobs within the MMWD were about ten years ago, when it built an Emporium Department Store and a Crocker Bank Building in San Rafael. In both cases, the clients were regular customers of Dinwiddie and the contracts were negotiated. The Fireman's Fund Building has water service, will not need a variance from the moratorium on new water connections, and its construction will not be affected by any action of the MMWD relative to continuing or lifting the moratorium. Moreover, Dinwiddie is neither preparing to bid on nor negotiating for, any contract for any construction within the MMWD, nor is it aware of any proposed project within the MMWD on which it contemplates bidding or negotiating. It is, of course, possible that in the future Dinwiddie may wish to bid on or negotiate for a contract for construction within the MMWD.

Director Lloyd's husband is assigned as project engineer on the construction of the Bank of America Data Center in San Francisco (which is not within the MMWD) and expects to be employed in that capacity at that site until 1978. He is paid on a straight salary basis and would not receive any additional compensation if Dinwiddie were to obtain a new contract within the MMWD.

CONCLUSION

(1) Directors of a municipal water district holding significant interests in business entities which may be affected by the district's decisions on requests for variances from a moratorium on new water connections may not participate in the decisions on those requests when the decisions will have a reasonably foreseeable material financial effect on the business entities in which the directors hold significant interests. Government Code Section 87100.

(2) Directors of a municipal water district who have significant interests in business entities which may be affected by a decision lifting a moratorium on new water connections may not participate in discussions of the Board of Directors on the feasibility of lifting the moratorium, nor vote on the lifting of the moratorium, when the decision to lift the moratorium will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the business entities in which the directors hold significant interests. Government Code Section 87100.

ANALYSIS

We consider first the question of Director MacPhail's participation on requests for variances in the situations described in examples (a) through (e), *supra*, at pp. 2-3. The pertinent sections of the Political Reform Act provide:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Government Code Section 87100.^{1/}

^{1/} All statutory references are to the Government Code unless otherwise noted.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103
(Emphasis added).

Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably foreseeable that the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

There can be no doubt but that Director MacPhail has a financial interest in McPhail's, Inc., within the meaning of Section 87103, since it is a business entity in which he has a direct investment worth more than \$1,000 and it also is a source of income of more than \$250 per year. Nor can there be any serious doubt that if McPhail's, Inc. becomes a supplier to any project which is made possible by the granting of a variance, the effect of the variance on McPhail's, Inc. will be distinguishable from the effect on the public generally. Although there may be many suppliers to a particular building project, they cannot constitute a large enough group to qualify as the "public generally," or even a significant segment of the public generally. Accordingly, the only elements in question with respect to Director MacPhail's participation in variance decisions are foreseeability and materiality. In any instance in which these two elements are present to the extent required by the Act, Director MacPhail must disqualify himself from participation in the decision.

We may quickly dispose of the element of materiality. In examples (a) through (d), we are given no information about the quantity of business which will accrue to McPhail's, but only information related to the likelihood that McPhail's will receive some business. These examples clearly are intended to elicit our interpretation of the element of foreseeability and we assume, in the discussion that follows, that the amount of business that McPhail's, Inc. may or may not receive is "material."

Example (e), on the other hand, appears to be directed at the element of materiality rather than foreseeability. McPhail's, Inc. certainly will receive business, conditional upon the granting of the variance, under the circumstances posited in example (e), but the total sales "may not be such as to have a 'material economic effect' on McPhail's, depending upon how that phrase is interpreted." Since, however, we have not been provided with facts upon which we could base a judgment regarding the element of materiality, we decline to address this issue in this opinion.

We turn, therefore, to the question of foreseeability in the specific context of Director MacPhail's participation in decisions on variances under the circumstances described in examples (a) through (d). We begin with consideration of the pertinent case law.

In the Dixon-Yates case, United States v. Mississippi Valley Generating Company, 364 U.S. 520 (1961), the Supreme Court voided a government contract because of the conflict of interest of an unpaid, intermittent, federal financial consultant who participated in the negotiations concerning the contract's provisions. Although the penal statute under which the contract was voided did not specifically require a finding of foreseeability,^{2/} the Court construed the statute as if the concept were specifically included within the statutory language.

^{2/}
18 U.S.C. § 434, repealed Sec. 4, Pub. L. 87-849, October 23, 1962, 76 Stat. 1119, 18 U.S.C. § 201 (1969) provided:

INTERESTED PERSONS ACTING AS GOVERNMENT AGENTS
Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint-stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States for the transaction of business with such business entity, shall be fined not more than \$2,000 or imprisoned not more than two years, or both.

The financial consultant in question, Adolphe H. Wenzell, participated intimately on behalf of the federal government in negotiations leading to an agreement between various corporations to sponsor an electric power project which would provide electricity to the Atomic Energy Commission. Soon after Wenzell terminated his consultantship, a bank of which he was an officer contracted to finance the project. The Court described the foreseeable benefit or interest to Wenzell's bank, occasioned by his participation in the negotiations for the establishment of the project, in the following terms:

... Wenzell was an officer and executive of the First Boston; he not only shared in the profits which First Boston made during the year, but he also received a bonus for any business which he brought to the firm; if a contract between the Government and the sponsors was ultimately agreed upon, there was a substantial probability that, because of its prior experience in the area of private power financing, First Boston would be hired to secure the financing for the proposed Memphis project; if First Boston did receive the contract, it might not only profit directly from that contract, but it would also achieve great prestige and would thereby be likely to receive other business of the same kind in the future; therefore, Wenzell, as an officer and profit-sharer of First Boston, could expect to benefit from any agreement that might be made between the Government and the sponsors.

United States v. Mississippi Valley
Generating Company, 364 U.S. 520,
555 (1961)
(Emphasis added).

In response to Mr. Wenzell's argument that he could not be expected to benefit from the contract because there was no formal contract or understanding between his bank and the sponsors of the project with respect to financing the project should the sponsors enter into an agreement with the Government, the Court reasoned that:

... we do not think that the absence of such a formal agreement or understanding is determinative. The question is not whether Wenzell was certain to benefit from the contract, but whether the likelihood that he

might benefit was so great that he would be subject to those temptations which the statute seeks to avoid.^{3/}

Id. at 560 (Emphasis added).

Similar reasoning has supported a finding of foreseeable financial consequences of official action in several California conflict of interest cases.^{4/} These cases also make it clear that the question of whether financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made must always depend on the facts of each particular case.

Against this background, we turn to the consideration of the reasonably foreseeable financial consequences of Director MacPhail's participation in examples (a) through (d). Each example presents a situation in which the district's decision on whether to grant a variance will permit a particular building to be constructed.

In example (a), Director MacPhail has no known connection with the project, although McPhail's, Inc. later may bid on or supply to the project certain materials. On these facts alone, we cannot find a reasonably foreseeable financial effect on McPhail's. McPhail's has numerous competitors in each product it sells, except ready-mix concrete (for which there are three major competitors). The situation is unlike that of United States v. Mississippi Valley Generating Company, *supra*, where "there was a substantial probability that, because of its

^{3/} Justice Harlan, dissenting in Mississippi Valley, *supra*, reasoned that the "probability" of First Boston's sharing in the venture because of its reputation, derived from the financing of similar projects, was not enough to produce in Wenzell a prohibited interest in the negotiations.

Whether or not a prohibited interest exists must be determined as of the period during which an individual is acting for the Government. And when the asserted interest arises "indirectly" by way of a subcontract, its existence can, in my opinion, only be found in some commitment, arrangement, or understanding obtaining at that time between the prime contractor and subcontractor.

364 U.S. at 569. Accord, Escondido Lumber Co. v. Baldwin, 2 Cal.App. 606 (1906).

^{4/} See People v. Deysher, 2 Cal.2d 141 (1934); People v. Darby, 114 Cal.App.2d 412 (1952); Stockton Plumbing and Supply Co. v. Wheeler, 68 Cal.App. 592 (1924).

prior experience in the area of private power financing, First Boston would be hired to secure the financing...." 364 U.S. at 555. Therefore, a material financial effect upon McPhail's, Inc. is not reasonably foreseeable and Director MacPhail's participation in the decision whether to grant a variance is not prohibited.

In example (b), McPhail's is preparing or has made a bid to supply one or more of its products, but no award has yet been made. It is possible, of course, that there could be special circumstances present which would indicate that there is only a remote likelihood of McPhail's being awarded a supply contract. For example, McPhail's might have a reason for making a bid even though it is clear the contract will be awarded elsewhere. Under such circumstances, no financial effect on McPhail's would be reasonably foreseeable and Director MacPhail would not be disqualified from participation in the variance decision.

As a general rule, however, when the bid is made with a serious hope that the contract will be awarded to McPhail's, we think a financial effect on McPhail's is reasonably foreseeable even if there is substantial competition. The statute requires foreseeability, not certainty. Furthermore, the fact that a seriously competitive bid on the project is being prepared or has been made is likely to focus the attention of the Director on the fact that he may benefit if a variance is granted. The ultimate test is whether the element of foreseeability, together with the other elements discussed earlier, is present to the point that the official's "unqualified devotion to his public duty" might be impaired. People v. Darby, 114 Cal. App.2d 412, 433 (1952). Under the circumstances described in example (b), we conclude that the financial effect on McPhail's is reasonably foreseeable and that Director MacPhail, therefore, must not vote or participate in the variance decision.

In example (c), we are told that a contractor who is a regular customer of McPhail's and who normally buys principally or only from McPhail's, is preparing to bid on or has bid on the project and, if awarded the contract, probably will purchase some of McPhail's products for the job. In example (d), we are told that such a contractor already has been awarded the contract but has not yet purchased or agreed to purchase any of McPhail's products for the project.

There is a significant difference between the two situations. In example (d), although there is no certainty that McPhail's will receive business, there is a high probability that it will since the contractor who has been awarded the contract is a regular customer. Although there is no agreement, express or implied, cf. People v. Deysher, 2 Cal.2d 141 (1934), between McPhail's and the contractor, there is,

without question, a sufficient likelihood that McPhail's will receive business to make the financial effect on Director MacPhail "reasonably foreseeable."

In example (c), on the other hand, an extra degree of remoteness is added to the foreseeability of the financial effect by reason of the fact that the contractor has not yet been awarded the contract, but merely has entered a bid or is preparing to do so. McPhail's will benefit only if the contractor's bid is successful and the contractor follows its normal practice of purchasing from McPhail's.

In the case of a contractor who in the past has purchased only from McPhail's, Inc., it is reasonably foreseeable that Director MacPhail's decision could have a material financial effect upon McPhail's, Inc. However, where the contractor-applicant purchases from vendors other than McPhail's, Inc. we cannot conclude that a financial effect on McPhail's is reasonably foreseeable. Nevertheless, if in this latter example there are facts indicating that the contractor's bid is likely to be successful, the financial effect would be reasonably foreseeable since the situation then becomes analogous to example (d). In the last analysis, what is reasonably foreseeable must depend on the facts and circumstances of each specific situation.

We turn next to consideration of whether Directors MacPhail and Lloyd may participate in discussions concerning lifting the moratorium and whether they may vote on this issue. It is not questioned that building activity within the MMWD would increase as a result of a decision to lift the moratorium. This increase in building activity would provide significant opportunities for McPhail's to increase its sales within the MMWD. Moreover, the likely financial effect on McPhail's, Inc. would be both material and reasonably foreseeable. The only substantial question presented with respect to Director MacPhail is whether the financial effect on McPhail's resulting from lifting the moratorium would be "distinguishable from the effect on the public generally." Section 87103.

Generally, the decision on lifting the moratorium will have a financial effect upon a host of interests within the MMWD in the sense that most business entities, investments in real property, and thus sources of income, will be affected. The financial effect, however, of the decision upon McPhail's, and, therefore, upon the financial interest of Director MacPhail, are distinguishable from the financial effect of the decision on business entities, investments in real property and sources of income within the district in general.

Presently, McPhail's supplies approximately 33-1/3 percent of all ready-mix concrete, approximately 25 percent of all building materials, approximately 20 percent of all

major appliances, and over 50 percent of the bottled gas marketed within the MMWD. Thus, it is clear that the foreseeable financial impact upon McPhail's, Inc. of a decision to permit, in effect, an increase in building activity within the county differs demonstrably from the decision's financial impact upon virtually all other business entities and persons within the MMWD. Business entities and persons in the district may benefit in a general way since some property values may increase, retail sales may increase or employment and investment opportunities may increase. McPhail's, Inc., however, is in a position to realize immediate, substantial and specific financial gains as a result of renewed building activity.

Accordingly, we conclude, based on the facts presented, that Director MacPhail's financial interests in McPhail's, Inc. would be materially affected by a decision to lift the moratorium and that the financial effect of such a decision upon McPhail's would be distinguishable from its effect on the public generally. It follows that Director MacPhail may not participate in the decision or the discussions preceding the decision to lift the moratorium.

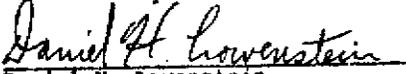
Director Lloyd has an interest in a source of income of \$250 or more (Section 87103(c)) in that she has a community property interest in her husband's salary from Dinwiddie Construction Company. See Section 82030(a). The lifting of the moratorium would make it possible for large projects of the type in which Dinwiddie specializes to be constructed in the MMWD. If Dinwiddie, in fact, were to win the contract to construct such a project, it could be concluded that the lifting of the moratorium had a financial effect on Dinwiddie.^{5/} However, the likelihood of such an occurrence in the near future does not seem high since Dinwiddie has constructed only one project in the MMWD in the past ten years. Furthermore, such a financial effect would not necessarily be "material." Even a substantial project within the MMWD might constitute a small percentage of Dinwiddie's total revenues and have little impact on Dinwiddie's profits or net asset value. Nor would any benefit to Dinwiddie necessarily bear any relation to Director Lloyd's income from Dinwiddie, a factor we believe may be considered in determining whether there may be a material financial effect on a source of income. We are told that Director Lloyd's husband works and will work through 1978 on a project located outside the MMWD. He is paid on a straight salary basis and his compensation would not be affected by Dinwiddie's obtaining or failing

^{5/} Such a conclusion would not be inevitable, however, since it is possible that a developer who is unable to build in the District because of the moratorium would build elsewhere in the San Francisco Bay Area, and that Dinwiddie's chances of winning the contract would be no different.

to obtain new contracts in the MMWD.

Under the foregoing circumstances, although it is conceivable that lifting the moratorium will have a material financial effect on Director Lloyd's source of income, we do not believe such an effect is reasonably foreseeable. Accordingly, Director Lloyd is under no restrictions with respect to voting or otherwise participating in the decision.

Approved by the Commission on December 4, 1975.
Concurring: Brosnahan, Carpenter, Lowenstein and Miller.
Commissioner Waters was absent.


Daniel H. Lowenstein
Chairman

CONFLICT OF INTEREST CODES: THEIR PURPOSE AND PREPARATION

This document has been prepared by the Conflicts of Interest Division of the Fair Political Practices Commission. It is designed to assist agencies which must develop Conflict of Interest Codes.

CONFLICT OF INTEREST CODES: THEIR PURPOSE AND PREPARATIONI. Introduction

The Political Reform Act of 1974 requires each state and local agency to adopt a Conflict of Interest Code. The purposes of the Codes are to provide reasonable assurance that all foreseeable potential conflicts of interest of public officials will be disclosed and prevented and to provide specific guidance to public officials and employees of their obligation to avoid conflicts of interest and to disclose appropriate financial interests.

The Political Reform Act imposes specific disclosure requirements on many state and local officials. However, the Act permits other individual agencies and their officers and employees to design Codes suited to their own functions and authority. Accordingly, the disclosure and disqualification provisions of each Code should be particularly applicable to the agency and its employees. The Codes, once adopted by the agencies, must be reviewed by a code reviewing body to assure their conformity with the standards mandated by the Act. An agency located solely within a single county, other than a city agency, will have its Code reviewed by the county board of supervisors. A city agency Code is reviewed by the city council. Codes of state agencies, city councils, county boards of supervisors, and local agencies with jurisdiction in more than one county are reviewed by the State Fair Political Practices

II. Designation of Officials and Employees

Any person who holds a position which entails the making or participation in the making of governmental decisions which may foreseeably have a material effect on any financial interest shall be a "designated employee" or "designated official" under the Codes. The Commission has defined "participation in the making of governmental decisions" in the following terms:

"(c) A public official or designated employee participates in the making of a governmental decision when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or,

(B) Preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

(d) Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests; or

(3) Actions by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract."

--2 Cal. Adm. Code §§18700(c), (d)

Each agency or department of an agency must determine the relevant duties of individual officers and employees. The following kinds of questions present a starting point in making this determination:

1. In what way does the function of your department or agency affect private financial interests?
2. What positions in your department are entirely ministerial, manual, secretarial, or clerical?
3. What positions entail the making of governmental decisions?
4. What positions in your department are staffed by persons who participate in the making of decisions which may affect private financial interests?

The discussion of the organization and designation of positions for the hypothetical "Ojai Labor Practices Commission", beginning on Page Ten, may be helpful.

III. Disclosure and Disqualification Requirements

The Conflict of Interest Code must require that each designated employee file an initial statement, an annual statement, and a leaving office statement disclosing reportable financial interests. The Act identifies reportable financial interests, generally, as investments, interests in real property, and income. Income may not be made reportable on an initial statement. A particular financial interest must be made reportable by a Code if the interest may foreseeably be affected materially by any decision made or participated in by a person holding a designated position.

The Act requires that each Conflict of Interest Code set forth the specific circumstances under which designated officials or employees must disqualify themselves from making or participating in the making of decisions which foreseeably may materially affect any of their financial interests. This specificity requirement may be satisfied in any of three ways. Under the first alternative, the agency may adopt a disqualification provision referring to disqualifying interests established in Government Code §87103, as follows:

Any designated employee must disqualify himself or herself from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any economic interest, as defined in Government Code §87103. No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made.

Another means of satisfying the specificity requirement may be to require disqualification of an official only where one of his or her reportable financial interests may be materially financially affected by a decision. This is the methodology adopted in the Code for the hypothetical "Ojai Labor Practices Commission", which follows on Page Ten. However, any agency adopting or any agency reviewing Codes adhering to this method of compelling disqualification should be aware that reportable financial interests must include, "Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management", in addition to investments, interests in real property and income.

A third alternative would base disqualification upon what is disclosed, except that the disqualification section would have a specific reference to management positions, as follows:

A designated employee must disqualify himself or herself from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any reportable economic interest (except gifts of less than \$250) or upon any business entity in which the designated employee holds a position of management or is a director, officer, partner, trustee, or employee. No member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made.

Under this alternative, of course, no management positions would have to be disclosed. For those agencies desiring as much specificity as possible in disqualification, while at the same time reducing the intrusion into the private affairs of agency employees and reducing possible confusion in filing requirements for management positions, alternative three appears to provide the best solution.

IV. Extent of Disclosure

The amount of disclosure required of any employee in a Conflict of Interest Code is based upon the responsibilities and resultant capacity to materially affect a financial interest of the employee occupying the designated position. For example, a person involved solely in acquisition of heavy equipment on behalf of his or her agency may be required to disclose interests in heavy equipment dealers and/or manufacturers, but would not be required to disclose interests in real property. In addition, disclosure in most circumstances may be limited to financial interests in the jurisdiction, and/or financial interests doing business or planning to do business in the jurisdiction, or having done business within the jurisdiction at any time during the two years prior to the time a statement is required to be filed under the Code.

A method for providing these distinctions, while easing the administrative burden, is to establish a disclosure schedule. Such a schedule would list various categories of disclosure. Each designated position would then be related to a particular disclosure category or categories. For example, an agency might establish the following categories:

1. Persons in this category shall disclose all interests in real property within the jurisdiction.
2. Persons in this category shall disclose all investments in business entities and all sources of income owning real property within the jurisdiction.

3. Persons in this category shall disclose all investments in business entities in the construction or building industry within the jurisdiction.
4. Persons in this category shall disclose all investments in business entities and sources of income contracting with, or selling to, the agency.

Applying the above categories to particular designated officials, it might be concluded that a planner would fall within Categories 1 and 2, whereas a building inspector would fall within Category 3. The disclosure categories of the hypothetical "Ojai Labor Practices Commission" provide further guidance.

It should be remembered that disclosure is related to interests which foreseeably may be affected materially by the official's decision. This does not mean every interest which conceivably could be affected, but rather those which foreseeably may be.

V. Manner of Disclosure

The Codes should establish a manner of disclosure similar to the provisions of the Act. In summary, these provisions require that if an interest is reportable, certain limited information shall be provided on a form supplied by the agency (See Appendix for a model statement of economic interests form approved by the Fair Political Practices Commission). The specific financial value of the interest need not be reported, rather its value must be reported within certain limits: "under \$10,000", "between \$10,000 and \$100,000", and "over \$100,000".

Disclosure statements must be executed under penalty of perjury and must be filed with the official's agency. In the case of statements filed by the head of the agency, a member of a board or commission not under a department of state government or not under the jurisdiction of a local legislative body, and a person who files a financial disclosure report pursuant to Article 2 (commencing with §87200) of Chapter 7, the agency shall make and retain a copy and forward the original to the code reviewing body. Thirty days after the effective date of a Code, the initial statements of designated officials must be filed. In addition, ten days before a person assumes a designated position, the person must file an initial statement for the position. (The initial statements may not require the disclosure of income by the designated official.) Thereafter, an annual statement must be filed disclosing investments, interests in real property, and income received over the period, and upon termination of employment, a leaving office statement must be filed.

VI. Adoption of a Code

Once the agency has determined the general language of its Code, which employees should be designated, and what disclosure will be required of each designated employee, it is necessary for the agency to hold a hearing which gives officers, employees, members and consultants of the agency and residents of the jurisdiction notice and the opportunity to present their views and to suggest modifications to the Code. In the case of state agencies, this hearing must comport with the requirements of the California Administrative Procedure Act.

The proposed Code must then be submitted to the code reviewing body pursuant to a deadline established for the receipt of the Code. Within ninety days of receipt of the Code, the code reviewing body must act to approve the Code, as submitted, revise and approve the Code, or return the Code to the agency for revision and resubmission.

If any agency fails to submit a proposed Code by any deadline established, the code reviewing body may issue an appropriate order including adoption of a Code for the agency.

VII. Effective Date of a Code

Conflict of Interest Codes shall become effective thirty days after the date of approval by the code reviewing body, or in the case of state agencies, thirty days after the Code is filed in the Office of the Secretary of State.

EXHIBIT VI

INSTRUCTION MANUAL FOR STATEMENT OF ECONOMIC INTERESTS FORM 720

(Government Code Sections 87200 - 87207)

FOR CANDIDATES

NEWLY-ELECTED OFFICEHOLDERS
WHO WERE NON-INCUMBENT CANDIDATES

AND APPOINTEES WHO HAVE NOT YET ASSUMED OFFICE

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Incumbents re-elected to the same office or office of the same jurisdiction, officeholders filing anniversary statements, and persons who have left office must file Form 721. See "Instruction Manual for Statement of Economic Interests - Form 721."

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INSTRUCTION MANUAL FOR STATEMENT OF ECONOMIC INTERESTS – FORM 720

These instructions are intended to assist the following persons to comply with the financial disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.):

- Candidates
- Newly-elected officeholders who were non-incumbent candidates
- Appointees who have not yet assumed office.

WHAT IS A STATEMENT OF ECONOMIC INTERESTS?

A Statement of Economic Interests is a form, available for inspection by the public, which discloses certain financial interests.

Form 720 is for candidates, newly-elected officeholders who were non-incumbent candidates and appointees who have not yet assumed office, all of whom must disclose their investments and interests in real property.

WHO MUST FILE STATEMENTS?

- State Offices – Governor
Lieutenant Governor
Attorney General
Controller
Secretary of State
Treasurer
Superintendent of Public Instruction
Member of the Legislature
Member of the State Board of Equalization
Member of the Public Utilities Commission
Member of the State Energy Resources Conservation
and Development Commission
Member of the State or Regional Coastal Zone
Conservation Commission
Member of the Fair Political Practices Commission
- County Offices – Member of the Board of Supervisors
Chief Administrative Officer
- City Offices – Mayor
Member of the City Council
City Manager

WHEN MUST STATEMENTS BE FILED?

Candidate – At the time of filing your declaration of candidacy.

Newly-elected officeholder who was a non-incumbent candidate – Within 30 days after the date your term begins.

Appointee who has not yet assumed office – At least 10 days before you take office.

WHAT FINANCIAL INTERESTS MUST BE REPORTED?

Candidate – Investments and interests in real property held as of the date of filing.

Newly-elected officeholder who was a non-incumbent candidate – Investments and interests in real property held as of the date of filing.

Appointee who has not yet assumed office – Investments and interests in real property held as of the date of filing.

WHERE MUST STATEMENTS BE FILED?

State Office – With your agency (e.g., Senators file with the Secretary of the Senate; the Treasurer files with the Treasurer's Office). If you are a candidate for state office, you may file your Statement at the time of filing your declaration of candidacy with the county clerk or registrar of voters who will forward your Statement to the appropriate agency.

County Office – With your county clerk.

City Office – With your city clerk.

HOW TO COMPLETE FORM 720

SCHEDULE 720-A

INVESTMENTS OVER \$1,000

You must report each of your investments (any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest) valued over \$1,000 if the business entity or any parent, subsidiary or otherwise related business entity owns real property in your jurisdiction* or does business, plans to do business or has done business in the past two years in your jurisdiction.

Any investments held by your spouse or dependent children must be reported as though held by you personally.

In addition, if you or your spouse owns directly, indirectly or beneficially a 10 per cent or greater interest in a business entity or trust which holds investments in other business entities which do business, plan to do business or have done business in the last two years in your jurisdiction, you must report your pro rata share of such investments if your share is worth over \$1,000.

EXAMPLE: You own 20 per cent of the common stock of X Corporation which neither does business, plans to do business nor has done business in the last two years in your jurisdiction. X Corporation holds an investment in Y Corporation worth \$10,000. Y Corporation does business in your jurisdiction. Your pro rata share of the investment in Y Corporation is worth \$2,000. Since you have an ownership interest of 10 per cent or greater in X Corporation, and since your pro rata share of the investment in Y Corporation is worth over \$1,000, you must report a \$2,000 investment in Y Corporation as though you owned it directly.

*"Jurisdiction" means the state if you are a state candidate, newly-elected state officeholder who was a non-incumbent candidate or appointee who has not yet assumed a state office, or the city or county if you are a local candidate, newly-elected local officeholder who was a non-incumbent candidate or appointee who has not yet assumed a local office. However, real property outside the city or county is deemed to be within the jurisdiction if it is located within two miles of the boundary or within two miles of any land owned or used by the city or county.

EXCEPTIONS: You need *not* list the following types of financial interests as investments:

- Time or demand deposits in financial institutions (e.g., bank accounts, savings accounts).
- Shares in a credit union.
- Insurance policies.
- Bonds and other debt instruments issued by any government agency.

For each reportable investment you must report the following information:

- Nature of the investment (e.g., common stock, partnership interest).
- Name of the business entity and a general description of the business activity.
- Value of your investment. For purposes of determining whether or not the value of an investment exceeds \$1,000, \$10,000 or \$100,000, you should only consider the value of the asset as of the filing date.

SAMPLE, SCHEDULE 720-A

At the time of filing her declaration of candidacy, Jane Smith, a candidate for county supervisor, owned stock valued at \$2,000 in XYZ Corporation which was doing business in her county. In addition, her husband held a 20 per cent beneficial interest in a trust account which owned stock worth \$15,000 in Petrol Products, Inc., which was doing business in her county. Since the pro rata share of Smith's husband in Petrol Products, Inc., is worth \$3,000, Smith must report the investment as though held by her personally. Schedule 720-A should be completed as follows:

XYZ Corporation <small>(name of company)</small>	<i>Check One</i>
Common Stock <small>(nature of interests, e.g., common stock, partnership interest, etc.)</small>	<input checked="" type="checkbox"/> Value does not exceed \$10,000
Manufacturers Widgets <small>(general description of business activity)</small>	<input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000
	<input type="checkbox"/> Value exceeds \$100,000
Petrol Products, Inc. <small>(name of company)</small>	<i>Check One</i>
Common Stock <small>(nature of interests, e.g., common stock, partnership interest, etc.)</small>	<input checked="" type="checkbox"/> Value does not exceed \$10,000
Produces Petroleum Products <small>(general description of business activity)</small>	<input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000
	<input type="checkbox"/> Value exceeds \$100,000

SCHEDULE 720-B

INTERESTS IN REAL PROPERTY OVER \$1,000

You must report each interest in real property (including any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property) located in your jurisdiction* if the fair market value of your interest is more than \$1,000.

*"Jurisdiction" means the state if you are a state candidate, newly-elected state officeholder who was a non-incumbent candidate or appointee who has not yet assumed a state office, or the city or county if you are a local candidate, newly-elected local officeholder who was a non-incumbent candidate or appointee who has not yet assumed a local office. However, real property outside the city or county is deemed to be within the jurisdiction if it is located within two miles of the boundary or within two miles of any land owned or used by the city or county.

Any interests in real property held by your spouse or dependent children must be reported as though held by you personally.

In addition, if you or your spouse owns directly, indirectly or beneficially a 10 per cent or greater interest in any business entity or trust which holds real property in your jurisdiction, you must report your pro rata share of the interest if your share is worth over \$1,000.

EXAMPLE: Your spouse inherited a one-fifth interest in the XYZ Trust. The trust owns an 80 per cent interest in Parcel A, a commercial property in downtown Chicago, worth \$3 million; a 10 per cent interest in Parcel B, which is located in your jurisdiction and worth \$20,000; and a 100 per cent interest in Parcel C, which is located within your jurisdiction and worth \$10,000. You need not report the interest in Parcel A because it is not located within your jurisdiction. You need not report the interest in Parcel B because the value of the trust's interest is \$2,000, and your pro rata share is one-fifth, or \$400, which is below the \$1,000 threshold. You must report Parcel C because the value of the trust's interest is \$10,000, and your pro rata share is one-fifth, or \$2,000, which exceeds the \$1,000 threshold.

For each reportable interest in real property you must show the following:

- Street address or precise location. You must state the street address or the lot number and subdivision of the real property. If there is no street address or subdivision, you must indicate the approximate location of the property and cite the book and page number at which the deed to your property is recorded in the County Recorder's office.
- Nature of your interest (e.g., ownership, option).
- Value of your interest. To determine the value of your interest, you should only consider your equity interest. For example, if you own property worth \$25,000 in which you have an \$8,000 equity (with \$17,000 still owed to the mortgager), your reportable interest is \$8,000. You need not indicate the value of real property which is used principally as your residence.

SAMPLE, SCHEDULE 720-B

You own your home in Mudville which is in your jurisdiction and own an equity interest in an undeveloped lot, also in your jurisdiction worth \$6,000. Schedule 720-B should be completed as follows:

<p style="text-align: center;">212 First Street, Mudville</p> <p style="font-size: small;">(Street Address or Precise Location of Property)</p> <hr style="border-top: 1px dashed black;"/> <p style="text-align: center;">Equity</p> <p style="font-size: small;">(Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center; font-weight: bold; font-size: small;">Check One</p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p> <p><input checked="" type="checkbox"/> Property is used principally as my residence</p>
<p style="text-align: center;">Lot 207, Greenlakes Subdivision, Mudville</p> <p style="font-size: small;">(Street Address or Precise Location of Property)</p> <hr style="border-top: 1px dashed black;"/> <p style="text-align: center;">Equity</p> <p style="font-size: small;">(Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center; font-weight: bold; font-size: small;">Check One</p> <p><input checked="" type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>

SCHEDULE 720-C

**INVESTMENTS AND INTERESTS IN REAL PROPERTY
HELD BY BUSINESS ENTITIES YOU CONTROL**

If you, your spouse or dependent children hold an ownership interest of 50 per cent or more of a business entity listed on Schedule 720-A, you must report all investments of that entity worth over \$1,000 in business entities which do business, plan to do business or have done business in the last two years in your jurisdiction, and all interests in real property worth over \$1,000 held by that entity within your jurisdiction.* A separate Schedule 720-C must be completed for each business entity.

For each investment held by such a business entity you must disclose the name, the nature of the investment, a general description of the business activity and the value on the date of filing.

For real property within your jurisdiction held by such a business entity, you must disclose the street address or precise location, the nature of the interest held and the value on the date of filing.

SAMPLE, SCHEDULE 720-C

Smith and Black, the insurance firm in which you have a 50 per cent* interest, owns real property in your jurisdiction valued at \$75,000 on which its office is located and stock valued at \$12,000 in Mutual of Idaho, an insurance company doing business in your jurisdiction. Schedule 720-C should be completed as follows:

Name of Business Entity Smith and Black

INVESTMENTS HELD BY BUSINESS ENTITY

Mutual of Idaho	<i>Check One</i>	
<small>(Name of Company)</small>	<input type="checkbox"/>	Value does not exceed \$10,000
Common Stock	<input checked="" type="checkbox"/>	Value exceeds \$10,000 but does not exceed \$100,000
<small>(Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)</small>	<input type="checkbox"/>	Value exceeds \$100,000
Insurance		
<small>(General Description of Business Activity)</small>		

INTERESTS IN REAL PROPERTY HELD BY BUSINESS ENTITY

110 Main Street, Mudville	<i>Check One</i>	
<small>(Street Address or Precise Location of Property)</small>	<input type="checkbox"/>	Value does not exceed \$10,000
Equity	<input checked="" type="checkbox"/>	Value exceeds \$10,000 but does not exceed \$100,000
<small>(Nature of Interest, e.g., Equity, Option)</small>	<input type="checkbox"/>	Value exceeds \$100,000

*"Jurisdiction" means the state if you are a state candidate, newly-elected state officeholder who was a non-incumbent candidate or appointee who has not yet assumed a state office, or the city or county if you are a local candidate, newly-elected local officeholder who was a non-incumbent candidate or appointee who has not yet assumed a local office. However, real property outside the city or county is deemed to be within the jurisdiction if it is located within two miles of the boundary or within two miles of any land owned or used by the city or county.

FORM 720

Statement of Economic Interests

(Government Code Sections 87200 et seq.)

This form is for candidates, newly-elected officeholders who were non-incumbent candidates and appointees who have not yet assumed office.

See "Instruction Manual for Statement of Economic Interests - Form 720."

1. Name: _____
2. Address: _____
3. Office: _____
 State of California County of _____ City of _____
4. Check the appropriate box:
 I am a candidate for the above-named office. (File with your declaration of candidacy.)
 I have been elected to the above-named office and assumed office on _____ (Date)
(File within 30 days of assuming office.)
 I was appointed to the above-named office and will assume office on _____ (Date)
replacing _____ (Name) (File at least 10 days before assuming office.)

VERIFICATION

I understand that investments or interests in real property owned by my spouse or dependent child in which they have an interest of greater than \$1,000 must be reported, and I have included all such investments or interests in real property in this statement.

I declare under penalty of perjury that I have used all reasonable diligence in preparing this statement and to the best of my knowledge it is true and complete.

Executed on _____, 19__ at _____, California.

(SIGNATURE)

Note to filing officers: Make and retain copies of all statements filed with you and forward the originals within five days of their receipt to: The Fair Political Practices Commission, Attention Conflicts of Interest Division, P.O. Box 807, Sacramento, California 95804.

SCHEDULE 720-A

Investments

(Government Code Sections 82034 & 87206)

See "Instruction Manual for Statement of Economic Interests – Form 720," Pages 2 and 3.

(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	
(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	
(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	
(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	
(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	
(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	
(Name of Company)	<i>Check One</i> <input type="checkbox"/> Value does not exceed \$10,000 <input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000 <input type="checkbox"/> Value exceeds \$100,000
(Nature of Interests, e.g., Common Stock, Partnership Interest, etc.)	
(General Description of Business Activity)	

SCHEDULE 720-B

Interests in Real Property

(Government Code Sections 82033 & 87206)

See "Instruction Manual for Statement of Economic Interests -- Form 720," Pages 3 and 4.

<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p> <p><input type="checkbox"/> Property is used principally as my residence</p>
<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>..... (Street Address or Precise Location of Property)</p> <p>..... (Nature of Interest, e.g., Equity, Option)</p>	<p style="text-align: center;"><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>

SCHEDULE 720-C

Investments & Interests in Real Property Held by Business Entity You Control

(Government Code Sections 82033, 82034 & 87206)

See "Instruction Manual for Statement of Economic Interests – Form 720," Pages 4 and 5.

Name of Business Entity

INVESTMENTS HELD BY BUSINESS ENTITY

<p>(Name of Company)</p> <p>(Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)</p> <p>(General Description of Business Activity)</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Name of Company)</p> <p>(Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)</p> <p>(General Description of Business Activity)</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Name of Company)</p> <p>(Nature of Investment, e.g., Common Stock, Partnership Interest, etc.)</p> <p>(General Description of Business Activity)</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>

Attach additional information on appropriately labeled continuation sheets

INTERESTS IN REAL PROPERTY HELD BY BUSINESS ENTITY

<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>
<p>(Street Address or Precise Location of Property)</p> <p>(Nature of Interest, e.g., Equity, Option)</p>	<p><i>Check One</i></p> <p><input type="checkbox"/> Value does not exceed \$10,000</p> <p><input type="checkbox"/> Value exceeds \$10,000 but does not exceed \$100,000</p> <p><input type="checkbox"/> Value exceeds \$100,000</p>

Attach additional information on appropriately labeled continuation sheets.

PRELIMINARY

STAFF DRAFT

CALIFORNIA LAW REVISION COMMISSION

CONFLICT OF INTEREST CODE

CHAPTER 1. GENERAL PROVISIONS

§ 10. Introduction and purpose

10. The Conflict of Interest Code of the California Law Revision Commission has been prepared and adopted pursuant to Article 3 (commencing with Government Code Section 87300) of Chapter 7 of the Political Reform Act of 1974.

§ 11. Other provisions applicable

11. In addition to the provisions of this code:

(a) All designated persons are subject to the provisions of Government Code Section 87100 which, in effect, provides as follows: No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest within the meaning of Government Code Section 87103.

(b) Employees of the Commission and Commission members appointed by the Governor are subject to the provisions of Government Code Section 10308 which provides as follows:

10308. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 10335, advocate the passage or defeat of any such legislation by the Legislature or the approval or veto of any such legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairman. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his official capacity as such employee or member.

(c) Employees of the Commission, but not Commission members, are subject to the Incompatible Activity Statement.

§ 12. Definitions

12. (a) The terms used in this code shall be interpreted in a manner consistent with the definitions of such terms contained in the Political Reform Act of 1974 and in the regulations of the Fair Political Practices Commission. See Appendix 1 (Selected Provisions of the Political Reform Act of 1974) and Appendix 2 (Selected Regulations of the Fair Political Practices Commission).

(b) As used in this code, "Commission" means the California Law Revision Commission.

§ 13. Designated positions and employees

13. (a) The positions described in subdivision (b) are designated positions and the persons holding such positions are designated employees whose responsibilities entail the making or participation in the making of decisions which may foreseeably have a material financial effect on an interest made reportable by Chapter 2.

(b) The following are designated positions:

- (1) Commission members appointed by the Governor.
- (2) The Executive Secretary and the Assistant Executive Secretary.
- (3) Full-time employees on the Commission's legal staff, other than the Executive Secretary and the Assistant Executive Secretary.
- (4) Active intermittent employees on the Commission's legal staff.
- (5) The Administrative Assistant.

(c) An independent consultant for the Commission is not a designated employee and is not subject to the provisions of this code.

Cross-References:

Government Code:

§ 82019 ("designated employee")

FPPC Regulations:

§ 18700(b)-(e)(making or participating in making a governmental decision)

§ 18700(a)(2)(consultant)

§ 18702 (material financial effect)

§ 14. Duty of disclosure and disqualification

14. Designated employees shall satisfy the applicable disclosure provisions of Chapter 2 and the applicable disqualification provisions of Chapter 3.

CHAPTER 2. DISCLOSURE

§ 20. Assignment of designated employees to disclosure categories

20. The disclosure categories of designated employees are as follows:

<u>Position</u>	<u>Disclosure category</u>
(a) Commission members appointed by the Governor. . . .	A, B
(b) The Executive Secretary and Assistant Executive Secretary	A, B
(c) Full-time employees on legal staff.	A
(d) Active intermittent employees on legal staff. . . .	A
(e) The Administrative Assistant.	B

Cross-References:

Conflict of Interest Code:

§ 21 (reportable items in disclosure categories)

§ 21. Reportable interests in disclosure categories

21. (a) A designated employee in disclosure category A shall report the following financial interests: (1) investments, (2) interests in real property, (3) income and sources of income, and (4) his or her status as a director, officer, partner, trustee, employee, or holder of a management position in a business entity, if it is reasonably foreseeable that such interest, income, source of income, or business entity in which the designated employee holds such management position may be affected materially by a decision made by the designated employee, or in which the designated employee participated, in the course of considering a topic on the calendar of topics for Commission study (as stated in the most recent Annual Report of the Commission and in any subsequent concurrent resolution of the Legislature), assuming the eventual enactment by the Legislature of any Commission recommendation which results or might have resulted from the consideration of such topic.

(b) A designated employee in disclosure category B shall report the following financial interests: (1) investments in any business entity, (2) income from any source, and (3) his or her status as a director, officer, partner, trustee, employee, or holder of a position of management in any business entity, if any such business entity or source of income may foreseeably be affected materially by a contract which was made within the last two years or foreseeably may be made in the future with the Commission or with the State of California for supplies, services, equipment, maintenance, or office space for the Commission.

Cross-References:

Government Code:

- § 82005 ("business entity")
- § 82028 ("gift")

- § 82030 ("income")
- § 82033 ("interest in real property")
- § 82034 ("investment")
- § 87103 (financial interest; indirect investment or interest)

FPPC Regulations:

- § 18700 (making or participating in making governmental decision)
- § 18702 (material financial effect)

§ 22. Contents of disclosure statements

22. Disclosure of financial interests shall be submitted on forms supplied by the Commission's staff. The forms shall require the statement of the information prescribed in this section.

(a) The form for disclosure of an investment or an interest in real property shall require statements of the following:

(1) The nature of the investment or interest in real property located in California.

(2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged.

(3) The address or other precise location of the real property.

(4) Whether the fair market value of the investment or interest in real property exceeds ten thousand dollars (\$10,000), and whether it exceeds one hundred thousand dollars (\$100,000). This statement need not be made with respect to an interest in real property which is used principally as the residence of the designated employee.

(5) If an investment constitutes 50 percent or more of the ownership interest of a business entity, the investments and interests in real property of the business entity.

(6) If the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.

(b) The form for disclosure of income shall require statements of the following:

(1) The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value, or twenty-five dollars (\$25) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) Whether the aggregate value of income from each source was greater than one thousand dollars (\$1,000) or whether it was greater than ten thousand dollars (\$10,000).

(3) The consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received.

(c) The form for disclosure of income of a business entity, including income of a sole proprietorship, shall require statements of the following:

(1) The name, address, and a general description of the business activity of the business entity doing business in California within the last two years.

(2) In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the designated employee's pro rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000).

(3) In the case of a business entity not described in paragraph (2), the name of every person from whom the business entity received payments if

the designated employee's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(d) The form for disclosure of management positions shall require a statement of the name of each business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds a position of management.

Cross-References:

Government Code:

- § 81004 (verification of statements; penalty of perjury)
- § 82005 ("business entity")
- § 82028 ("gift")
- § 82029 ("immediate family")
- § 82030 ("income")
- § 82033 ("interest in real property")
- § 82034 ("investment")
- § 82044 ("payment")
- § 82047 ("person")

FPPC Regulations:

- § 18704 ("source of income")
- § 18727 ("gifts of hospitality")
- § 18728 ("honoraria")
- § 18740 (privileged information)

§ 23. Time of filing initial disclosure statement

23. (a) A designated employee shall file an initial statement not later than [30 days after the effective date of this code].

(b) A person newly appointed to a civil service designated position shall file a disclosure statement within 30 days after assuming the position.

(c) A person newly appointed to a noncivil service designated position shall file a disclosure statement not later than 10 days before assuming office unless an earlier assumption of office is required by emergency circumstances.

Cross-References:

Government Code:

- § 87302(b) (time of initial filing)

§ 24. Time of filing annual disclosure statements

24. An annual disclosure statement, covering the preceding calendar year, shall be filed by each designated employee not later than February 1.

§ 25. Time of filing final disclosure statement

25. A designated employee who leaves his or her position shall, within 30 days after leaving, file a disclosure statement covering the period between the previous disclosure statement and the date of leaving the position.

§ 26. Place of filing disclosure statements

26. (a) Each designated employee shall file the disclosure statement with the staff of the Commission.

(b) The staff of the Commission shall make and retain a copy of the disclosure statement and promptly forward the original to the Fair Political Practices Commission.

CHAPTER 3. DISQUALIFICATION

§ 30. Disqualification

(30). (a) A designated employee shall disqualify himself from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any reportable interest of the designated employee except sources of gifts less than two hundred fifty dollars (\$250).

[(b) Notwithstanding subdivision (a), a designated employee may make or participate in the making of a decision to the extent that his or her participation is legally required for the decision to be made.]

(c) A designated employee who has disqualified himself or herself shall thereafter refrain from participating in making the decision and shall not attempt to influence other persons with respect to the matter.

Cross-References:

Conflict of Interest Code:

§ 13 (designated positions and employees)
§ 21 (reportable interests)

Government Code:

§ 87028 ("gift")
§ 87100 (general disqualification requirement)
§ 87101 (legally required participation)
§ 87302(c) (disqualification; legally required participation)

FPPC Regulations:

§ 18700 (making or participating in making a governmental decision)
§ 18701 (legally required participation)
§ 18702 (material financial effect)
§ 18703 (effect on public generally)

§ 31. Manner of disqualification

31. A designated employee who is required to disqualify himself or herself shall do so in the manner provided in this section.

(a) A member of the Commission appointed by the Governor shall notify the other members of the Commission at the meeting during which consideration of the decision is to take place. The notice of disqualification shall be recorded in the Minutes of the meeting.

(b) A member of the legal staff (other than the Executive Secretary) and the Administrative Assistant shall notify the Executive Secretary in writing. The Executive Secretary shall notify the Assistant Executive Secretary in writing. A notice of disqualification shall be kept on file.

APPENDIX I

[Selected Provisions of the Political Reform Act of 1974.]

From Government Code §§ 81000-91014

Chapter 1. General Statements

§ 81004
§ 81007
§ 81008
§ 81011

Chapter 2. Definitions

§ 82005
§ 82019
§ 82028
§ 82029
§ 82030
§ 82033
§ 82034
§ 82035
§ 82044
§ 82047
§ 82048
§ 82049

Chapter 7. Conflicts of Interest

§§ 87100-87312

Chapter 11. Enforcement

§§ 91000-91014

Ch. 1

§ 81004. Reports and statements; perjury; verification

All reports and statements filed under this title shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs and verifies any report or statement required to be filed under this title which contains material matter which he knows to be false is guilty of perjury.

§ 81007. Mailing of report or statement; presumption of receipt on deposit in mail

When a report or statement or copies thereof required to be filed with any officer under this title have been sent by first-class registered mail, addressed to the officer, it shall for purposes of any deadline be deemed to have been received by him on the date of the deposit in the mail. It shall be presumed until the contrary is established that the date shown by the post office cancellation mark on the envelope containing the report or statement is the date it was deposited in the mail.

§ 81008. Public records; inspection and reproduction; time; charges

Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received. No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from such persons. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page. Campaign statements shall be open for public inspection and reproduction from 9:00 a. m. to 5:00 p. m. on the Saturday and Sunday preceding a statewide election.

§ 81011. Goods, services and facilities; valuation at market value; description

Whenever in this title the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services, or facilities shall be appended to the report or statement.

Ch. 2

§ 82005. Business entity

"Business entity" means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

§ 82015. Designated employee

"Designated employee" means any officer, employee, member or consultant of any agency whose position with the agency

(a) is exempt from the state civil service system by virtue of subdivisions (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article XXIV of the Constitution, unless the position is elective or solely secretarial, clerical or manual;

(b) is elective, other than an elective state office; or

(c) 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.

"Designated employee" does not include an elected state officer or any unalarmed member of any board or commission which serves a solely advisory function.

§ 82028. Gift

"Gift" means any payment to the extent that consideration of equal or greater value is not received. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The term "gift" does not include informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

§ 82029. Immediate family

"Immediate family" means the spouse and dependent children. Whenever disclosure of investments or interests in real property is required by this title, investments and interests in real property of members of the immediate family shall also be disclosed.

§ 82030. Income

(a) "Income" means, except as provided in subsection (b), income of any nature from any source, including but not limited to any salary, wage, advance, payment, dividend, interest, rent, capital gain, return of capital, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the public without regard to official status, rebate, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

(b) "Income" does not include:

- (1) Campaign contributions required to be reported under Chapter 4 of this title;
- (2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization;
- (3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;
- (4) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;
- (5) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph;
- (6) Any devise or inheritance;
- (7) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;
- (8) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government.

§ 82031. Interest in real property

"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction if the fair market value of the interest is greater than one thousand dollars (\$1,000). Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

§ 82034. Investment

"Investment" means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value exceeds one thousand dollars (\$1,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of investments of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater. The term "parent, subsidiary or otherwise related business entity" shall be specifically defined by regulations of the Commission.

§ 82035. Jurisdiction

"Jurisdiction" means the state with respect to a state agency and, with respect to a local government agency, the region, county, city, district or other geographical area in which it has jurisdiction. The jurisdiction of a member of a regional coastal zone conservation commission shall be the permit area in which the regional commission has jurisdiction. Real property shall be deemed to be "within the jurisdiction" with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

§ 82044. Payment

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

§ 82047. Person

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

§ 82048. Public official

"Public official" means every member, officer, employee or consultant of a state or local government agency.

§ 82049. State agency

"State agency" means every state office, department, division, bureau, board and commission, and the Legislature, but does not include the courts or any agency in the judicial branch of government.

CHAPTER 7. CONFLICTS OF INTEREST

Article	Section
1. General Prohibition	87100
2. Disclosures	87200
3. Conflict of Interest Code	87300

ARTICLE 1. GENERAL PROHIBITION

Sec.

- 87100. Public officials; state and local; financial interest.
- 87101. Participation in legal governmental action or decision.
- 87102. Additional requirements; remedies.
- 87103. Financial interest; material effect; indirect investment or interest.

§ 87100. Public officials; state and local; financial interest

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

§ 87101. Participation in legal governmental action or decision

Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

§ 87102. Additional requirements; remedies

The requirements of Section 87100 are in addition to the requirements of Articles 2 and 3 of this chapter and any Conflict of Interest Code adopted thereunder. No provision of Chapter 11 of this title is applicable to this article except the provisions of Section 81003. The remedies provided in that section may be sought against any public official other than an elected state officer, and those remedies are the exclusive remedies for a violation or threatened violation of Section 87100.

§ 87103. Financial interest; material effect; indirect investment or interest

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, by any business entity controlled by the public official or by a trust in which he has a substantial interest. A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

ARTICLE 2. DISCLOSURE

- Sec.
87200. Applicability.
87201. Candidates; statement.
87202. Elected, appointed and holdover officials; statement.
87203. Anniversary of assumption of office; statement.
87204. Persons leaving office; statement.
87205. Anniversary of assumption of office; determination.
87206. Investment or interest in real property; statement; contents.
87207. Income; statement; contents.

§ 87200. Applicability:

This article is applicable to elected state officers, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Zone Conservation Commission, members of the board of supervisors and chief administrative officers of counties, mayors, city managers, chief administrative officers and members of city councils of cities, members of each of the six regional coastal zone conservation commissions, and to candidates for any of these offices at any election.

§ 87201. Candidates; statement

Every candidate for an office specified in Section 87200 shall file with his declaration of candidacy a statement disclosing his investments and his interests in real property.

§ 87202. Elected, appointed and holdover officials; statement

Every person who is elected to an office specified in Section 87200 shall, within thirty days after assuming such office, file a statement disclosing his investments and his interests in real property. Every person who is appointed to an office specified in Section 87200 shall file such a statement not less than ten days prior to assuming office. Persons who hold an office mentioned in Section 87200 on the effective date of this article shall file such a statement within thirty days after the effective date of this article.

§ 87203. Anniversary of assumption of office; statement

Every person who holds an office specified in Section 87200 shall, within thirty days after each anniversary of assuming office, file a statement disclosing his investments, his interests in real property and his income during the period since the previous statement filed under this section or Section 87202. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

§ 87204. Persons leaving office; statement

Every person who leaves an office specified in Section 87200 shall, within thirty days after leaving the office, file a statement disclosing his investments, his interests in real property, and his income during the period since the previous statement filed under Sections 87202 or 87203. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

§ 87205. Anniversary of assumption of office; determination

- (a) For purposes of determining the anniversary of assuming an office, the date on which the term of office began is deemed the date of assuming office, whether or not the person holding the office actually assumed the office on that date.
- (b) A person who completes a term of an office specified in Section 87200 and on the same day begins a term of the same office or another such office of the same jurisdiction is not deemed to assume office or leave office. The day on which the new term begins shall be deemed an anniversary of assuming the office.

§ 87206. Investment or interest in real property; statement; contents

When an investment or an interest in real property is required to be disclosed under this article, the statement shall contain:

- (a) A statement of the nature of the investment or interest;
- (b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
- (c) The address or other precise location of the real property;
- (d) A statement whether the fair market value of the investment or interest in real property exceeds ten thousand dollars (\$10,000), and whether it exceeds one hundred thousand dollars (\$100,000). This information need not be provided with respect to an interest in real property which is used principally as the residence of the filer;
- (e) In the case of an investment which constitutes fifty percent or more of the ownership interest in a business entity, disclosure of the investments and interests in real property of the business entity;
- (f) In the case of a statement filed under Sections 87203 or 87204, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.

§ 87207. Income; statement; contents

(a) When income is required to be reported under this article, the statement shall contain, except as provided in * * * subsection (b) * * *:

(1) The name and address of each source of income aggregating two hundred * * * fifty dollars (\$250) or more in value, or twenty-five dollars (\$25) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(2) A statement whether the aggregate value of income from each source was greater than one thousand dollars (\$1,000), and whether it was greater than ten thousand dollars (\$10,000);

(3) A description of the consideration, if any, for which the income was received;

(4) In the case of a gift, the amount and the date on which the gift was received.

(b) When income of a business entity, including income of a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity;

(2) In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the filer's pro rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000);

(3) In the case of a business entity not covered by paragraph (2), the name of every person from * * * whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

ARTICLE 3. CONFLICT OF INTEREST CODES

Sec.

- 87300. Agency; adoption and promulgation; effect of violation.
- 87301. Formulation at decentralized level; intra-department review; policy.
- 87302. Required provisions.
- 87303. Proposed code; submission; approval; time.
- 87304. Proposed code; failure to submit; action by reviewing body.
- 87305. Superior court; preparation and adoption of code; other relief; parties.
- 87306. Amendments; changed circumstances; court order.
- 87307. Amendments; own initiative or petition; failure to act; appeal to reviewing body.
- 87308. Judicial review.
- 87309. Approval and upholding code and amendments.
- 87310. Designated employee; broad or undefinable duties; disclosure.
- 87311. Review and preparation of proposed codes; law governing.
- 87312. Assistance in preparation of codes; model provisions.

§ 87300. Agency; adoption and promulgation; effect of violation

Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

§ 87301. Formulation at decentralized level; intra-department review; policy

It is the policy of this act that Conflict of Interest Codes shall be formulated at the most decentralized level possible, but without precluding intra-departmental review. Any question of the level of a department which should be deemed an "agency" for purposes of Section 87300 shall be resolved by the code reviewing body.

§ 87302. Required provisions

Each Conflict of Interest Code shall contain the following provisions:

(a) Specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

(b) Requirements that each designated employee file annual statements disclosing reportable investments, interests in real property and income. The Conflict of Interest Code shall set forth for each position or category of positions enumerated under subsection (a) of this section the specific types of investments, interests in real property and income which are reportable and the manner of reporting each item. An investment, interest in real property or income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his position. The manner of reporting reportable items shall be substantially equivalent to the requirements of Article 2 of this chapter. The first statement filed under this section by a designated employee shall disclose any reportable investments and interests in real property. Statements shall be filed by each designated employee within thirty days after the effective date of the Conflict of Interest Code. Thereafter, new civil service designated employees shall file statements within thirty days after assuming office. All other new designated employees shall file statements not less than ten days before assuming office or, if subject to confirmation, ten days before being confirmed, unless an earlier assumption of office is required by emergency circumstances. The provisions of the Conflict of Interest Code adopted under this subsection shall not be applicable to any designated employee who is covered by Article 2 of this chapter.

(c) Specific provisions setting forth any circumstances under which designated employees or categories of designated employees must disqualify themselves from making or participating in the making of any decision. Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be affected materially by the decision. No designated employee shall be required to disqualify himself with respect to any matter which could not legally be acted upon or decided without his participation.

§ 87303. Proposed code; submission; approval; time

No conflict of interest code shall be effective until it has been approved by the code-reviewing body. Each agency shall submit a proposed conflict of interest code to the code-reviewing body by the deadline established for the agency by the code-reviewing body. The deadline for any agency in existence on April 1, 1976, shall not be earlier than April 1, 1976. The deadline for any agency not in existence on April 1, * * * 1976, shall be six months after it comes into existence. Within 90 days after receiving the proposed code or receiving any proposed amendments or revisions, the code-reviewing body shall:

(a) Approve the proposed code as submitted;

(b) Revise the proposed code and approve it as revised; or

(c) Return the proposed code to the agency for revision and resubmission within 60 days. The code-reviewing body shall either approve the revised code or revise it and approve it. When a proposed conflict of interest code or amendment is approved by the code-reviewing body, it shall be deemed adopted and shall be promulgated by the agency.

§ 87304. Proposed code; failure to submit; action by reviewing body

If any agency fails to submit a proposed Conflict of Interest Code or amendments within the time limits prescribed pursuant to Sections 87303 or 87301, the code reviewing body may issue any appropriate order directed to the agency or take any other appropriate action, including the adoption of a Conflict of Interest Code for the agency.

§ 87303. Superior court; preparation and adoption of code; other relief; parties

If after six months following the deadline for submission of the proposed Conflict of Interest Code to the code reviewing body no Conflict of Interest Code has been adopted and promulgated, the superior court may, in an action filed by the agency, the code reviewing body, any officer, employee, member or consultant of the agency, or any resident of the jurisdiction, prepare a Conflict of Interest Code and order its adoption by the agency or grant any other appropriate relief. The agency and the code reviewing body shall be parties to any action filed pursuant to this section.

§ 87305. Amendments; changed circumstances; court order

Every agency shall amend its Conflict of Interest Code, subject to the provisions of Section 87303, when change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to Section 87302(a) and relevant changes in the duties assigned to existing positions. Proposals for amendments or revisions shall be submitted to the code reviewing body within ninety days after the changed circumstances necessitating the amendments have become apparent. If after nine months following the occurrence of such changes the Conflict of Interest Code has not been amended or revised, the superior court may issue any appropriate order in an action brought under the procedures set forth in Section 87303.

§ 87307. Amendments; own initiative or petition; failure to act; appeal to reviewing body

An agency may at any time amend its Conflict of Interest Code, subject to the provisions of Section 87303, either upon its own initiative or in response to a petition submitted by an officer, employee, member or consultant of the agency, or a resident of the jurisdiction. If the agency fails to act upon such a petition within ninety days, the petitioner shall be deemed denied. Within thirty days after the denial of a petition, the petitioner may appeal to the code reviewing body. The code reviewing body shall either dismiss the appeal or issue an appropriate order to the agency within ninety days.

§ 87308. Judicial review

Judicial review of any action of a code reviewing body under this chapter may be sought by the agency, by an officer, employee, member or consultant of the agency, or by a resident of the jurisdiction.

§ 87309. Approval and upholding code and amendments

No Conflict of Interest Code or amendment shall be approved by the code reviewing body or upheld by a court if it:

- (a) Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;
- (b) Fails to provide to each affected person a clear and specific statement of his duties under the Code; or
- (c) Fails to adequately differentiate between designated employees with different powers and responsibilities.

§ 87310. Designated employee; broad or undefinable duties; disclosure

If the duties of a designated employee are so broad or undefinable that the requirements of Section 87309 cannot be complied with, the Conflict of Interest Code shall require the designated employee to comply with the requirements of Article 2 of this chapter.

§ 87311. Review and preparation of proposed codes; law governing

The review of proposed Conflict of Interest Codes by the Commission and by the Attorney General and the preparation of proposed Conflict of Interest Codes by state agencies shall be subject to the Administrative Procedure Act. The review and preparation of Conflict of Interest Codes by local government agencies shall be carried out under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views.

§ 87312. Assistance in preparation of codes; model provisions

The Commission shall, upon request, provide technical assistance to agencies in the preparation of Conflict of Interest Codes. Such assistance may include the preparation of model provisions for various types of agencies. Nothing in this section shall relieve each agency of the responsibility for adopting a Conflict of Interest Code appropriate to its individual circumstances.

CHAPTER II. ENFORCEMENT

Sec.

- §1000. Violations; misdemeanor; fines; limitations.**
- §1001. Criminal and civil penalties and remedies; attorney general and district attorneys; civil prosecutor.**
- §1002. Effect of conviction on candidacy; exception; nolo contendere; felony.**
- §1003. Injunction; conflicts of interest.**
- §1003.5 Conflicts of interest; discipline.**
- §1004. Reporting requirements; violations; civil liability.**
- §1005. Contribution; gift or expenditure, making or receiving as violation; economic benefit of designated employee; civil liability.**
- §1006. Joint and several liability for violation.**
- §1007. Civil actions; request to civil prosecutor to commence action; procedure.**
- §1008. Judgment on the merits; precedence; dismissal.**
- §1009. Amount of liability; seriousness of violation and degree of culpability, disposition of recovery.**
- §1010. Campaign disclosure violations; time of request to civil prosecutor.**
- §1011. Limitations.**
- §1012. Costs; attorney fees; bond.**
- §1013. Late filing of statement or report; fees; penalties; deposit of funds received [New].**
- §1014. Applicability of other state laws.**

§ 91000. Violations; misdemeanor; fines; limitations

(a) Any person who knowingly or willfully violates any provision of this title is guilty of a misdemeanor.

(b) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation.

(c) Prosecution for violation of this title must be commenced within two years after the date on which the violation occurred.

§ 91001. Criminal and civil penalties and remedies; attorney general and district attorneys; civil prosecutor

(a) The Attorney General is responsible for enforcing the criminal provisions of this title with respect to state agencies, lobbyists and state elections. The city and district attorneys of any city or county in which a violation occurs have concurrent powers and responsibilities with the Attorney General.

(b) The civil prosecutor is primarily responsible for enforcement of the civil penalties and remedies of this title. The civil prosecutor is the Commission with respect to the state or any state agency, the city attorney with respect to a city or city agency, and the district attorney with respect to any other agency. The civil prosecutor may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction.

§ 91002. Effect of conviction on candidacy; exception; nolo contendere; felony

No person convicted of a misdemeanor under this title shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for purposes of this section. Any person violating this section is guilty of a felony.

§ 91003. Injunction; conflicts of interest

(a) Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require the plaintiff to file a complaint with the Commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include but are not limited to orders, permits, resolutions and contracts, but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action.

§ 91003.6 Conflicts of interest; discipline

Any person who violates a provision of Article 2 or 3 of Chapter 7 is subject to discipline by his agency, including dismissal, consistent with any applicable civil service or other personnel laws, regulations and procedures.

§ 91004. Reporting requirements; violations; civil liability

Any person who intentionally or negligently violates any of the reporting requirements of this act shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported.

§ 91005. Contribution, gift or expenditure, making or receiving as violation; economic benefit of designated employee; civil liability

(a) Any person who makes or receives a contribution, gift or expenditure in violation of Section 84300, 84304, 80202, 80203 or 80204, or makes an expenditure in violation of Chapter 5 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to five hundred dollars (\$500) or three times the amount of the unlawful contribution, gift or expenditure, whichever is greater.

(b) Any designated employee who realizes an economic benefit as a result of a violation of a disqualification provision of a Conflict of Interest Code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

§ 91006. Joint and several liability for violation

If two or more persons are responsible for any violation, they shall be jointly and severally liable.

§ 91007. Civil actions; request to civil prosecutor to commence action; procedure

Any person, before filing a civil action pursuant to Sections 91004 and 91005, must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall include a statement of the grounds for believing a cause of action exists. The civil prosecutor shall respond within forty days after receipt of the request, indicating whether he intends to file a civil action. If the civil prosecutor indicates in the affirmative, and files suit within forty days thereafter, no other action may be brought unless the action brought by the civil prosecutor is dismissed without prejudice as provided for in Section 91008.

§ 9100. Judgment on the merits; precedence; dismissal

Not more than one judgment on the merits with respect to any violation may be obtained under Sections 91004 and 91005. Actions brought for the same violation or violations shall have precedence for purposes of trial in order of the time filed. Such actions shall be dismissed once judgment has been entered or a settlement approved by the court in a previously filed action. The court may dismiss a pending action without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the civil prosecutor or any plaintiff in an action based on the same violation.

§ 91009. Amount of liability; seriousness of violation and degree of culpability; disposition of recovery

In determining the amount of liability under Sections 91004 or 91005, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought under Section 91004 or 91005, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the General Fund of the state. In an action brought by the civil prosecutor, the entire amount recovered shall be paid to the general fund or treasury of the jurisdiction.

§ 91010. Campaign disclosure violations; time of request to civil prosecutor

No request to the civil prosecutor pursuant to Section 91007 shall be made or filed in connection with a report or statement required by Chapter 4 of this title until the time when an audit and investigation could be begun under Section 90002(b).

§ 91011. Limitations

No action shall be filed under Sections 91004 or 91005 more than two years after the first day on which a request to the civil prosecutor could be filed.

§ 91012. Costs; attorney fees; bond

The court may award to a plaintiff or defendant other than an agency, who prevails in any action authorized by this title his costs of litigation, including reasonable attorney's fees. On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs.

§ 91013. Late filing of statement or report; fees; penalties; deposit of funds received

(a) If any person files * * * an original statement or report, * * * after any deadline imposed by this act he shall, in addition to any other penalties or remedies established by this act, be liable * * * in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within five days after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, he shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting five days after the officer has sent specific notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater.

§ 91014. Applicability of other state laws

Nothing in this chapter shall exempt any person from applicable provisions of any other laws of this state.

APPENDIX 2

[SELECTED PROVISIONS FROM REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION]

From 2 Cal. Admin. Code § 18700 et seq.

§ 18700

§ 18700 amendment

§ 18701

§ 18703

§ 18704

§ 18727

§ 18728

§ 18740

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

1. C

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AUG 19 1976
Office of Administrative Hearings

ENDORSED
APPROVED FOR FILING
(Gov. Code 11380.2)
AUG 20 1976
Office of Administrative Hearings

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION
(Agency)
Date of adoption, amendment, or repeal:
August 5, 1976
By: *Janet H. Lowenstein*
Chairman
(Title)

ENDORSED
FILED
In the office of the Secretary of State
of the State of California
AUG 20 1976
At 3:10 o'clock P. M.
MARCH FONG LU, Secretary of State

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EMERGENCY ORDER AMENDING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 87100 of the Government Code, the Fair Political Practices Commission hereby amends its regulation in Division VI, Title 2, California Administrative Code, as follows:

Repeal 2 Cal. Adm. Code Section 18700.

Add 2 Cal. Adm. Code Section 18700.

Chapter 7; Article 1: Conflicts of Interest; General Prohibition
18700. Public Official Making, Participating in Making, or Using His Official Position to Influence a Governmental Decision (87100)

The provisions herein define terms as used in Chapter

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(Pursuant to Government Code Section 11380.1)

7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision by any agency;

(C) Its action, recommendation, or consideration is a legal prerequisite to a final governmental decision; or

(D) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

(b) A public official "makes a governmental decision," except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency;
- (5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing

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(Pursuant to Government Code Section 11380.1)

power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300.

(c) A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

(d) Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests; or

(3) Actions by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

(e) "In any way attempting to use his or her official position to influence a governmental decision" shall include furthering or attempting to affect in any manner any decision.

(1) Within or before his or her agency; or

(2) Before any agency which is appointed by or subject to the budgetary control of his or her agency.

(f) "In any way attempting to use his or her official position to influence a governmental decision" shall not include

(1) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest;

(2) Actions by public officials, employees or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

REGULATIONS
**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**
(Pursuant to Government Code Section 11380.1)

FINDING OF EMERGENCY

The Fair Political Practices Commission finds that an emergency exists and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety or general welfare. A statement of the facts constituting such emergency is:

STATEMENT OF FACTS

Numerous agencies are in the process of drafting and adopting their conflict of interest codes and in order to permit this process to continue, it is necessary to amend this section on an emergency basis.

* * * * *

This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

9/8/76

NOTICE OF IMPORTANT REGULATION AMENDMENTS

1. As indicated in the cover memorandum to these materials, 2 Cal. Adm. Code §18700(c), defining "participating in the making of a governmental decision", has been amended. The revised regulation section is attached. It is intended to have the effect of removing from the scope of coverage of a Conflict of Interest Code those employees who are on the periphery of the decision-making process.

2. The Fair Political Practices Commission amended 2 Cal. Adm. Code Section 18700(a)(1)(B), deleted subsection(a)(1)(C), and renumbered subsection (a)(1)(D) to (a)(1)(C) as noted below. These Regulation amendments will result in eliminating from the prohibitions of Government Code Section 87100 and the coverage of Conflict of Interest Codes many persons formerly covered pursuant to the Commission's Regulations.

Chapter 7: Conflicts of Interest

18700. Public Official Making, Participating in Making, or Using His Official Position to Influence a Governmental Decision (87100).

The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision by an agency, or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

~~(C) Its action, recommendation, or consideration is a legal prerequisite to a final governmental decision; or~~

(B) (C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

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WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11350.1)

Copy below is hereby certified to be a true
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amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION
(Agency)

Date of adoption, amendment, or repeal:

January 7, 1976

By:

H. J. Bennett
Executive Director

(Title)

ENDORSED
FILED

In the office of the Secretary of State
of the State of California

JAN 22 1976

At 3:15 o'clock P.M.
MARCH FONG EU, Secretary of State

RECEIVED
JAN 23 1976

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ORDER ADOPTING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the
provisions of the Administrative Procedure Act (Government
Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the
authority vested by Section 83112 of the Government Code,
and to implement, interpret or make specific Section 87103
of the Government Code, the Fair Political Practices Commis-
sion hereby adopts its regulation in Division VI, Title 2,
California Administrative Code, as follows:

Chapter 7, Article 1: Conflicts of Interest; General Prohibition
18702. Material Financial Effect (87103)

(a) The financial effect of a governmental decision
on a financial interest of a public official is material if,
at the time the official makes, participates in making or
attempts to use his or her official position to influence
the making of the decision, in light of all the circumstances

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(Pursuant to Government Code Section 11300.1)

and facts known at the time of the decision, the official knows or has reason to know that the existence of the financial interest might interfere with the official's performance of his or her duties in an impartial manner free from bias.

(b) In determining the existence of a material effect upon a financial interest, consideration should be given, but not be limited to, an analysis of the following factors:

(1) In the case of a business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000), or in the case of a public official who is a director, officer, partner, trustee, employee, or holds any position of management in a business entity:

(A) Whether the effect of the decision will be to increase or decrease the annualized gross revenue of the business entity by one percent or more or the annual net income of the business entity by .5 percent or more;

(B) Whether the effect of the decision will be to increase or decrease the assets or liabilities of the business entity by \$50,000 or more, or by .5 percent of its current assets or liabilities, whichever is less.

(2) In the case of any real property in which the public official has a direct or indirect interest

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(Pursuant to Government Code Section 11380.1)

worth more than one thousand dollars (\$1,000):

(A) Whether the effect of the decision will be to increase the income-producing potential of the real property by \$100 or five percent per month, whichever is less;

(B) Whether the effect of the decision will be to increase the fair market value of the real property by \$1,000 or more or by .5 percent, whichever is greater.

(3) In the case of a source of income of a public official as defined in Government Code Section 87103(c):

(A) The decision will affect the source of income in the manner described in subsection (b) above;

(B) Whether the governmental decision will directly affect the amount of income to be received by the official;

(C) Whether there is a nexus between the governmental decision and the purpose for which the official receives income.

The specific dollar or percentage amounts set forth above do not constitute either absolute maximum or minimum levels, but are merely intended to provide guidance and should be considered along with other relevant factors in determining

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(Pursuant to Government Code Section 11380.1)

whether a financial interest may interfere with the official's exercise of his or her duties in rendering a decision.

(c) Subsection (a) of this section notwithstanding, the making or participation in the making of a governmental decision by a contract consultant or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively on a project or contract.

* * * * *

This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

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WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION
(Agency)

Date of adoption, amendment, or repeal:

February 3, 1976

By: *Daniel H. Howenstein*

Chairman

(Title)

FILED

FEB. 20, 1976

430

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GOVERNMENT CODE
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ORDER ADOPTING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 87103 of the Government Code, the Fair Political Practices Commission hereby adopts its regulation in Division VI, Title 2, California Administrative Code, as follows:

Adopt Section 18703:

Chapter 7; Article 1: Conflicts of Interest; General Prohibition 18703. Effect on the Public Generally (87103)

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same

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(Pursuant to Government Code Section 11333.1)

manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

(a) In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally.

(b) In the case of any other elected official, an industry, trade or profession of which that official is a member may constitute a significant segment of the public generally if that industry, trade or profession is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the official.

(c) An industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the the creation of the official's agency or office contains a finding and declaration, including an express reference to Section 87103 of the Government Code, to the following effect:

The Legislature [or other authority] declares that the individual[s] appointed to the office of _____ is [are] intended to represent the further the interest of the [specified industry, trade or profession], and

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(Pursuant to Government Code Section 11390.1)

that such representation and furtherance will ultimately serve the public interest. Accordingly, the Legislature [or other authority] finds that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

(d) Through January 1, 1979, an industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the creation of the official's agency contains a requirement or express authorization that members of that industry, trade or profession hold such office. After January 1, 1979, in the absence of an express finding and declaration of the type described in Paragraph (c) of this section, such an industry, trade or profession constitutes a significant segment of the public generally only if such a finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

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JAN 20 1976

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FAIR POLITICAL PRACTICES COMMISSION

(Agency)

Date of adoption, amendment, or repeal:

January 16, 1976

By: *David H. Rowenstein*

Chairman
(Title)

FILED
In the office of the Secretary of State
of the State of California
JAN 20 1976
MISS. [Signature] M.
17381 FOLIO 23, Secretary of State

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ORDER ADOPTING EMERGENCY REGULATION OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 87103(c) of the Government Code, the Fair Political Practices Commission hereby adopts its regulation in Division VI, Title 2, California Administrative Code, as follows:

Chaper 7; Article 1: Conflicts of Interest; General Prohibitions
18704. Source of Income (87103(c))

Source of income, as used in Government Code Section 87103(c), shall not include a former employer if: All income from the employer was received by or accrued to the public

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(Pursuant to Government Code Section 11380.1)

official prior to the time he or she became a public official;
the income was received in the normal course of the previous
employment; and there was no expectation by the public official
at the time he or she assumed office of renewed employment
with the former employer.

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FINDING OF EMERGENCY

The Fair Political Practices Commission finds that an
emergency exists and that the foregoing regulation is neces-
sary for the immediate preservation of the public peace,
health and safety or general welfare. A statement of the
facts constituting such emergency is:

STATEMENT OF FACTS

This regulation must take effect immediately in order
to insure that certain state agencies affected by the regula-
tion will be able to act pursuant to it and to thereby fulfill
statutorily mandated obligations within specified time periods.

* * * * *

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(Pursuant to Government Code Section 11330.1)

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(Gov. Code 11330.1)
SEP 18 1975
Office of Administrative Hearings

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FAIR POLITICAL PRACTICES COMMISSION
(Agency)
Date of adoption, amendment, or repeal:
August 21, 1975
By: *Daniel H. Hovener*
Chairman
(Title)

ENDORSEMENT
FILED
In the office of the Secretary of State
of the State of California
SEP 18 1975
AS 11 o'clock A.M. LF
EUGENE TOROYU, Secretary of State

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ORDER ADOPTING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Gov. Code Title 2, Div. 3, part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret, or make specific Section 87207(a) of the Government Code, the Fair Political Practices Commission hereby adopts its regulations in Division VI, Title 2, California Administrative Code, as follows:

Chapter 7: Conflicts of Interest

18727. "Gifts of Hospitality - Section 87207(a)"

For the purposes of Government Code Section 87207(a), the term "income" does not include the value of gifts of hospitality involving food, beverages or lodging provided

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(Pursuant to Government Code Section 11012.1)

to any person filing a statement of economic interest if such hospitality has been reciprocated within the filing period.

"Reciprocity" as used in this paragraph includes the providing by the filer to the host of any consideration, including entertainment or a household gift of a reasonably similar benefit or value.

* * * * *

These regulations will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

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JUN 15 1976
Office of Administrative Hearings

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION
(Agency)

Date of adoption, amendment, or repeal:

June 1, 1976

By: *Daniel H. Lowenstein*

Chairman
(Title)

FILED
In the office of the Secretary of State
of the State of California
JUN 17 1976
At 3:45 o'clock P.M.
101.01 FONG LU, Secretary of State

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ORDER ADOPTING EMERGENCY REGULATION OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 87207 of the Government Code, the Fair Political Practices Commission hereby amends its regulation in Division VI, Title 2, California Administrative Code, as follows:

Repeal 2 Cal. Adm. Code Section 18728.

Add 2 Cal Adm. Code Section 18728 as follows:

18728. Reporting of Income and Gifts; Honoraria and Awards (87207)

(a) As used in this section, "honorarium" means a payment for speaking at any event, participating in a panel or seminar or engaging in any similar activity. For purposes of this section, free admission, food, beverages and similar

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(Pursuant to Government Code Section 11380.1)

nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel and for necessary accommodations provided directly in connection with the event are not payments and need not be reported by the filer.

(b) When a filer is required to report income under Government Code Sections 87200, et seq., the filer may elect to report any honoraria received on a schedule established by the Commission for that purpose. The schedule shall contain all the information that is required for reporting a gift and shall require a specific description of the services provided. The schedule shall not require the filer to determine or to state whether or to what extent the value of the honorarium exceeded the value of the services provided. A filer who elects to use the schedule provided for in this paragraph for any honorarium must disclose on the schedule all honoraria of \$25.00 or more received during the period.

(c) Any filer who does not elect to use the schedule described in paragraph (b) must report an honorarium as a gift unless it is clear from all of the surrounding circumstances that the services provided represented equal or greater value than the payment received. If it is clear from the surrounding circumstances that the services provided were of equal or greater value than the payment received, the

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(Pursuant to Government Code Section 11380.1)

honorarium is income, not a gift. When the filer claims that the honorarium is not a gift, he shall have the burden of proving that the consideration was of equal or greater value, unless the filer is a defendant in a criminal action.

(d) A prize or an award shall be disclosed as a gift unless the prize or award is received on the basis of a bona fide competition not related to the filer's official status. Prizes or awards which are not disclosed as gifts shall be disclosed as income.

.....
FINDING OF EMERGENCY

The Fair Political Practices Commission finds that an emergency exists and that the foregoing regulations are necessary for the immediate preservation of the public peace, health and safety or general welfare. A statement of the facts constituting such emergency is:

STATEMENT OF FACTS

This regulation is necessary in order to provide guidance for filing Statements of Economic Interests. Since these statements are being filed continually, it is necessary for this regulation to take effect immediately.

.....
This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

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FAIR POLITICAL PRACTICES COMMISSION
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING

JUL 23 1976

Office of Administrative Hearings

ENDORSED
APPROVED FOR FILING
(Gov. Code 11380.3)

JUL 26 1976

Office of Administrative Hearings

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION
(Agency)

Date of adoption, amendment, or repeal:

July 20, 1976

By: *David H. Truitt*

Chairman
(Title)

**ENDORSED
FILED**

In the office of the Secretary of State
of the State of California

JUL 28 1976

At 4:10 o'clock P.M.
MARCH FONG EU, Secretary of S.

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ORDER ADOPTING REGULATIONS OF THE
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 87207(b)(2) and (b)(3) of the Government Code, the Fair Political Practices Commission hereby amends its regulation in Division VI, Title 2, California Administrative Code, as follows:

Add 2 Cal. Adm. Code Section 18740.

18740. Privileged Information: Statement of Economic Interests (87207(b)(2) and (b)(3))

An official need not disclose under Sections 87207(b)(2) and 87207(b)(3) the name of a person who paid fees

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or made payments to a business entity if disclosure of the person's name would violate a legally recognized privilege under California law. Such a person's name may be withheld in accordance with the following procedure:

(a) An official who believes that a person's name is protected by a legally recognized privilege may decline to report the name, but shall file with his Statement of Economic Interests an explanation for such nondisclosure. The explanation shall separately state for each undisclosed person the legal basis for assertion of the privilege and, as specifically as possible without defeating the privilege, facts which demonstrate why the privilege is applicable.

(b) With respect to each undisclosed person, the official shall state that to the best of his knowledge he has not and will not make, participate in making, or in any way attempt to use his official position to influence a governmental decision when to do so constituted or would constitute a violation of Section 87100.

(c) The Executive Director or his designee may request further information from the official and, if no legal or factual justification sufficient to support assertion of the privilege is shown, may order that the

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disclosure required by the Act be made. The official shall, within 14 days after receipt of an order from the Executive Director or his designee, either comply with the order or, if he wants to challenge the determination of the Executive Director or his designee, appeal the determination, in writing, to the Commission.

(d) If the Executive Director or his designee determines that nondisclosure is justified because of the existence of a privilege, the matter shall be referred to the Commission.

(e) The Commission shall review an appeal filed under paragraph (c) or a recommendation made by the Executive Director or his designee under paragraph (d) at a meeting held no less than 14 days after notice of the meeting is mailed to the official, the Attorney General and both the district attorney and city attorney of the jurisdictions in which the official's residence and principal place of business are located. The Commission shall decide whether nondisclosure is warranted by issuing an opinion under Section 83114 and shall treat the explanation for nondisclosure accompanying the official's Statement of Economic Interests as an opinion request. The procedures set forth in 2 Cal. Adm. Code Sections 18320-18325, however, shall not apply to opinions issued pursuant to this regulation.

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(f) If the Commission orders an official to disclose, the official must comply within 14 days. The Executive Director or his designee may, for good cause, extend any of the time periods established in this regulation.

COMMENT: A person's name is not ordinarily protected from disclosure by the law of privilege in California. Under current law, for example, a name is protected by the attorney-client privilege only when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability. See, e.g., Brunner v. Superior Court, 51 Cal. 2d 616, 618 (1959); EX parte McDonough, 170 Cal. 230 (1915); Baird v. Koerner, 279 F.2d 623, 630 (9th Cir. 1960); and cases compiled in In re Grand Jury Proceedings, 517 F.2d 666, 670-71 (5th Cir. 1975). A patient's name has been protected by the physician-patient privilege only when disclosure of the patient's name would also reveal the nature of the treatment received by the patient because, for example, the physician is recognized as a specialist. See, e.g., Marcus v. Superior Court, 18 Cal. App. 3d 22, 24-25 (1971) and Ascherman v. Superior Court, 254 Cal. App. 2d 506, 515-16 (1967). The names of business

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customers are not protected by the trade secret privilege and, because of surrounding circumstances, disclosure of a particular customer's identity would also result in disclosure of special needs and requirements of the customer that are not generally known to competitors. See, e.g., King v. Pacific Vitamin Corp., 256 Cal. App. 2d 841, 846-49 (1967) and Peerless Oakland Laundry Co. v. Hickman, 205 Cal. App. 2d 556, 559-60 (1962).

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This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

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