

Admin.

January 19, 1995

Memorandum 95-9**Conflict of Interest Code: Disclosure Categories**

The Commission needs to consider revision of disclosure categories under the Conflict of Interest Code in light of potential conflicts that could arise under new topics on the Commission's agenda — specifically unfair business practices, shareholders' rights and corporate director responsibilities, and the Uniform Unincorporated Nonprofit Association Act. The Commission's Conflict of Interest Code needs to be amended within 90 days of commencement of consideration of a new topic whose disclosure duties are not covered by existing categories. (A copy of the current Conflict of Interest Code is attached.)

Background

The Commission's governmental function presents a special challenge for the Political Reform Act of 1976. The Commission's authority is potentially unlimited — it depends upon what the Legislature authorizes for study. Traditionally, the Commission has retained subjects on its calendar for maintenance purposes. The Commission assumes the responsibility of monitoring the experience under statutes enacted on Commission recommendation. Thus, it is important to continue authority to study relatively recent studies. After five or 10 years have passed with no activity, the Commission may drop a study from its calendar.

The Commission's Conflict of Interest Code includes a mechanism for limiting disclosure categories to those matters foreseeably affected by topics considered this year or likely to be considered next year. The process is implemented by a letter from the Executive Secretary to the FPPC conveying the list of active or anticipated topics and correlating the topics with the disclosable financial interests. (A copy of this letter follows the attached Conflict of Interest Code and will also accompany your packet of materials for the upcoming annual statement.)

This process permits limitation of items on the following list of entities that are stated in the Commission's Conflict of Interest Code:

The entities and persons listed below, in the jurisdiction of California, constitute financial interests of a type that foreseeably

may be materially affected by a Law Revision Commission decision concerning a topic on the Commission's Calendar of Topics Authorized for Study:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the leasing or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.
13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.
16. Any entities or persons engaged in the business of tracing heirs.
17. Any entities or persons engaged in the business of appraising property.

However, this list cannot be expanded except through amendment of the Commission's Conflict of Interest Code. Thus, to the extent that entities not on this list may foreseeably be affected by a Commission decision in the course of considering new topics on the Commission's agenda, the Code must be amended.

The new topics the Commission plans to commence studying in the near future, are the following:

1. Uniform Unincorporated Nonprofit Association Act

Whether the Uniform Unincorporated Nonprofit Association Act, or parts of the Uniform Act, and related matters should be adopted in California. (Authorized by 1993 Cal. Stat. res. ch. 31.)

We are awaiting completion of the consultant's background study, but plan to take up this topic during 1995.

The staff proposes to add the following disclosure category: "A position as an officer or director of a California unincorporated nonprofit association."

2. Unfair Business Practices

Whether the law governing unfair competition litigation under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code should be revised to clarify the scope of the chapter and to resolve procedural problems in litigation under the chapter, including the res judicata and collateral estoppel effect on the public of a judgment between the parties to the litigation, and related matters. (Authorized by 1993 Cal. Stat. res. ch. 31.)

Initial consideration of the consultant's background study is scheduled for the this meeting.

Litigation issues are already covered from the perspective of law firms (disclosure category 15). In order to pick up other possibly affected interests, the staff proposes to add the following: "Any entity or person that is a party in unfair competition litigation in California or has been within the past two years." An alternative would be: "Any entity or person that has been a party in unfair competition litigation in California two or more times within the past five years." These types of disclosure categories assume that the designated employee has the requisite knowledge. But the alternative of attempting to list types of litigants is impractical, as a quick review of parties listed in case annotations will demonstrate.

3. Shareholders' Rights and Corporate Director Responsibilities

Whether the requirement of paragraph (2) of subdivision (b) of Section 800 of the Corporations Code that the plaintiff in a shareholder's derivative action must allege the plaintiff's efforts to secure board action or the reasons for not making the effort, and the standard under Section 309 of the Corporations Code for protection

of a director from liability for a good faith business judgment, and related matters, should be revised. (Authorized by 1993 Cal. Stat. res. ch. 31.)

We are awaiting the consultant's background study due in March, and plan to take up this topic during 1995.

The staff proposes to add the following disclosure category: "A position as director of a California corporation." We considered attempting to delineate shareholder interests, but have not been able to come up with a suitable description of a foreseeable material financial effect on such an interest.

4. Tolling Statutes of Limitation

Whether Section 351 of the Code of Civil Procedure, relating to tolling statutes of limitations while the defendant is out of state, and related matters, should be revised. (Authorized by 1994 Cal. Stat. res. ch. 81.)

This topic does not appear to present any foreseeably affected financial interests suitable for identification in the Conflict of Interest Code.

Real Property Sales

In addition, the staff recommends that disclosure category 5 be revised to include real property sales:

5. Any entities or persons whose primary activity in California is the sale, leasing, or development of real estate.

This is appropriate in view of the frequency of real property issues on the Commission's agenda.

Conclusion

The staff will prepare the necessary paperwork to revise the Commission's Conflict of Interest Code to make these changes, subject to any revisions determined by the Commission.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary