A GUIDE TO

THE POLITICAL REFORM ACT OF 1974

CALIFORNIA'S CONFLICT OF INTEREST LAW FOR PUBLIC OFFICIALS

(Other Than Members of the Legislature,
Constitutional Officers and the Insurance Commissioner)

CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804
(916) 322-5901

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INTRODUCTION

The purpose of this pamphlet is to provide a brief overview of the conflict of interest provisions of the Political Reform Act.l/

The Political Reform Act requires public officials at all levels of government to publicly disclose their private economic interests and to disqualify themselves from participating in decisions in which they have a financial interest. This pamphlet is intended to help public officials understand and abide by the laws concerning disclosure and disqualification. It is also intended as a guide for members of the public who are concerned about maintaining impartial government decisionmaking.

The pamphlet commences with an introduction to the Fair Political Practices Commission and the Political Reform Act. It then summarizes the disclosure and disqualification requirements for public officials, and explains how to seek assistance from the Fair Political Practices Commission concerning conflict of interest questions. The pamphlet concludes with a brief description of Government Code Section 1090 and other laws which relate to conflicts of interest, and suggests methods of obtaining additional information about those laws.

The discussion in this pamphlet is necessarily general. It will answer most of the basic questions about the conflict of interest provisions of the Political Reform Act. If you have specific questions or problems, you should consult the statutes, regulations, court decisions and the opinions of the Fair Political Practices Commission. The Fair Political Practices Commission will provide assistance with specific questions about the Political Reform Act. You also may wish to refer the matter to the attorney for the agency in question or to a private attorney for consultation on specific requirements of the law.

FAIR POLITICAL PRACTICES COMMISSION

The Fair Political Practices Commission consists of five members, including a full-time chairperson. No more than three may be from the same political party.

The chairperson and one member, who must be from different political parties, are appointed by the Governor. The three remaining commissioners are appointed, respectively, by the Attorney General, the Secretary of State and the Controller. Commissioners serve four-year terms and may not be reappointed once they have completed a full term.

The Fair Political Practices Commission has primary responsibility for the impartial, effective administration of the Political Reform Act. The Commission adopts regulations to implement and clarify the Political Reform Act. These regulations are found in Title 2 of the California Code of Regulations, Section 18000 et seq. The Commission also issues opinions and advice letters, conducts seminars, prescribes forms, publishes manuals, issues reports, and enforces the requirements of the Political Reform Act.

THE POLITICAL REFORM ACT

The Political Reform Act was enacted by the people of the State of California by an initiative, known as Proposition 9, in 1974. This initiative statute was enacted to accomplish the following purposes:

(a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.

(b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

(d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.

(e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.

(f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.2/

This pamphlet is a guide to the conflict of interest provisions of the Political Reform Act.

HOW DOES THE POLITICAL REFORM ACT PREVENT CONFLICTS OF INTEREST?

1. By Disclosure: The Political Reform Act requires every public official to disclose all economic interests, such as investments, interests in real estate (real property), or sources of income or

gifts, which the official may possibly affect by the exercise of his or her official duties. Disclosure is made on a form called a "statement of economic interests." 3/

2. By Disqualification: If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence or attempt to influence a governmental decision.4/

WHO MUST FILE STATEMENTS OF ECONOMIC INTERESTS UNDER THE POLITICAL REFORM ACT?

The Governor, members of the Legislature, elected state and local officials, judges and commissioners of courts of the judicial branch of government, and all high ranking state and local officials must file statements of economic interests.5/ Other officials or employees of state and local government agencies also must file statements of economic interests if they are "designated" in a conflict of interest code adopted by the agency for which they work.6/ Each agency must adopt a conflict of interest code which designates all its officials or employees who make or participate in governmental decisions which could cause conflicts of interest.7/ Unpaid members of boards and commissions and consultants to state or local government agencies also may be required to file statements of economic interests if they make or participate in making governmental decisions which could affect private financial interests.8/

The disclosure required by a particular designated official or employee must be narrowly drawn to include only the kinds of economic interests he or she could significantly affect through the conduct of his or her office.9/ For example, the executive officer of an agency with extensive regulatory powers, through the exercise of his or her official position, could affect a broad range of private economic interests. The executive officer would thus be required to disclose all investments, interests in real property, sources of income, and business entities in which he or she is a director, officer, partner, trustee, employee or holds any position of management.

In contrast, an employee of the same agency whose duties are limited to reviewing contracts for supplies, equipment, materials, or services provided to the agency would be required to report only those interests he or she holds which are likely to be affected by the agency's contracts for supplies, equipment, materials, or services. The employee would report sources of income and business entities in which, he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management, if the business entity or source of income is of the type which within the previous two years has provided supplies, equipment, materials, or services to the agency.

Each government agency has a list of all agency officials and employees who must file statements of economic interests.l0/ Anyone may inspect the conflict of interest code and this list. The Commission's Technical Assistance Division provides assistance to public officials who have questions regarding the forms for disclosure of economic interests. Questions about the adoption or amendment of an agency's conflict of interest code may also be addressed to the Commission's Technical Assistance Division.

ARE STATEMENTS OF ECONOMIC INTERESTS AVAILABLE TO THE PUBLIC?

Statements of economic interests are public records. Any member of the public must be permitted to inspect and copy any statement during normal business hours. No more than 10 cents per page may be charged for copies. In addition, a $5 retrieval fee per request may be charged for statements which are five or more years old. A request for more than one report or statement at the same time is considered a single request. No other conditions may be imposed on inspection and copying. No one may be required to identify himself or herself or sign anything in order to be permitted to inspect or copy statements.11/

Statements of economic interests must be kept on file by the official's or employee's agency and made available upon request.l2/ Statements of certain officials, including elected state officials, members of the Legislature, judges, court commissioners, most high ranking state officials, many elected local officials, planning commissioners, city and county chief administrative officers, city managers, city attorneys, county counsel and city and county treasurers are also available at the office of the Fair Political Practices Commission.13/

WHO MAY BE DISQUALIFIED UNDER THE POLITICAL REFORM ACT?

The disqualification requirements of the Political Reform Act apply to all elected state and local government officials, to all appointed state or local government officials, and to all governmental agency employees, except judges and court commissioners.14/ Unpaid members of boards or commissions and consultants to state or local government agencies who, on an ongoing basis, play a significant role in the decisionmaking process may also be required to disqualify themselves under the Act when faced with a decision that could affect their private economic interests.15/

WHAT IS A CONFLICT OF INTEREST?

A public official or employee has a conflict of interest when all of the following occur:

1. The official makes, participates in, or uses his or her official position to influence a governmental decision;

2. It is foreseeable that the decision will affect the official's economic interest;

3. The effect of the decision on the official's economic interest will be material;

4. The effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.

Participation in a Governmental Decision: The first component of a conflict of interest is whether the official makes, participates in, or uses his or her official position to influence a governmental decision. Generally speaking, a governmental decision is any decision made by a government body or by a government official or employee in his or her official capacity. Governmental decisions include: decisions on ordinances, regulations and resolutions: decisions on contract awards, purchases and leases; decisions on hiring, firing and personnel actions: decisions on land use, zoning, redevelopment plans, permits and variances; and decisions on any other matter which may come before a state or local government agency.16/

A public official makes a governmental decision when he or she, acting within the authority of his or her office, does any of the following:

- Votes on a matter.
- Appoints a person.
- Obligates or commits his or her agency to any course of action.
- Enters into any contractual agreement on behalf of his or her agency.
- Determines not to act in any of the ways described above, unless that determination is made because the official has disqualified himself or herself due to a conflict of interest.17/

For example, a public official makes a governmental decision when he or she votes as a member of a board, commission or council on any governmental decision, regardless of the outcome of the vote. Whether the official votes for or against the action, or for or against his or her economic interest, the official makes a governmental decision when he or she votes on the decision.

In addition, public officials, including heads of departments, directors of agencies, and employees of state or local government agencies, make governmental decisions when they take or authorize any official action on behalf of their agencies. A determination that an agency will not take a particular action is also a governmental decision.

A public official participates in a governmental decision when he or she responds to comments, takes part in discussions, advises or makes recommendations to a decisionmaker, whether or not the decisionmaker ultimately follows the official's advice.18/ A consultant who is hired under contract with a government agency to prepare a report or analysis or to directly advise the decisionmaker may be participating in a governmental decision.19/ Whether a consultant participates in a governmental decision depends on the duties of the consultant. Specific questions on this subject should be addressed to the Commission staff.

A public official who negotiates on behalf of his or her agency with any other public or private agency or with any person outside his or her agency concerning a governmental decision participates in that decision.20/ An official whose actions are solely ministerial, secretarial, clerical or manual does not make or participate in governmental decisions.21/

A public official influences or attempts to influence a governmental decision when the official appears before any governmental agency in his or her official capacity and urges that a particular governmental decision be made. Contacts with any individual within a government agency for the purpose of urging a particular decision or result are also considered influencing or attempting to influence a governmental decision.22/

A public official can sometimes influence a governmental decision when acting in a private, as well as in an official capacity. For example, an official who appears as the representative of a third party before the official's own agency is influencing or attempting to influence a governmental decision. This would also be true if the official appears before an agency subject to the appointive or budgetary control of the official's agency to represent a third party.23/

The following actions by an official are not considered influencing or attempting to influence a governmental decision:

- Appearing before any agency, including his or her own agency, in the same manner as any other member of the general public, to represent only himself or herself on a matter affecting real property or a business entity wholly owned by the official, his or her spouse or dependent children.24/

- Appearing as a private citizen before an agency that is independent of the appointive or budgetary control of the official's own agency. The official must not act or purport to act as the representative of his or her own agency, or use his or her agency's official stationery in any communications.25/

- Communicating with the general public or the press.26/

Foreseeability: The second component of a conflict of interest is whether it is foreseeable that the decision will affect the official, the official's immediate family, or the official's economic interest. For example:

- The decision affects the official's personal financial status, or that of his or her spouse or dependent children.27/ This does not apply, however, to decisions which affect the official's own government salary. It applies to any decision which affects the government salary of an official's spouse only if the decision is to hire, fire, promote, demote or discipline the spouse, or to set a salary for the spouse that is different from salaries paid to other employees in the same job classification or position.28/

- The decision affects a business entity located in, doing business in, owning real property in, or planning to do business in the official's jurisdiction, and the official, or his or her spouse or dependent child has an investment in the business worth $1,000 or more.29/ Investments in a business entity include: ownership of stock, bonds, or commercial paper; a general or limited partnership interest; or any other form of ownership interest in a business entity. Investments do not include: bank accounts; interests in mutual funds, money market funds, or insurance policies; or government bonds or securities.30/ Business entities include: corporations; partnerships; joint ventures; sole proprietorships: and any other type of enterprise operated for a profit. A nonprofit organization is not a business entity.31/

- The decision affects real estate (real property) located in the official's jurisdiction and the official, or his or her spouse or dependent child, has an interest of $1,000 or more in that real estate.32/ Interests in real property include: ownership (equity); deeds of trust (mortgages); leaseholds; options to buy; and joint tenancies.33/ A month-to-month lease is not an interest in real property.34/

- The decision affects a person, business entity, or nonprofit entity located in, doing business in, owning real property in, or planning to do business in the official's jurisdiction from which the official has received income of $250 or more, or the official's spouse has received income of $500 or more, in the past 12 months.35/ With certain exceptions, income includes: salaries; commissions; rents; payments received for goods or services (including payments for sale of a home, automobile or investment); loans (including loans previously made but still outstanding); and all other types of payments.36/ Income means gross income or payments received, rather than net income, profits or taxable income. Income does not include: the official's own government salary; inheritances; dividends, interest or premiums from publicly traded stock, mutual funds, bank accounts, credit unions or insurance policies; alimony or child support; loans of $10,000 or less from banks, credit unions, or credit cards on terms generally available to the public; mortgages on a principal residence on terms generally available to the public; loans from family members; or most pensions.37/

- The decision affects a person, business entity, or nonprofit entity from whom the official has received gifts of $250 or more in the past 12 months.38/ This includes gifts from sources inside and outside the official’s jurisdiction, except for gifts from specified family members.39/ Gifts provided to the official’s spouse or children may be considered gifts to the official under some circumstances.40/

- The decision affects a business entity, other than a nonprofit organization, in which the official is a director, officer, partner, trustee, employee or holds a position of management.41/

In order to create a conflict of interest, the effect of a governmental decision on an official's economic interest must be reasonably foreseeable.42/ An effect on an official's economic interest is foreseeable when there is a substantial likelihood that it will ultimately occur as a result of a governmental decision. Even during the preliminary phases of a decision, an official must consider whether the end result of a decision is likely to affect his or her economic interests. An effect does not have to be certain to be foreseeable; however, if an effect is a mere possibility, it is not foreseeable.43/

Materiality: The third component of a conflict of interest is whether the effect of the decision on the official's economic interest will be material.44/

It is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material. Specific circumstances under which an effect is material are set forth in the Commission's regulations.45/

An effect of $250 or more on the personal income, assets (other than real estate), or out-of-pocket expenses of the official, or of his or her spouse or dependent children, is material.46/ For purposes of determining whether there is a conflict of interest, it does not matter whether the financial effect increases or decreases the personal income, assets, or expenses. When an official has an investment in, or receives income from a business entity, it is necessary to consider how governmental decisions would affect the business entity. An official may be disqualified from participating in a decision even though the decision would not affect the value of his or her investment or the amount of income he or she receives.47/ Whether an effect on a business entity will be considered material depends on the financial size of the business entity.48/ For example, an effect of only $10,000 on the gross revenues or assets of a small business is material,49/ while a $1 million effect on the gross revenues or assets of a Fortune 500 company is material.50/ Similar dollar tests apply to individuals and nonprofit entities which have been a source of income or gifts.51/ A similar dollar test also applies to effects on real property when the property is not directly affected by the decision. Whether an effect on such real property will be considered material depends on its distance from the property which is the subject of the decision and the dollar amount of the effect. For example, property within 300 feet of the property which is the subject of the decision is materially affected unless there is no financial effect. Property located within a 300 - 2500 foot radius of the property which is the subject of the decision is materially affected if its fair market value is increased or decreased by $10,000, or if its rental value is increased or decreased by $1,000 per 12 month period.52/

The effect of a decision on an official's leasehold interest in real property is material if it will increase or decrease the amount of rent by $250 or 5 percent during any 12 month period, or if the decision will significantly affect the use or enjoyment of the property or its legally allowable use.53/

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests.54/ For example, the effect may be material if the official's receipt of income from a private source is directly related to the decision.55/

In special situations, an effect is considered material regardless of its dollar value. These situations include the following:

- A person or business entity in which the official has an investment interest worth $1,000 or more, or which is a source of income of $250 or more to the official in the last 12 months, is directly involved in a decision before the official's agency.56/ A person or business entity is directly involved in a decision before an official's agency if it is the subject of the proceeding or initiates the proceeding by filing an application, claim, appeal or similar request.57/

- The decision would affect the zoning, annexation, sale, lease, actual or permitted use of, or taxes or fees imposed on real property in which the official has an interest of $1,000 or more.58/

- The decision is to designate the survey area, select the project area, adopt the preliminary plan, form a project area committee, certify the environmental document, adopt the redevelopment plan, add territory to the redevelopment area or rescind or amend any of these decisions; and the official has an interest in real property in the boundaries, or the proposed boundaries of the redevelopment area.59/

The "Public Generally" Exception: The fourth component of a conflict of interest is whether the effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.60/ An official does not have a conflict of interest if the effect of a governmental decision on the official or his or her economic interest is indistinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's interests in <u>substantially the same manner</u> as it would affect a significant segment of the public.

Regulation 18703 sets out two types of tests to determine what constitutes a "significant segment" of the public generally. Under the percentage test, ten percent of the population, property owners, or home owners in the jurisdiction (or the district the official represents) is considered a significant segment.61/ In the alternative, the exception will apply if the decision will affect 50 percent of all businesses in the jurisdiction or the district the official represents, so long as the segment is composed of persons other than a single industry, trade, or profession.

Regulation 18703 also contains a raw-number standard. If the decision will affect 5,000 individuals it will affect a significant segment.

In September 1993, the "public generally" exception was expanded to include a variety of new exceptions, each dealing with a different factual situation.

- Regulation 18703(b) codifies a special rule for rates, assessments, and similar decisions.62/ The exception allows public officials whose economic interests are subject to rates, assessments, etc., to participate in decisions setting or modifying the rate or assessment so long as the changes have a uniform or proportionate financial effect throughout the jurisdiction or throughout a significant segment of the jurisdiction.

- Regulation 18703(c) provides an exception applicable to states of emergency. The financial effect of a governmental decision on an official subject to a state of emergency is indistinguishable from its financial effect on the public generally if the decision will affect the official's interests in substantially the same manner as other persons subject to a state of emergency.63/

- Regulation 18703.2 provides an exception for decisions affecting industries, trades or professions, under some circumstances. For example, where an industry, trade, or profession is a predominant industry, trade, or profession in the official's jurisdiction, the "public generally" exception may apply.

- Regulation 18703.3 provides an exception for persons appointed to represent specific economic interests such as election districts, homeowners, tenants, etc., so long as specific criteria are met.64/ This exception has been applied to some local private industry councils and mobile home rent control boards.

Public Generally Rule for Small Jurisdictions: Additionally, in small jurisdictions (population of 25,000 or less and geographic area of 10 square miles or less) the effect of a decision on an official's principal residence is deemed to be no different from its effect on the public generally if all the following requirements are also met:

- The public official is required to reside within the jurisdiction.

- The public official, if he or she is an elected officer, has been elected in an at-large election.

- The decision does not have a direct effect (as provided in Regulation 18702.1(a)(3)) on the public official's principal residence.

- The principal residence is more than 300 feet from the boundaries of the property which is the subject of the decision.

- The principal residence is located on a parcel of land of one quarter acre or less, or a residential lot not larger than 125 percent of the median residential lot size for the jurisdiction.65/

In summary, there are four questions to ask in determining whether an official has a conflict of interest:

l. Will the official make, participate in, or use his or her official position to influence a governmental decision?

2. Is it reasonably foreseeable that the decision will affect the official, the official's immediate family, or an economic interest of the official?

3. Will the effect of the decision on the official's economic interest be material?

4. Will the effect of the decision on the official's economic interest be distinguishable from its effect on the public generally?

The answer to each of these four questions must be "yes" for the official to be disqualified from a decision because of a conflict of interest.

WHAT SHOULD A PUBLIC OFFICIAL WHO HAS A CONFLICT OF INTEREST DO?

When a public official determines that a particular governmental decision will foreseeably and materially affect his or her economic interest, in a manner that is different from the effect on the general public, the official has a conflict of interest. The official is not counted for purposes of establishing a quorum, and must not vote on, make, participate in any way in, or attempt to influence the decision.66/ This is called disqualification. When an official disqualifies himself or herself from a governmental decision because of a conflict of interest, the reason for the disqualification must be announced (in the case of a member of a voting body), or disclosed in writing (in the case of all other officials).67/

IS A GOVERNMENTAL DECISION VALID IF IT WAS MADE BY AN OFFICIAL WHO HAD A CONFLICT OF INTEREST?

A governmental decision is not automatically invalidated by the participation of an official who had a conflict of interest. However, it may be set aside by a court if the court determines that an official who made the decision had a conflict of interest, that without that official's actions the decision would not have been made, and that setting aside the decision will not cause injury to innocent persons.68/

MAY A PUBLIC OFFICIAL EVER MAKE A DECISION IN WHICH HE OR SHE HAS A DISQUALIFYING FINANCIAL INTEREST?

The law recognizes a type of "rule of necessity" for those rare situations in which a public official is legally required to make or participate in a decision, even though the official has a disqualifying financial interest.69/ This rule is different from the common law "rule of necessity." It applies only when: (1) no one else has the legal authority to make or participate in the decision.70/ (2) the existence and nature of the official's financial interest is put on the public record, and (3) the official does not try to influence the decisions of others outside of a public meeting.71/ In such a case, the Political Reform Act allows the official to make or participate in the decision.

Pursuant to this rule, an official is not legally required to make or participate in a decision simply because the official's vote is needed to break a tie, or because the official is needed for a quorum as a result of some other official's absence.72/ However, if so many members of an agency are disqualified because of conflicts of interest that no decision is possible because a quorum of qualified members cannot be convened, there is a procedure for allowing some officials who have a disqualifying financial interest to vote. In that case, the additional number of officials necessary to constitute a quorum may be selected by drawing lots, or through some other method of random selection.73/ The officials selected may vote and make statements or ask questions during a public meeting.74/

WHAT ARE THE PENALTIES FOR VIOLATION OF THE CONFLICT OF INTEREST PROVISIONS OF THE POLITICAL REFORM ACT?

The Fair Political Practices Commission can bring an administrative action against an official who has violated the disclosure or disqualification requirements of the Political Reform Act, and may impose administrative penalties of up to $2,000 for each violation.75/ An official who violates the Act may be subject to a civil lawsuit, in which a court may impose a fine.76/ A willful violation of the Act is also a misdemeanor, punishable by a fine and/or by imprisonment; it also may result in the official being ineligible to run for public office for four years.77/ The fine for a willful conflict of interest violation may be up to $10,000; the fine for willfully failing to disclose an economic interest may be up to $10,000 or three times the amount not disclosed whichever is greater.78/ These penalties apply to violations of the disclosure requirements of the Act by any public official.79/ However, they do not apply to violations of the disqualification provisions of the Act by the Governor, other constitutional officers or members of the Legislature.80/ They do apply to disqualification violations by all other public officials.

HOW CAN A PUBLIC OFFICIAL FIND OUT IF HE OR SHE HAS A CONFLICT OF INTEREST?

When a public official suspects that he or she may have a conflict of interest in an upcoming decision, the attorney for the official's agency should be consulted. The official can also ask the Legal Division of the Fair Political Practices Commission for advice. Requests for written advice are generally answered within 21 working days, 81/ although written or telephone advice may be given more quickly in urgent situations. If an official poses a question which is unusually complex, significant or unique, the full Commission may issue an opinion, although this process takes longer.82/ The Commission provides advice only about the Political Reform Act; the Commission will not answer questions about Government Code Section 1090 or other laws which are not part of the Political Reform Act.

If the Commission advises an official in writing that disqualification is not necessary, and the official has truthfully provided all material facts, the official is provided with immunity against any administrative action brought by the Commission arising from the same conflict of interest charges. Reliance on the written advice also serves as evidence of good faith conduct in any civil or criminal proceeding based on the same charges.83/

The Commission may only issue opinions or give advice regarding conflicts of interest to the official who may have to be disqualified, or to the official's authorized representative.84/ Advice about specific situations will not be given to members of the public, or to other persons who are interested in whether or not an official should be disqualified from the specific decision.

In addition, the Commission will not issue an opinion or provide advice about an official's past conduct. These questions are referred to the Enforcement Division of the Fair Political Practices Commission. Whether a public official has committed a violation of the Political Reform Act is determined after investigation by the Commission's Enforcement Division.

All Commission regulations, opinions and enforcement decisions are published by the California Continuing Education of the Bar. Virtually all advice requests and advice letters are public records.85/ Opinions, significant advice letters and enforcement cases are summarized in the Commission's Bulletin which is distributed regularly. Copies of opinions, advice letters and enforcement decisions can be obtained from the Commission.

WHAT SHOULD YOU DO IF YOU SUSPECT THAT A PUBLIC OFFICIAL HAS VIOLATED THE CONFLICT OF INTEREST PROVISIONS OF THE POLITICAL REFORM ACT?

Complaints concerning violations of the conflict of interest provisions of the Political Reform Act should be made to the local district attorney or the Enforcement Division of the Fair Political Practices Commission.

CAMPAIGN CONTRIBUTIONS AND GOVERNMENTAL DECISIONMAKING.

The Political Reform Act also contains Government Code Section 84308, a provision which deals specifically with conflicts of interest and campaign contributions.

Government Code Section 84308 is discussed in detail in a pamphlet entitled "A Guide to Government Code Section 84308--Conflicts of Interest and Campaign Contributions." This pamphlet is available from the Fair Political Practices Commission.

GOVERNMENT CODE SECTION 1090 AND OTHER LAWS.

Government Code Section 1090 and other laws not included in the Political Reform Act apply to specific situations where public officials may have conflicts of interest. For example, Government Code Section 1090 applies to conflicts of interest involving contracts made by officials of public agencies, and Health and Safety Code Section 33130 applies only to certain redevelopment situations. The Fair Political Practices Commission has no authority to advise public officials about the application of these laws, or to enforce them. That responsibility belongs to city attorneys, county counsel, other public agency attorneys, district attorneys, and the State Attorney General.

NOTES (All statutory references are to the Government Code unless otherwise specified. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954.)

1/ Sections 81000-91015.

2/ Section 81002.

3/ Art. 2 (commencing with Section 87200), Art. 3 (commencing with Section 87300), and Art 5 (commencing with Section 87500), Ch. 7, Title 9, govern disclosure.

4/ Art 1 (commencing with Section 87100), Ch. 7, Title 9, governs disqualification.

5/ Section 87200.

6/ Art. 3 (commencing with Section 87300), Ch. 7, Title 9.

7/ Section 87300.

8/ See, Commission on Cal. State Gov. Organization v. Fair Political Practices Com. (1977) 75 Cal.App.3d 716; In re Siegel (1977) 3 FPPC Ops. 62; In re Leach (1978) 4 FPPC Ops. 48.

9/ Regulation 18730(b)(3); Hays v. Wood (1979) 25 Cal.3d 772.

10/ Section 87302(a).

11/ Section 81008.

12/ Section 81009.

13/ Section 87500.

14/ Sections 82048 and 87100.

15/ Section 82019; Regulation l8700; In re Maloney (1977)3FPPC Ops. 69.

16/ Section 87100; Sections 18700 and 18700.1.

17/ Regulation l8700(b).

18/ Regulation 18700(c).

19/ Regulation 18700(c)(2).

20/ Regulation 18700(c)(1).

21/ Regulation 18700(d).

22/ Regulation 18700.1.

23/ Regulation 18700.1.

24/ Regulation 18700.1(b)(l).

25/ Regulation 18700.1(c).

26/ Regulation 18700.1(b)(2).

27/ Section 87103.

28/ Section 82030(b)(2); Regulation 18702.1(c)(1).

29/ Section 87103(a).

30/ Section 82034.

31/ Section 82005.

32/ Section 87103(b).

33/ Section 82033.

34/ Regulation 18233.

35/ Section 87103(c).

36/ Section 82030(a).

37/ Section 82030(b).

38/ Section 87103(e). The $250 figure for gifts is subject to a Consumer Price Index escalator, making the figure $290 as of 1997.

39/ Sections 82028 and 82030(a).

40/ Regulation 18944.

41/ Sections 87103(d) and 82005.

42/ Section 87103.

43/ In re Thornr (1975) 1 FPPC Ops. 198; Witt v. Morrow (1977) 70 Cal.App.3d 817; Downey Cares v. Downey Community Development Commission (1987) 196 Cal.App.3d 983.

44/ Section 87103.

45/ Regulations 18702 through 18702.6.

46/ Regulation 18702.1(a)(4).

47/ Witt v. Morrow (1977) 70 Cal.App.3d 817.

48/ Regulation 18702.2.

49/ Regulation 18702.2(g).

50/ Regulation 18702.2(a).

51/ Regulations 18702.5 and 18702.6.

52/ Regulation 18702.3.

53/ Regulation 18702.4.

54/ Regulation 18702(b).

55/ Regulation 18702.1(d).

56/ Regulation 18702.1(a)(1) and (2).

57/ Regulation 18702.1(b).

58/ Regulation 18702.1(a)(3).

59/ Regulation 18702.1(a)(3).

60/ Section 87103; Regulation 18703; In re Legan (1985)9 FPPC Ops. 1.

61/ The exception may be applied against an election district rather than the jurisdiction as a whole. For example, 10 percent of the official's election district would be considered a significant segment.

62/ Regulation 18703(b); Hickling Advice Letter, No. A-94-192.

63/ Regulation 18703(c); Kohn Advice Letter, No. A-93-447.

64/ Regulation 18703.3; Larsen Advice Letter, No, I-94-110.

65/ Regulation 18703.1

66/ Section 87100; In re Biondo (1975) 1 FPPC Ops. 54.

67/ Regulation 18700(b)(5).

68/ Section 91003(b); Downey Caresy v. Downey Community Development Commission (1987) 196 Cal.App.3d 983.

69/ Section 87101.

70/ Affordable Housing Alliance v. Feinstein (1986) 179 Cal.App.3d 484; In re Hudson (1978) 4 FPPC Ops. 13.

71/ Regulation 18701; In re Brown (1978) 4 FPPC Ops. 19.

72/ Section 87101; Regulation 18701(c).

73/ In re Hudson (1978) 4 FPPC Ops. 13.

74/ Regulation 18701(b)(4).

75/ Section 83116.

76/ Sections 91005(b) and 91005.5.

77/ Sections 91000 and 91002.

78/ Section 91000(b).

79/ Section 91013 also imposes late filing fees on officials who fail to file timely statements of economic interests.

80/ Section 87102.

81/ Section 83114(b); Regulation 18329.

82/ Section 83114(a); Regulations 18320-18326.

83/ Section 83114(b).

84/ Section 83114; Regulations 18320 and 18329.

85/ Sections 6250-6265.

APPENDIX A

How to Disqualify Yourself from Decision Making

If you determine that your financial interests require you to disqualify yourself from making or participating in the making of a University decision, you are required to submit a "disqualification statement" under the following procedures. You must notify in writing your Conflict of Interest Coordinator, your department head, and your immediate supervisor, briefly stating the reasons, including disclosure of the specific disqualifying interest(s) leading to your determination not to make or participate in making the University decision. Disclosure of the financial interest prompting disqualification must be made with a level of specificity at least equal to the disclosure of financial interests on the annual statement of economic interests. The supervisor must place a copy of the disqualification statement in your Personnel File and shall reassign the matter to another employee and record the name of the substitute employee with all copies of the disqualification statement. You must then refrain from participating in any way in the decision; and you must not use your official position to influence any other person with respect to the matter.

If you have questions or require assistance please call or e-mail your local Conflict of Interest Coordinator.

APPENDIX B

Academic Decision Regulation

Because of concern that the Act would operate to prohibit faculty and other members of the University with teaching and research responsibilities from making various decisions in the course of academic instruction and research, the Fair Political Practices Commission (FPPC) adopted an academic decision regulation, which provides:

(a) Except as provided in subsection (b), neither disclosure of financial interests nor disqualification is required...in connection with:

(1) Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching;

(2) Decisions made by a person who has teaching or research responsibilities at an institution of higher education to pursue personally a course of academic study or research, to apply for funds to finance such a project, to allocate financial and material resources for such academic study or research, and all decisions relating to the manner or methodology with which such study or research will be conducted. Provided, however, that the provisions of this subsection (2) shall not apply with respect to any decision made by the person in the exercise of institution- or campus-wide administrative responsibilities respecting the approval or review of any phase of academic research or study conducted at that institution or campus.

(b) Disclosure shall be required...in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, but disqualification may not be required...in connection with any such decision if the decision is substantively reviewed by an independent committee established within the institution.

Two University documents provide for University implementation of the academic decision regulation:

1. University Policy on Disclosure of Financial Interest in Private Sponsors of Research (APM-028-0)

2. Guidelines for disclosure and Review of Principal Investigator's Financial Interest in Private Sponsors of Research (APM-208-10)

Questions about the Academic Decision Regulation or the conflict of interest filing obligations of principal investigators may be directed to the Office of the Vice Provost for Research.