

DATE: March 4, 1987

TO: W. B. Kolender, Chief of Police  
FROM: City Attorney  
SUBJECT: Police Department's Conflict of Interest Code

In the course of our review of the Commander Fortier matter, we were required to review and evaluate portions of the department's Conflict of Interest Code. (See attached.) Exhibit A of this code deals with "Designated Positions, Duties, and Categories" and assigns Commanders to disclosure category 4, the lowest reporting category and one requiring no disclosure of real property interests.

While that assignment is within the department's discretion, the Political Reform Act, California Government Code section 81000 et seq., compels disclosure of all assets that may be "foreseeably" affected by the designated employee's decisions.

. 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 and for each such enumerated position, the specific types of investments, interests in real property, and sources of income which are reportable. An investment, interest in real property, or source of 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 or her position.

California Government Code section 87302

Emphasis added.

Moreover Section 87309 provides:

. 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; . . . .

Our review found that Commander Fortier's duties had the "foreseeable potential" to impact real property holdings since his duties deal with property location and development. Hence we recommend either expanding the Commanders' disclosure category or restricting the responsibility for real property recommendations to the Deputy Chief level where such reporting is required.

We remain ready to revise Exhibit A in conformance with your decision.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:048.7.2(x043.2)

Attachment-Conflict of Interest Code

(Exhibit A and B)

ML-87-21