

Memorandum

To : Members of the Commission

Date : April 20, 1979

From : FAIR POLITICAL PRACTICES COMMISSION
Sarah T. Cameron *SC*

Subject: Proposed Amendment of Regulation 18702 - Material Financial Effect

Attached is a proposal to modify the materiality regulation - 2 Cal. Adm. Code Section 18702 - to emphasize the general standard and to clarify that the specific dollar and percentage amounts mentioned are merely tools to help one determine if the general standard is met. The first step we have taken to accomplish this is to move the general standard back to paragraph (a). Next, we propose an introduction to the specific standard which provides that the effects set forth there meet the general standard but which also recognizes that the specific standards may not be applicable because they may not be computable ("application... would not be feasible") or because, in the context of the particular decision and the particular financial interest, such an application would not make sense in terms of the policies and purposes of the Act ("application... would be unreasonable considering the nature of the decision being made and the financial interest being affected").

The staff believes that these changes reinsert flexibility into the choice of which standard to use and therefore meet the concerns previously expressed by the Commission without returning to the "bias" standard which was part of the regulation before last November. Not only was the bias standard difficult to apply but it also shifted the focus of any materiality analysis from the financial effects of a decision to the effects which those effects could be expected to have on the official. The "substantial/insignificant" test keeps the focus of the Act on the effects of the decision on the financial interest held by the official. We do not believe that conscientious application of the bias standard in our advice and opinion processes would lead to different results than application of the substantial/insignificant standard. We do think, however, that the bias standard contained the potential for abuse by those who might ignore the reasonable

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man approach built into that standard and might instead conclude that since they were not in fact biased, they did not even have to consider the magnitude of a decision's effects on their financial interests.

Finally, we have made a few nonsubstantive changes in the regulation. First, we have a paragraph (D) in (b)(3) to restate the general standard with respect to sources of income that are not business entities. Technically, this standard would apply anyway, but we have run into some confusion caused by our specific reference to sources which are business entities which leads us to conclude that some people thought that (b)(3)(A) and (B) were the only tests for materiality which applied to sources of income which were not business entities. Restatement of the general standard as applied to sources which are not business entities should solve that problem. Second, when we moved (b)(3)(A) and (B) around in November, we did not correct the punctuation so that there is now a period after (B) and a semi-colon after (C). Taking this opportunity to change that error, I also think we should put an "or" after all the subparts of (b)(1), (2) and (3). This will make it clearer that the tests are alternatives.

STC:nrw