



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Cardenas, Hatch, Hayward, and Wilson

From: Dave Bainbridge, General Counsel
Karen Harrison, Senior Commission Counsel

Subject: Prenotice of Proposed Repeal and Adoption of Regulation 18707, Disqualification Requirements

Date: April 6, 2020

Requested Action and Summary of Proposal

For the Commission's review and comments, staff proposes non-substantive clean-up amendments to Regulation 18707, resulting in its repeal and proposed adoption, with a substantive clarification that Section 87200 public officials who have a financial interest in a decision on a public meeting agenda may not avoid the public identification requirements in Section 87105 by a partial absence from the meeting.¹ Incorporating any Commission direction, the current regulation will be noticed for repeal and the proposed regulation for adoption on or after May 21, 2020, the Commission's scheduled May meeting.

Background and Current Law

Concerned citizens recently brought to the Commission's attention that an elected public official in their county attended a public meeting in which they understood the official to have a financial interest in an item on the agenda. The public official reportedly left the meeting prior to the particular agenda item, and then returned to the meeting after the item was completed, with no disclosure as to his financial interest. The Commission directed staff to review Regulation 18707 and propose amendments which will avoid such circumventions of the disclosure requirements.

Section 87100 states that no public official 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 87105 governs the manner of disqualification for an official who holds an office specified in Section 87200.² Essentially

¹ The regulations of the FPPC are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source. The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code.

² Section 87200 applies to elected state officers, judges and commissioners of courts of the judicial branch of government, 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 Commission, members of the High-Speed Rail Authority, members of planning commissions, members of

Section 87105 requires public officials to immediately prior to the consideration of the matter publicly identify the financial interest that gives rise to the conflict, recuse themselves from discussion and voting on the matter, and leave the room until after the matter is concluded.

Section 87105 states:

(a) A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

(1) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

(2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

(3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

(4) Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue.

(b) This section does not apply to Members of the Legislature.

Interpreting the recusal requirements, Regulation 18707 (a)(3)(B) permits an exception to the public identification duties where the official is absent:

(B) Absence. If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, there are no public identification duties on the public official for that item at that meeting.

Staff proposes a redrafted Regulation 18707 to streamline the language in the regulation. Addressing the avoidance issue, staff proposes clarifying the timing for public identification of a financial interest in a public meeting as follows:

(2) Timing. Public identification of the financial interest must be made immediately prior to consideration of the agenda item. Partial absence from a meeting does not excuse the official's public identification requirement. If an official leaves a meeting in advance of the agenda item in which the official is

the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and candidates for any of these offices at any election.

disqualified, the official must publicly identify the agenda item and the financial interest prior to leaving the meeting. An official first joining a meeting after the consideration of an agency item in which the official is disqualified must publicly identify the agenda item and the financial interest immediately upon joining the meeting.

Notably, staff has placed the items currently identified as “exceptions” in subdivision (a)(3) in more appropriate categories, given the limited nature of these items. For example, when an official has a conflict of interest in a matter on the consent calendar, the only “exception” is that the official need not leave the room. (See Regulation 18707(a)(3)(A).) Staff proposes addressing this item under the requirements for “recusal and leaving the room” as follows:

(3) Recusal and Leaving the Room. The public official must recuse him or herself, leave the room after the identification required by this regulation is made, and refrain from any participation in the decision. The official will not be counted toward achieving a quorum while the item is discussed.

(A) For an agenda item on a consent calendar (uncontested items), the official may remain in the room during the consent calendar.

Summary

Proposed Regulation 18707 clarifies the necessity for public identification of a conflict of interest in a public meeting agenda item where the official attends part of the meeting and either leaves the meeting prior to the agenda item’s consideration or arrives after its consideration.

Attachment: Current Regulation 18707 for Repeal
Proposed Regulation 18707 for Adoption