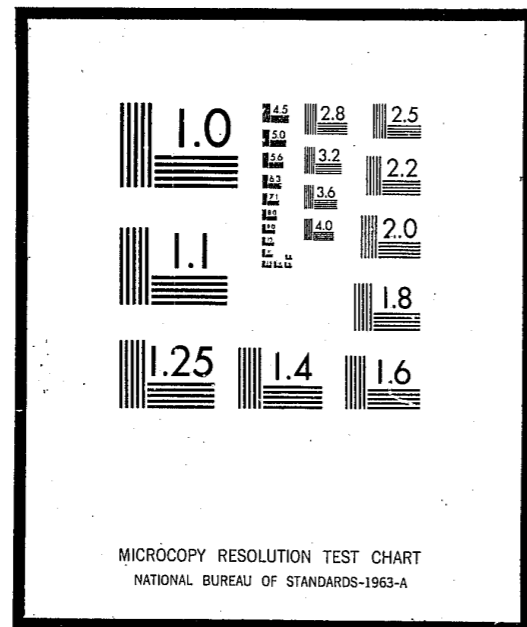


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8/28/75



Los Angeles County Municipal Courts Planning & Research

MEMORANDUM

March 1, 1974

TO: L. A. COUNTY MUNICIPAL COURT JUDGES
FROM: PLANNING AND RESEARCH UNIT
SUBJECT: Compliance with Conflict of Interest Act
Government Code 3600-3760

In response to requests from many L. A. County Municipal Court Judges, the Planning and Research Unit has prepared a memorandum regarding the Governmental Conflict of Interests Act (Government Code § 3600-3760).

Questions have arisen regarding:

- 1) General interpretation of the Act.
- 2) Application to judges.
- 3) Requirements for disclosure.

In response to these inquiries, we have prepared the following documents:

- ATTACHMENT "1" - Major legal issues
- ATTACHMENT "2" - Conclusion
- ATTACHMENT "3" - Compliance

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Concern over the newly-enacted Conflict of Interest Act focused on two general areas:

- (1) Validity of the Act.
- (2) Applicability to the Judiciary.
- (3) Interpretations of the Act were derived from three sources.
 - Opinion of Los Angeles County Counsel, (January 10, 1974).
 - Memorandum prepared by the Conference of California Judges, (February 20, 1974).
 - Secretary of State Information Manual, Disclosure of Assets & Income by Office-holders & Candidates.

Discussion centered on four specific questions:

- (1) Are judges "Constitutional Officers" and/or "Public Officers" as defined in the Act?
- (2) Do the "prior interest" provisions constitute Due-Process violations?
- (3) Does the Act present a separation of powers problem?
- (4) Is the Act deemed invalid by City of Carmel v. Young?

For copies of documents discussed in this memorandum or related questions, please contact Carol E. Schatz, Assistant Planner, at 974-6181.

1. ARE JUDGES CONSTITUTIONAL OFFICERS AND/OR PUBLIC OFFICERS PER SECTIONS 3610(c) and 3610(h) OF THE ACT?

Section 3610(c) defines "Constitutional Officers". It lists specific offices and includes "all other elected state officials".

Section 3610(h) defines a public official as any elective or appointive officer of any public agency.

For purposes of disclosure, it is important to determine which, if any, of these two sections applies to judges.

If judges are "constitutional officers", whether they be candidates for office or officeholders, they must comply with the disclosure provisions of Section 3700.

If, however, they are not "constitutional officers" but are "public officials", they must disclose the appropriate information according to guidelines established by their own agency pursuant to the mandate created by section 3700.

It is the opinion of the County Counsel that judges are both "constitutional officers" and "public officials". It is the opinion of Counsel for the Conference of California Judges that Superior and Municipal Court Judges are probably elected state officials and therefore Constitutional Officers (forcing compliance with the provisions of Section 3700).

The Conference concludes that judges are elected officials. There appears to be no case law on the specific question as to whether superior and municipal court judges are elected state officials. However, based upon the following arguments, the Conference indicates that it hesitatingly accepts the proposition that judges are elected state officials:

- The State Constitution provides that the judicial power of the state is vested in the Supreme Court, Courts of Appeal, Superior Courts, Municipal Courts and Justice Courts.

- Supreme Court and Court of Appeals judges are elected on a state-wide basis.
- The Constitution establishes qualifications for judges in all but Justice Courts.
- The Governor can fill vacancies in all but Justice Courts.
- The salary of a municipal court judge is fixed by the Legislature.
- Government Code Section 6801 says certain judges, including superior and municipal court judges "shall not be deemed state officers for purposes of this section" implying judges are state officials for other purposes.

Based upon these arguments, it is probable that superior and municipal court judges will be deemed to be elected state officials compelling compliance with the disclosure provisions of the Act.

2. IS THERE A DUE PROCESS VIOLATION IN REQUIRING THE DISCLOSURE OF INTERESTS HELD PRIOR TO THE EFFECTIVE DATE OF THE ACT?

No specific operative date was indicated at the time of enactment. This raises a question of the validity of proscribing penalties for acts which were not considered conflicts of interests at the time they occurred.

Further, if interests held prior to the effective date of the legislation now fall within the category of those to be disclosed, judicial decisions may be retroactively void for conflict of interest.

The Conference of California Judges indicated that a possible violation of due process would be avoided if filing under the statute is not required until April, 1975.

3. IS THERE A VIOLATION OF THE CONCEPT OF SEPARATION OF POWERS?

This question is raised by the ability of the legislature to impose sanctions on judges, including forfeiture of office. The Act may conflict with case law holding ". . . Where the Constitution prescribes the qualifications for state office, the legislature can neither add to, nor detract from, the qualifications so prescribed." Wallace v. Superior Court, 141 C.A.2d 771, 776.

The Conference Memorandum raised the possibility that since the legislature has the power to set requirements for judicial office, it may also have the power to establish criteria for removal of judges from office.

4. IS THE STATUTE, IN WHOLE OR IN PART, INVALID UNDER CITY OF CARMEL-BY-THE-SEA V. YOUNG, 2 C.3d 259?

The purposes of the statute are enumerated in Section 3600 to include assurance of independence of public officials and the availability of possible conflict of interest information to the public. Section 3602 admonishes that the provisions of the statute are to be construed liberally to effect its purposes.

The court in City of Carmel-By-The-Sea, held that "finance disclosure requirement legislation must be narrowly drawn to include only those transactions and holdings which have a reasonable relationship to the official duties of the public officer."

A specific provision of the Act which may fail the "reasonable relationship" test is Section 3700(d) requiring disclosure of real estate or business interests within the official's jurisdiction. Such interests are conclusively presumed by the Act to be interests materially affected by the official in the scope of his or her official duties. That such a presumption could stand under the City of Carmel-By-The-Sea test is questionable. If only one section of the Act is invalid under the case, however, it may be severable under Section 3602.

ATTACHMENT "2"

CONCLUSION

The issue of greatest importance at this time is briefly discussed (in No. 1.) above. The general conclusion is that Section 3700 does apply to judges of the Supreme Court, Court of Appeals, Superior Court, Municipal and Justice Court.

CONCLUSION: THERE IS SUFFICIENT CAUSE TO WARRANT THE FILING OF THE NECESSARY DISCLOSURE REPORTS. DISQUALIFICATION FOR OFFICE OR LOSS OF POSITION ARE THE RISKS OF NOT SO DOING.

ATTACHMENT "3"

COMPLIANCE

The Secretary of State has mailed each Municipal Court Judge two documents related to the Conflict-of-Interest Act:

1. FORM 716:

drawn to comply with the disclosure requirements of Section 3700, et. seq. of the Conflict-of-Interest Act;

2. INFORMATIONAL MANUAL FOR DISCLOSURE OF ASSETS AND INCOME BY OFFICEHOLDERS AND CANDIDATES:

detailed requirements and instructions for the completion of FORM 716.

703 SERIES FORMS: (For candidates only)

disclosure forms to be completed by all candidates, in addition to FORM 716.

END