

RESOLUTION 12-01-2018 – AS AMENDED

DIGEST

Legislative Conflicts of Interest: Limitations on Employment

Amends Government Code section 8920 to specify that a member of the Legislature may not accept employment that a reasonable person under the circumstances would believe would impair the member’s judgment or induce disclosure of legislative confidences.

STATEMENT OF REASONS

The Problem: Legislators are prohibited from accepting other employment that he or she “has reason to believe” will impair his or her judgment. That is a subjective test and easy to get around.

The Solution: This resolution makes the test on other employment (moonlighting) objective by replacing “has reason to believe” to “is of such a character to.”

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 8920, to read as follows:

- 1 § 8920
- 2 (a) No Member of the Legislature, state elective or appointive officer, or judge or justice
- 3 shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or
- 4 engage in any business or transaction or professional activity, or incur any obligation of any
- 5 nature, which is in substantial conflict with the proper discharge of his duties in the public
- 6 interest and of his responsibilities as prescribed in the laws of this state.
- 7 (b) No Member of the Legislature shall do any of the following:
- 8 (1) Accept other employment which ~~he has reason to believe will~~ a reasonable person
- 9 under the circumstances would believe to either impair his independence of judgment as to his
- 10 official duties or require him, or induce him, to disclose confidential information acquired by
- 11 him in the course of and by reason of his official duties.
- 12 (2) Willfully and knowingly disclose, for pecuniary gain, to any other person,
- 13 confidential information acquired by him in the course of and by reason of his official duties or
- 14 use any such information for the purpose of pecuniary gain.
- 15 (3) Accept or agree to accept, or be in partnership with any person who accepts or agrees
- 16 to accept, any employment, fee, or other thing of monetary value, or portion thereof, in
- 17 consideration of his appearing, agreeing to appear, or taking any other action on behalf of
- 18 another person before any state board or agency.
- 19 This subdivision shall not be construed to prohibit a member who is an attorney at law
- 20 from practicing in that capacity before any court or before the Workers’ Compensation Appeals
- 21 Board and receiving compensation therefor. This subdivision shall not act to prohibit a member
- 22 from acting as an advocate without compensation or making inquiry for information on behalf of
- 23 a constituent before a state board or agency, or from engaging in activities on behalf of another
- 24 which require purely ministerial acts by the board or agency and which in no way require the

25 board or agency to exercise any discretion, or from engaging in activities involving a board or
26 agency which are strictly on his or her own behalf. The prohibition contained in this subdivision
27 shall not apply to a partnership or firm of which the Member of the Legislature is a member if
28 the Member of the Legislature does not share directly or indirectly in the fee, less any expenses
29 attributable to that fee, resulting from the transaction. The prohibition contained in this
30 subdivision as it read immediately prior to January 1, 1983, shall not apply in connection with
31 any matter pending before any state board or agency on or before January 2, 1967, if the affected
32 Member of the Legislature was an attorney of record or representative in the matter prior to
33 January 2, 1967. The prohibition contained in this subdivision, as amended and operative on
34 January 1, 1983, shall not apply to any activity of any Member in connection with a matter
35 pending before any state board or agency on January 1, 1983, which was not prohibited by this
36 section prior to that date, if the affected Member of the Legislature was an attorney of record or
37 representative in the matter prior to January 1, 1983.

38 (4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift
39 from any source except the State of California for any service, advice, assistance or other matter
40 related to the legislative process, except fees for speeches or published works on legislative
41 subjects and except, in connection therewith, reimbursement of expenses for actual expenditures
42 for travel and reasonable subsistence for which no payment or reimbursement is made by the
43 State of California.

44 (5) Participate, by voting or any other action, on the floor of either house, in committee,
45 or elsewhere, in the passage or defeat of legislation in which he has a personal interest, except as
46 follows:

47 (i) If, on the vote for final passage by the house of which he is a member, of the
48 legislation in which he has a personal interest, he first files a statement (which shall be entered
49 verbatim on the journal) stating in substance that he has a personal interest in the legislation to be
50 voted on and, notwithstanding that interest, he is able to cast a fair and objective vote on that
51 legislation, he may cast his vote without violating any provision of this article.

52 (ii) If the member believes that, because of his personal interest, he should abstain from
53 participating in the vote on the legislation, he shall so advise the presiding officer prior to the
54 commencement of the vote and shall be excused from voting on the legislation without any entry
55 on the journal of the fact of his personal interest. In the event a rule of the house requiring that
56 each member who is present vote aye or nay is invoked, the presiding officer shall order the
57 member excused from compliance and shall order entered on the journal a simple statement that
58 the member was excused from voting on the legislation pursuant to law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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