To: The Fair Political Practices Commission

From: Bill Lenkeit

Date: April 15, 2015

Re: April 2015 Commission Meeting Item #8

Several years ago, recognizing that the Act's mechanized conflict of interest formulas had strayed so far from its intended language, and the long established basic foundations of conflict of interest principles, that the regulations bore little relationship to either, then-Chair Ravel directed staff to embark on a project to completely overhaul those regulations. The directive was to take a fresh look at everything and to find a way to implement the meaning of the Act in a clear and easily approachable manner, using common sense analysis rather than the numerical calculations established under the then existing structure. The project was to include a thorough examination of the regulatory history of each regulation in order to have a complete understanding of the development of the regulations and to address necessary issues for proposed solutions.

Under the Act, once an official has a defined financial interest, he or she is prohibited from participating in any decision "if it is [1] *reasonably foreseeable* that the decision will have a [2] *material* financial effect, [3] *distinguishable from* its effect on *the public generally*" (emphasis added), on that financial interest. In our attempt to quantify factors that are not, and were never intended to be, quantifiable, in a so-called quest for "bright lines," numbers were substituted for reason. A reasonable foreseeable possibility became a substantial likelihood. A material financial effect meant, as an example, for a small business owner only effects of $20,000 or more. And the public generally test became so complicated that the Enforcement Division represented that it did not have the resources necessary to figure it out and asked the Commission to clarify that it was really an "exception," giving the respondent the burden of showing that it applied.

Instead of a legal analysis, the conflict of interest determination was left to odds-makers, bookkeepers, and survey takers. This in turn lead to a major problem identified by Chair Ravel and observed from her experience based at the county level dealing with PRA issues, that staff advice letters, beside being too long and involving too many unnecessary steps, frequently did not provide an answer, almost always ending up with ten plus pages that essentially concluded "here are the rules, you make the call." Her view was that we were the experts, and the process should not be so complicated that we could not figure out the answer and make the call ourselves.

Given the new direction, staff completed a thorough review of the background and history and developed a restructured plan for the Act's conflict of interest regulations that sought to apply common sense principles in place of the mechanical formulas. Staff presented its research to the Commission at the April 2013 meeting, along with a plan for

the reorganization of the regulations. The overall proposal to move away from determinative measurements and toward the application of common sense principles was approved by the Commission at that meeting and has been reaffirmed at each of the various steps along the way.

The current item, while taking some steps to continue that process, does not go far enough. It does not sufficiently deal with the root problem in the current analysis--that of the first-prong of the current "significant segment/substantially the same manner" test that is supposed to determine what public generally means. There is also a nagging issue that was intended to be presented to the Commission as a primary issue from the beginning of this project that has now been completely avoided. Additionally, there is one confusing change that was never identified as part of any public comment (IP) notice or included in the 45-day notice that modifies the long standing exemption for owners of three or fewer rental properties that arose from rent control decisions as presented in the Commission's *Ferraro* Opinion, a rule in effect since 1978. Apparently, the exception is now swept into a broad exception that applies to "all interests in business entities or real properties" without any discussion of the reasoning for this change or how it relates to the discussion in *Ferraro* that lead to the creation of the exception in the first place. Finally, some of the remaining language is unclear, as discussed below.

The two major issues concern the use of the term "significant segment," with its corresponding percentage identification, and the continued application of the term public generally as an "exception." To understand these concerns, it is helpful to review the history of the regulation and how it grew to be what is addressed in this item.

The Commission began its examination of adopting a regulation to apply the term public generally in the fall of 1975. Much of the language contained in the PRA was taken from its predecessor, the Moscone Act. However, the Moscone Act used the term "significant segment" of the public generally while the PRA did not. The first question the Commission addressed was, absent the significant segment language, what was the "public generally." Or, more simply put, did the public generally mean everybody?

The Commission quickly realized that to read the term public to mean every single member of the public would render the phrase meaningless, as few if any governmental decisions will affect every single person. Examples considered decisions affecting all taxpayers, business sales, consumer purchases, homeowners, drivers, etc. Research of case law turned up support for a lesser than all interpretation in the form of a case involving actress Mary Pickford and a "public offering," where the court declared that such an offering need not be made to every member of the public.

Citing the above examples, Chairman Lowenstein indicated that it appeared necessary to read the term "significant segment" back into the definition, intending it to cover heterogeneous or "amorphous" groups contained within the overall public, united by a common broad based element, not limited to a particular business, industry, or profession. There original regulation, adopted on February 3, 1976, provided:

> "A material financial effect of a governmental decision on an official's interests, . . . is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade, or profession does not constitute a significant segment of the public generally."

This regulation presented the Act's first use of the terms "significant segment" and "substantially the same manner," which later became the basis for the current two-pronged-test. But unlike the current test, it is clear that neither of these conceptual terms were intended to be quantified, either by percentages or numbers of individuals or actual dollar effects measured on each member of the public affected.

In the early 1990s, for reasons that are not specifically determinable through a search of the regulatory file or other means, but most likely was carried in on the wave at that time to establish exact thresholds for measuring all portions of the conflicts analysis, the term "significant segment" changed from a general concept of a broad based public segment to an exact numerical measurement. The measurement was set at ten percent or an exact number that varied by what financial interest was being measured. For individuals, it was 5,000 people in the jurisdiction. This change redefined "public" to mean, at most, one out of ten people.

To counterbalance this incredibly low threshold, the term "substantially the same manner" was intentionally strictly applied, using a dollar-to-dollar comparison method, rather than an overall percentage effect basis. While the regulation provided that substantially the same did not mean exactly the same, little guidance beyond that was given. The end result was that the public generally test was almost never able to be determined.[1] This eventually lead to a problem that arose sometime during the late 1990s/early 2000s period of restructuring the regulations into the eight step process, when Enforcement was challenged by a Respondent that he had not violated the Act because he had not been financially affected in a manner distinguishable from the public generally. Enforcement stated that public generally was treated as an exception that the Respondent had to prove applicable. The Respondent countered that was not how it was laid out in the Act and nothing else indicated that was the rule either.

Enforcement then proposed drafting regulations to clearly state that the public generally test was to be applied as an exception for the Respondent to prove, claiming that they had always applied it that way. Enforcement rightfully argued that the rule was so difficult to determine, that there was no way they could figure it out in many cases without the expenditure of considerable resources including the hiring of outside

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[1] In response to an advice request that provided information that the entire jurisdiction's property values would increase by a fixed percentage, staff provided a response that two-percent in dollar value up or down compared to the official properties on ten percent of property owners within the jurisdiction would meet the test. When staff proposed to codify this rule by regulatory amendment, the Commission rejected the proposal because it would be "too hard ... to figure out."

consultants to collect the information needed. Legal then drafted a memo to the Commission representing that a regulation was needed to merely codify the exiting law that treated public generally as an exception. As the sole support for this claim, the memo cited the word *unless* in the original regulation (see above) and argued that, by the use of that word alone, the Commission had intended the public generally rule to be an exception from the inception of the regulation in 1976.

The problem with this representation is that an examination of the record shows that the exact opposite is true--that the public generally rule was, in fact, as the statute indicates, intended to be included as one of the four elements to establish a conflict of interest violation.[2] This fact was emphasized in the *Thorner* Opinion (1975) 1 FPPC Ops. 198, p. 5, issued while the regulation was being drafted; in the *Owen* Opinion, (1976) 2 FPPC Ops. 78, p. 4, issued four months after the regulation had been drafted, and in a memorandum prepared by Chairman Lowenstein in December 1975 as part of the drafting of the regulation. (See attached.) Additionally, public generally was cited as an element in a seminal FPPC case, *Consumers Union of United States, Inc. v. California Milk Producers Advisory Board* (1978) 82 Cal. App. 3d 433, ironically, a case that was cited in a subsequent memo to the Commission as support for the view that the Commission had always treated public generally as an exception.

From the onset of this project, the goal was to do what should have been done in the first place--fix the language applying the public generally test so that it was clear enough for everyone to understand. [3] There appeared to be something inherently wrong when a government agency makes a rule so complicated that it cannot figure it out itself, and solves that problem by switching the burden to the other side, telling them here, if you want to use it, you figure it out.

The manner of applying the public generally test should be of particular concern because under the current system, this factor tends to not always show up on Enforcement's radar, as it is not something they have to deal with unless raised by the other side. Because not all public officials have the necessary knowledge or resources to navigate the complexities of the PRA, the unintended consequences of applications like this have a chilling effect on an individual's desire to participate in the public process. A least one recent case fined an individual a fairly significant amount over a matter where the public generally exception likely applied. Because the fine was reached by stipulation, it was never questioned by review. Government agencies should make sure necessary precautions are taken to eliminate such results.

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[2] Having worked with all of the individuals who were involved in this process I wish to make it absolutely clear that I strongly believe that no intentional misrepresentations were made and that, due to the passage of time, the failure to completely research the record, and the fact that by that time public generally had been loosely referred to as an "exception" for a number of years, leading to a sort of "that's the way I always heard it to be" trap in the search for some justification of that believe.

[3] The original language that was to be presented in the identification of the four steps under Regulation 18700 made this clear. It was amended at the last minute to leave the official must establish requirement when staff realized that the public generally language would have to be clarified before that change could be made..

This comment does not necessarily argue a position one way or the other as to who should have the burden, only that the Commission should be aware of all the facts, and that a problem exists, so it can make an informed decision regarding how the statutory language was meant to be interpreted. Staff's memo, and the proposed regulation, fails to address what started out as perhaps the most significant concern in the process of attempting to revise this regulation.

The second major concern is the continued identification of the public as a specific limited percentage of the public. It just does not have any rational basis, and it promotes difficulty in its application. Precisely for that reason, this project has consistently eliminated the use of arbitrary numbers. With this item, the Commission is supposed to be determining what constitutes the "public generally" as a concept, not how many specific members it takes to comprise that group. While staff's memo correctly points out that the current ten percent threshold is too low, other than being somewhat higher, it provides no justification for why 25 percent is appropriate. When a question was raised as to why 26 percent was OK but 24 percent was not, the answer was "as if anyone can calculate those numbers with that kind of precision." If that is true, why are they being asked to? Pulling a different number out of the hat does not solve the problem that began with the use of fixed numbers that do not take account of, and have little relationship to, the overall general circumstances involved.

Finally, there are a few other general factors worth noting that have not been raised above. The language leaves out agricultural and industrial property. Was this intentional and if so why? Subdivision (c) seems to raise more questions than it answers. Why is it necessary to state that something is unique if it is disproportional, and then give examples of some of the factors that would make it disproportional? What is meant by unique? And what does "interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest" attempt to change in the analysis and why? The whole subdivision seems to say that something is unique if it is disproportional, and it is disproportional when the material financial effect on the official's financial interest is bigger. It seems a lot of this is unnecessary and could be addressed more economically.

In closing, where this regulation makes significant improvement is in changing the analysis from a head-to-head comparison to determine if the financial effect is substantially the *same* to an overall determination of how an official is affected *differently* from the subject group. In other words, what used to be referred to as a contrast of interests (tell how they are different) rather than a comparison of interests (tell how they are the same) before the word compare took on both meanings.

This should be the heart of the public generally examination. All the rest unnecessarily confuses the issue. At this stage of the analysis it has already been determined that the public official has a financial interest that is material financially affected by the governmental decision. It should not take a lot of commentary to determine whether that affect is so noticeably different from everyone else when a

decision has broad impacts on the general public that the public official's duty to the public is compromised.

If you truly believe that staff's proposed language represents the best product that that can be achieved, pass the regulation. If you believe that further examination will result in a better product, take the time necessary to achieve that goal. California's hard working public officials deserve no less.

State of California

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Memorandum

To : Members of the Commission

Date : December 29, 197[illegible]

From : FAIR POLITICAL PRACTICES COMMISSION
Daniel H. Lowenstein, Chairman

Subject: "Distinguishable from the public generally."

In this memorandum I attempt to bring together in writing, as much for my own benefit as yours, my thoughts arising out of the testimony and discussions regarding the statutory phrase, "distinguishable from the public generally." Government Code Section 87103.

As we stated in the Thorner opinion, "distinguishable from the public generally" is one of the four elements that must be present before an official is required to disqualify himself from participating in a governmental decision. In a given case we do not reach the issue of whether the effect of the decision on the official's economic interest is distinguishable from its effect on the public generally unless it has already been established that:

1. The decision may affect an economic interest of the official of the type described in Section 87103.

2. The possible effect on the official's interest is "reasonably foreseeable."

3. The foreseeable effect on the official's economic interest will be "material."

Assuming that the other three elements are present, if the effect on the official's interest will be distinguishable from the effect on the public generally, the official must disqualify himself. If the effect on the official's interest will be indistinguishable from the effect on the public generally, he may participate even though the other elements are present.

The primary question of interpretation which we must resolve is how extensively to read the phrase "public generally." Draft regulations submitted by the staff state that an official may participate in a decision whose effect on his interest is indistinguishable from its effect on a significant segment of the public. Although

some members of the Commission have opposed this concept, it is clear that it is not necessary for every citizen of the jurisdiction to be affected identically by the governmental decision. For example, suppose a county supervisor votes to raise or lower the property tax rate or a state legislator votes to raise or lower the income tax rate. Even though some county residents do not pay property taxes and some citizens of the state do not pay income taxes, we would probably agree that these are archetypical situations in which the official may participate because the effect on him is indistinguishable from the effect on the public generally. Once it is agreed that the "public generally" does not necessarily mean absolutely everyone, then it must be agreed that some segment of the public short of the entire public is tantamount to the public generally.1/ Whether we choose to

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1/ The only judicial interpretation of the word "public" found by the staff tends to support this conclusion, although the case arose in a different context. Under the Corporate Securities Act, certain regulatory requirements applied only to the sale of securities offered "to the public." It was held that solicitation of a small group of private investors constituted an offering "to the public:"

> This method certainly constituted an offering to the "public." Corpus Juris states that the word does not have a fixed or definite meaning; in one sense "the word does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few".... Webster's New International Dictionary, second edition, gives among other definitions of the word, "a particular body or section of the people; often specifically, a clientele". While the group solicited by defendants in this case was a comparatively small one, it nevertheless constituted the "public", so far as the purposes of the Corporate Securities Act are concerned.
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> Mary Pickford Co. v. Bayley Bros., Inc., 12 Cal 2d 501, 514 (1939).

The above language should not be applied too literally to our situation. In Pickford, the purpose of a remedial statute was best served by reading the word "public" to include very small segments of the total population. Such a reading of the same word in Section 83105 could, if carried to extremes, render the conflict of interest provisions a nullity. Nevertheless, the

(Continued on Page Three.)

describe such a segment as "significant," "major," "substantial," "large" or by some other adjective is less important than how we apply such a concept. In short, how much of the public is a "significant" segment?

Like other questions arising under the conflict of interest provisions, this question is not susceptible to a simple or mechanical answer. Many cases will arise that must be dealt with individually, for any regulation which attempted to establish a formula to resolve all cases would necessarily be arbitrary and in some applications unjust. On the other hand, there are certain questions which are definable and recurring, so that treatment by regulation is possible and appropriate. One such question that is before us is whether an industry, trade or profession constitutes such a significant segment of the public that it is tantamount to the "public generally." Provided that a majority of us can reach agreement on an answer, I believe we should adopt a regulation addressing this question and leave other questions that may arise open for future consideration.

Is a single industry, trade or professional group tantamount to "the public generally" within the meaning of Section 87103? I think not, at least as a general rule. An affirmative answer has been urged by Floyd Shimomura of the Attorney General's office, relying in part on a corresponding provision of the Moscone Governmental Conflict of Interest and Disclosure Act. Government Code Section 3625(d) provides that, so far as the Moscone Act is concerned, an official may participate

> if the action or decision affects an economic interest of the official as a member of the public or a significant segment of the public or as a member of an industry, profession or occupation, to no greater extent than any other such member of the public, segment of the public or an industry, profession or occupation.
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> (Emphasis added.)

Apparently it is suggested that since the Moscone Act clearly permitted an official to act when a governmental decision would affect his economic interest the same as it would affect the rest of the industry, we should assume the same doctrine was intended to be embodied in the Political Reform Act. I find this unpersuasive. If the content of the Moscone Act is relevant at all it

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1/ (continued) Pickford case makes it clear that one may conclude that a "significant" or "major" segment of the total population is tantamount to the "public generally" without doing violence to either the English language or judicial precedent.

suggests the opposite conclusion, since the Political Reform Act could have included the same language but did not. More important, the suggested interpretation seems inconsistent with the statutory declaration:

> Public officials...should perform their duties in an impartial manner, free from bias caused by their own financial interests....
>
> Section 81001(b).

Many decisions of government which have the most far-reaching effects on economic interests--on matters such as taxes, subsidies, regulation--affect industries as a whole rather than particular companies within an industry. For a member of a council, board, commission or other government agency to vote for benefits for his own industry is ordinarily precisely the sort of conflict that the Act is intended to avoid.

I thus conclude that as a general rule the "public generally" means something more than a single industry, trade or profession. It may be argued that there should be no exceptions and that therefore we should adopt a regulation expressing that simple idea. The argument would be that whatever the "public generally" means, it means the same thing in all situations; that if some officials are barred from participating in decisions benefiting their own industries, then all officials must be so barred. I do not find such an argument compelling; specifically, I believe that under certain circumstances there may be exceptions for members of boards established expressly for the purpose of serving particular industries. To explain my reasons for so believing I must first discuss the rationale that underlies the "distinguishable from the public generally" clause.

The rule requiring disqualification when a conflict of interest exists is based on a generalization about human psychology. When there is a conflict of interest, experience tells us there is a significant possibility that the official will act in favor of his personal interest rather than in furtherance of his public responsibilities; or that in attempting to set aside his personal interest his judgment regarding the public interest will be distorted, possibly even to the detriment of his personal interest as a result of "bending over backward." In any given case the generalization might not be valid and the official might be capable of reaching a decision without being at all affected by his personal interest. Nevertheless, the law concludes that the generalization is valid in enough cases to justify requiring disqualification in all cases.

With respect to the first three elements, it is easy to see their relation to the psychological generalization that underlies

the disqualification requirement. If the personal economic interest is more than trivial, if the effect of the governmental decision will be material and if the likelihood of the effect actually occurring is sufficiently high (i.e., "reasonably foreseeable"), the generalization is likely to be valid in a high percentage of cases. If any of these three elements is not present, the generalization is much less likely to be valid. The fourth element, however, has little or no relation to the generalization. If the other three elements are present the official's judgment is likely to be affected regardless of how many or how few other people will be affected by the decision in the same manner.

If this is so, why is an official with a conflict permitted to act simply because a decision's effect on him will be indistinguishable from its effect on the public generally? One reason that comes immediately to mind is a practical one. Governmental decisions must be made by someone, and if a very high percentage of the population is disqualified it may be difficult to find an official who is permitted to act. If this situation arises frequently, the whole process of government will be rendered extremely cumbersome. This point should not be overstated, however, for the practical problems could probably be solved. A more important reason for the "distinguishable from the public generally" clause is that if the portion of the population sharing the same economic interest becomes large enough, the official's private interest begins to merge with the public interest. The county supervisor who desires to reduce property taxes may be selfishly motivated, but such a large percentage of the population pays property taxes that by pursuing his selfish interests he pursues the public interest. The "conflict of interest" is benign; or, to state the point another way, there is a congruence, rather than a conflict, between public and private interests.

As a general rule, this rationale reaffirms the conclusion stated above that the "public generally" means more than a single industry, trade or profession. Manifestly, any industry may have needs and interests which are special to it and distinct from, if not in opposition to, the rest of the public. The rationale for the "distinguishable from the public generally" clause also suggests, however, two possible exceptions to the general rule.

Let us turn first to the much debated question of legislatively mandated industry representatives on boards and commissions. If we were to accept Mr. Shimomura's view that a single industry, trade or profession is tantamount to the public generally we would of course conclude that it would always be proper for industry representatives to sit on marketing and regulatory boards and commissions, whether or not the governing statute required such

representation. On the other hand, if we followed the general rule set forth above without exception we would conclude that such industry representatives could never participate in matters having a material financial effect on the industries they represent. Any existing statutes to the contrary would be nullified. See Section 81013.

In my opinion, neither of these extreme positions is a satisfactory interpretation of the Act. In discussing the rationale of the "distinguishable from the public generally" clause, I spoke as though the "public" and the "public interest" were always uniform and undifferentiated. In fact, however, the "public" consists of many groups, often with competing interests. It is one of the functions of the legislative branch in a democracy to balance and reflect the competing interests of these groups. In carrying out this function the legislature[2/] may create numerous programs, some of which benefit particular groups over others, but all of which, at least in theory, reflect the overall public interest when considered in total. The Political Reform Act, which is concerned with the integrity of governmental processes and not with the content of governmental programs, does not purport to prevent the legislature from setting up programs to benefit particular industries. Nor does the Act prevent the legislature from creating boards and commissions to administer such programs and directing such boards and commissions to carry out the legislative purpose to benefit the particular industries.

Let us now consider the position of an industry representative on such a board with such a directive from the legislature. If he participates in a governmental decision which will have a material financial effect on his industry there is, under the general rule set forth above, a "conflict" between his private interest and the interest of the population at large outside the industry. <u>But his private interest is identical to the "public" interest as defined by the legislative purposes of the program he is administering</u>. The official's actions which are intended to benefit his own industry may be contrary to the interests of other industries, of consumers and of others, but given the nature of the program established by statute these groups should properly address their concerns not to the official but to the legislature whose mandate he is carrying out. Viewed in terms of the special legislative purposes, the position of the industry representative on the board is analogous to that of the county supervisor who votes on his own property taxes. There is a congruence, not a conflict of interest.

2/As used in this discussion, the term "legislature" includes not only the State Legislature but also local legislative bodies.

One of the staff drafts in effect recognized this concept by proposing that a single industry, trade or profession be considered tantamount to the "public generally" when there is an express statutory requirement or authorization that representatives of the industry, trade or profession be appointed to an agency. I suggest a modification of the staff proposal, only slightly different in concept but with significantly different practical and political consequences. The staff proposal would leave undisturbed all the boards and commissions created in the past with industry representatives or, in many cases, with industry dominance. Many of these boards and commissions have come under attack in recent years from critics who charge that they protect industry at the expense of the public at large. Their defenders say that such boards and commissions provide stability that in the long run benefits the public, and that they also preserve and upgrade product quality and professional ethics. It is not our function as a commission to resolve such policy disputes. But we can and should insist that they be resolved by the legislature in light of the present-day sensitivity to conflict-of-interest problems reflected in the Act. The legislature should have the right to provide for industry representation, but it should do so expressly with reference to the Act. We should not presume a present legislative intent to create exceptions to normal conflict of interest rules on the basis of statutes passed long ago under different circumstances.

Accordingly, I propose a regulation that would establish as a general rule that a single industry, trade or profession does not constitute either the "public generally" or, if we use the concept, a "significant segment" of the public. However, if a statute, ordinance or other provision of law creating or authorizing the creation of an agency provides that one or more offices are created for the purpose of representing the interests of a specified industry, trade or profession and that for purposes of Government Code Section 87103 such industry, trade or profession constitutes the "public" to be represented and served by the officials who are appointed, then such a legislative declaration would be valid and Section 87103 would be interpreted in light of the legislative declaration.[3/] For an official who is appointed

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[3/] If we adopt the approach I suggest we should avoid any unnecessary temporary disruption of existing agencies by providing that for a one or two year period following the adoption of our regulation any provision of law requiring or permitting representatives of an industry, trade or profession to be appointed will be deemed to constitute the necessary legislative declaration. This would give the State Legislature and each local legislative body sufficient time to consider whether industry representation in any given agency is appropriate in view of the policy of the Political Reform Act and the purposes of the programs administered by the agency.

pursuant to such a provision, the industry, trade or profession he is appointed to represent would be tantamount to the "public generally."

A final question is whether a distinction should be drawn between elective and appointive officials. A staff draft provided that in the case of an elective official the industry, trade or profession should be considered tantamount to the public generally. This was in response to testimony to the effect that a district composed largely of farmers, lumbermen, cattle raisers, etc., might elect a member of the prevailing industry to the Legislature or to the board of supervisors or other local body. To prohibit such a representative from participating in matters affecting the industry could frustrate democratic values. In the terms of my analysis set forth above, when the official is elected from such a district there is a congruence rather than a conflict between the official's private interest and the public interest of that district. On the other hand, the staff draft in effect creates a broad exemption and could in some situations permit elected officials to act in matters benefiting themselves and very few of their constituents. I suggest that we consider a regulation limiting the staff draft to situations in which the industry affected by the governmental decision is a prevailing industry in the jurisdiction as a whole or in the district from which the official was elected.