

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

May 13, 1985

Steven Woodside
Deputy County Counsel
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Your Request for Advice; Santa
Clara County Fair Association
Our File No. A-85-053

Dear Mr. Woodside:

You have written requesting advice on behalf of the Board of Supervisors of Santa Clara County. The Board is the Conflict of Interest Code-reviewing body for all agencies within the County. In that capacity, the Board has asked you to seek our written advice as to its duties with respect to whether the Santa Clara County Fair Association should be covered by a conflict of interest code.

FACTS

The Santa Clara County Fair Association ("Association") is a nonprofit, public benefit corporation, incorporated under the nonprofit corporation laws of the State of California in 1939. The Association was not created by the County of Santa Clara;^{1/} however, for many years now it has operated the Santa

^{1/} It is not now known precisely how the Association was created. It may be that the County was the impetus for its creation; however, that fact is not known to us at this time.

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Clara County Fair ("County Fair"). Currently, the Association operates the County Fair under a contract with the County, pursuant to Government Code Section 25906.^{2/}

Under the provisions of Section 25906 the board of supervisors may contract with a nonprofit corporation to operate the County Fair on the County-owned fairgrounds and may allocate County funds for "any purpose incidental to the fair." In addition, state funds may be provided through the State Department of Food and Agriculture from the Fair and Exposition Fund established from revenues generated by horse racing. If state funds are received, the budget shall be approved by the Board of Supervisors and then by the State Department of Food and Agriculture.

In the case of the Fair Association, the Board of Supervisors has contracted with it to manage and operate the County Fairgrounds and to conduct the Annual County Fair: The contract covers the five-year period from August 18, 1981, through August 15, 1986. While the Board of Supervisors makes no direct allocation to the Association, it grants the Association use of the fairgrounds and structures thereon for the nominal rent of \$1.00/yr. In reality, this constitutes a subsidy toward the Association's operations. In addition, out of a total budget last year of nearly \$4 million, the Association received nearly \$200,000 (roughly 5%) from the state. Its budget is reviewed by the State Department of Food and Agriculture, in accordance with the provisions of Section 25906, previously discussed above.

^{2/} All statutory references are to the Government Code unless otherwise specified. Your letter states, in part:

... The County of Santa Clara has a contract with the Fair Association for the conducting of an agricultural fair and for the use and management of the public fairgrounds which are owned by the County. The County does not control the operation of the Fairgrounds by the Fair Association. The contract was entered into pursuant to Govt. Code Section 25906 which permits such contracts under conditions as set by the Board of Supervisors. The County Board of Supervisors has not contracted with the Fair Association pursuant to a different section, Govt. Code Section 25905, which provides for nonprofit corporations to contract with the County "as agent of the County, for a period not exceeding 5 years."

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The contract contains provisions for the reversion of all County Fair property and buildings, as well as any supplies, material or equipment, to the County upon termination of the contract or upon dissolution of the Association.^{3/} The contract specifically provides that persons employed by the Association "shall not be deemed County employees for any purpose whatsoever."^{4/} The Association's By-Laws provide for five of the 21 directors on the Board of Directors to be appointed by the County Board of Supervisors.^{5/} The primary purpose of the Association is stated as follows in its By-Laws:

... to operate the Annual Santa Clara County Fair and other expositions, and to maintain and make available for public or private use the facilities of the Santa Clara County Exposition Center under the provisions of the Lease Management Agreement with the Board of Supervisors of Santa Clara County.^{6/}

QUESTION

In essence, your question is whether the Association's Board of Directors should be covered by a conflict of interest code, adopted pursuant to the provisions of the Political Reform Act.^{7/}

CONCLUSION

We conclude that the members of the Association's Board of Directors and its management-level employees should be covered by the County of Santa Clara's Conflict of Interest Code.

^{3/} Agreement, Para. 9F; Para. 9K.

^{4/} Agreement, Para. 9E.

^{5/} By-Laws, Art. V, Sec. A.

^{6/} By-Laws, Art. I, Sec. A.

^{7/} Government Code Sections 81000-91015; hereinafter referred to as the "Act."

ANALYSIS

In the instant situation, the Association's Board and management employees are entrusted with the management, maintenance and control of substantial public assets -- the Santa Clara County Exposition Center. In that role, they are performing a function which would otherwise come within the duties of the County Executive. (See, Opinion No. 55-121, August 31, 1955, 26 Ops. Atty. Gen. 94.) Having also considered the discussion in another Attorney General's Opinion (Opinion No. 57-6, April 5, 1977, 29 Ops. Atty. Gen. 107, 112-113) regarding the distinctions between contracts entered into pursuant to Section 25905 or Section 25906, we perceive no difference for purposes of the Political Reform Act. Under either section the Association's role is essentially the same.

Moreover, the extant question has primarily arisen out of the Association's actions in determining the possible future uses of the fairgrounds, specifically with respect to horse racing activities and a possible professional sports arena.^{8/} In this role, the Association has been endeavoring to influence the decisions of other governmental bodies, which includes providing "recommendations or counsel." (See, Leach Opinion, No. 76-092, 4 FPPC Opinions 48 at 53-54.)

Consequently we conclude that where, as here, the officers and managers of a "public benefit" corporation are managing substantial public assets, receiving public funds and governmental subsidies, and are making recommendations to governmental decision makers, they are functioning as public officials within the meaning of the Act and should be subject to its conflict of interest provisions.^{9/} Therefore, it is our advice to the Santa Clara County Board of Supervisors that, in its role as code reviewing body, it should amend the County's Conflict of Interest Code to include as designated employees the members of the Association's Board of Directors, its General Manager, and any other appropriate management personnel.

^{8/} See attached correspondence received from Ms. Eve Roberson of S.O.S. (Save Our Space).

^{9/} See enclosed copy of a recent Advice Letter, No. A-84-319, to Geoffrey Hayden, regarding the City of Fresno retirement funds. See also, Section 81003.

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If you have further questions regarding this advice, please contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert E. Leidigh".

Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

County of Santa Clara

California

Donald L. Clark, County Counsel

February 27, 1985

Mr. Robert Leidigh
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Request for Written Advice Relative
to the Santa Clara Valley Fair Association

Dear Mr. Leidigh:

We request written advice from your office as to whether the Santa Clara Valley Fair Association is a "local government agency" within the meaning of the Political Reform Act of 1974 (Govt. Code §81000 et seq.); and if so, is the Santa Clara Valley Fair Association required to adopt a conflict of interest code pursuant to Govt. Code Section 87300? We ask your advice in order that we may advise our clients, the Santa Clara County Board of Supervisors, who are the code reviewing body for local government agencies within the County jurisdiction.

Our Tentative Conclusion

We have tentatively concluded that the Santa Clara Valley Fair Association, a nonprofit corporation, is not a "local government agency" as defined in Govt. Code Section 82041.

The Facts

The Santa Clara Valley Fair Association was incorporated as a nonprofit corporation on May 11, 1939. A nearly legible copy of the articles of incorporation are attached hereto.

The Fair Association was not created by the County of Santa Clara; nor does the County of Santa Clara control the Board of Directors of the Fair Association. The current bylaws of the Fair Association provide that the Board of Directors shall consist of 5 directors appointed by the Board of Supervisors and 18 elective directors who are members of the Fair Association. The County of Santa Clara has a contract with the Fair Association for the conducting of an agricultural fair and for the use and management of the public fairgrounds which are owned by the County. The County does not control the operation of the Fairgrounds by the Fair Association. The contract was entered into pursuant to Govt. Code Section 25906 which permits such contracts under any conditions as set by the Board of Supervisors. The County Board of Supervisors has not contracted with the Fair Association pursuant to a different section, Govt. Code Section 25905, which provides for nonprofit corporations to contract

with the County "as agent of the County, for a period not exceeding 5 years."

Analysis

Govt. Code Section 82041 defines "local government agency" as a county or other local government, "or any department, division, bureau, office, board, commission, or other agency of these . . ."

This section does not appear to include a nonprofit fair association which contracts with a county as a "local government agency" subject to the Political Reform Act. A nonprofit fair association is not a political subdivision, nor is it a department, division, bureau, office, board, commission or other agency of the county.

Your office has previously advised in the Seigel opinion, FPPC Opinion No. 76-054 (July 6, 1977) and the Anaheim Stadium Advice Letter (July 20, 1981) that the following factors should be considered in determining whether or not an entity should be regarded as a "local government agency":

1. Whether the impetus for formation of the corporation originated with a government agency. (We have no information as to whether or not the Fair Association incorporated in 1939 was sponsored by the County of Santa Clara.)
2. Whether it is substantially funded by, or its primary source of funds is, a government agency. (In this case, the County of Santa Clara does not fund the Fair Association.)
3. Whether one of the principal purposes of which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed. (Although county governments can conduct their own agricultural fairs, it is our understanding that in several counties, including ours, such a fair has traditionally been undertaken by a Fair Association.)
4. Whether the corporation is treated as a public entity by other statutory provisions (We are not aware of other statutory provisions which treat the Fair Association as a public agency.)

Mr. Robert Leidigh

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In addition to the apparent inapplicability of the factors listed above, it appears that other provisions of law do not treat a fair association as a local government agency. For example, although the Ralph M. Brown Act (Govt. Code §54950 et seq.) relating to public meetings specifically includes "any nonprofit corporation created by one or more local agencies", the Fair Association does not appear to have been created by the County. This office has previously advised the Santa Clara County Grand Jury that the Brown Act does not apply to the Fair Association (see Opinions dated April 5, 1984 and January 13, 1984 attached hereto).

In addition, we are informed by counsel for the Fair Association that the Alcohol Beverage Control Commission does not treat the Fair Association as a public agency.

Finally, we are advised that counsel for the Fair Association has consistently advised the Fair Association that it is not subject to the Political Reform Act.

Conclusion

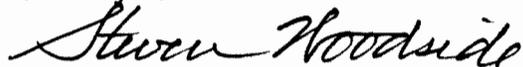
In view of the foregoing, we have tentatively concluded that the Fair Association is not a "local government agency" within the meaning of the Political Reform Act; and that it would be inappropriate for our clients, the County Board of Supervisors, to seek to compel the Association to adopt a conflict of interest code and submit the appropriate disclosures.

We recognize, however, that in light of the broad purposes of the Political Reform Act to require disclosure of interest which may influence a public decision, it may well be concluded that the Political Reform Act should be applied to fair associations who contract with counties.

We look forward to your advice.

Respectfully submitted,

DONALD L. CLARK
County Counsel



STEVEN WOODSIDE
Chief Assistant County Counsel

SW:jf
Encls.

cc: Charles Perrotta
Counsel, Fair Association
cc: E. L. Roberson
2600 Senter Road, #289
San Jose, California 95111