

State of California



Fair Political Practices Commission

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

August 6, 1985

Suzanne B. Gifford
Assistant General Counsel
Southern California Rapid Transit
District
425 South Main Street
Los Angeles, CA 90013

Re: Your Request for Advice
Our File No. A-85-134

Dear Ms. Gifford:

This letter is sent in response to your request for advice on behalf of Southern California Rapid Transit District ("District") concerning the financial disclosure obligations of District Consultants under the Political Reform Act.^{1/} More specifically, you asked whether the attorney retained to provide advice and counsel to the District on labor relations and labor negotiations should file financial disclosure statements as a consultant under the District's Conflict of Interest Code. Mr. Charles H. Goldstein of Goldstein and Kennedy who is under contract to provide these services has declined to submit a Statement of Economic Interests based on his opinion that he is not a consultant covered by the Conflict of Interest Code.

QUESTION

Does the position of District Consultant in the Conflict of Interest Code include an attorney who is retained to provide advice and counsel to the District on labor relations and labor negotiations?

ANSWER

Yes.

^{1/} The Political Reform Act is contained in Government Code Sections §1000-91014. All statutory references are to the Government Code unless otherwise noted.

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DISCUSSION

In its conflict of interest code, each agency must designate those positions that involve the making of, or participation in, decisions which may foreseeably affect any financial interest. Section 87302. Both the definitions of "designated employee" and "public official" in the Act include any consultants to an agency who make or participate in the agency's decisions.^{2/} Sections 82015 and 82048.

A "consultant," within the meaning of the Act, includes "any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency...." 2 Cal. Adm. Code Section 18702(a)(2). This term does not include, however, a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Adm. Code Section
18700(a)(2)(A) and (B).

When an attorney is hired under a contract to perform legal services for a specific matter (e.,g., a particular piece of litigation), he ordinarily comes within this exemption. Under such circumstances, the attorney uses his own judgment and expertise to render professional services, and his decisions are not subject to day-to-day review or direction by the District. Essentially, the attorney is being called upon to deliver a finished project -- a contract or a settlement -- and not to participate in or advise the District on general governmental

^{2/} Most agencies (including the District) designate in their codes "All Consultants." Then when a consultant is actually hired, a determination is made whether the person is a consultant within the meaning of the Act and, if so, what their financial disclosure requirements should be.

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decisions requiring legal expertise. Applying this analysis to Mr. Goldstein's situation, when he negotiates the labor agreements, he does not appear to be the type of consultant covered by the Act.

On the other hand, when an attorney provides general advice and counsel to the District in a particular area on a continuing basis, it is our view that he is a consultant within the meaning of the Act. Mr. Goldstein has agreed to provide advice and counsel to the District's General Manager on general labor relations matters. It is my understanding that this includes advising the District on the implications of certain District decisions on its labor relations. The regular contact with District officials indicates that he does not act with the independence necessary to trigger the exemption. He is not delivering a finished product, but is entering into the daily decisionmaking of the District.

For these reasons, when Mr. Goldstein provides general advice on labor relations matters, he is acting as a consultant within the meaning of the Act. Although it is likely that most of the decisions in which he is involved as a labor relations consultant will not affect the types of financial interests covered by the Act, it is possible that there may be some decisions which could pose a potential conflict of interest. Therefore, you should review carefully the types of decisions in which he participates as a consultant to determine if any of them could foreseeably affect the types of economic interests covered by the Act; if any of them could, Mr. Goldstein should be required to make appropriate financial disclosure under the District's Conflict of Interest Code.

Please feel free to contact me if I can be of further assistance.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:plh
cc: Charles H. Golstein



Suzanne B. Gifford
Assistant General Counsel

June 7, 1985

Ms. Diane Fishburn
Staff Counsel
Fair Political Practices Commission
Box 807
Sacramento, California 95804

Dear Ms. Fishburn:

Re: Request for Opinion

The Board of Supervisors of the County of Los Angeles, on October 23, 1984 approved revisions to the Southern California Rapid Transit District ("District") Conflict of Interest Code and to Exhibit B to that Code, the list of positions required to file Economic Disclosure Statements. Non-staff attorneys are included in the list of consultants required to file SEI's. They are included in disclosure categories 1, 2, and 3 (see Exhibit A to Code, enclosed).

Attorney Charles Goldstein has been hired by the District to provide advice and counsel to the District's General Manager. A copy of the professional services contract is enclosed.

Accordingly, he was requested to complete a Form 730 and file it with the District's Personnel Department.

Mr. Goldstein has declined to submit a Statement on the basis that he is not included in the definition of consultant as set forth in Section 18700(a)(2) of Title 2 of the California Administrative Code. Please see his letter to the District's Personnel Department dated May 13, 1985, which explains that Mr. Goldstein believes he is covered by the exclusions of Sections 18700(a)(2)(A) and (B).

Form 730 was sent to this consultant based on our reading of Section 18700(a)(2) and our opinion that the services provided did not fall within the exclusion of §18700(a)(2)(A) because the advice, counsel and recommendations given were given intermittently -- although on an on-going basis -- on a variety of topics at the request of the General Manager.

Ms. Diane Fishburn

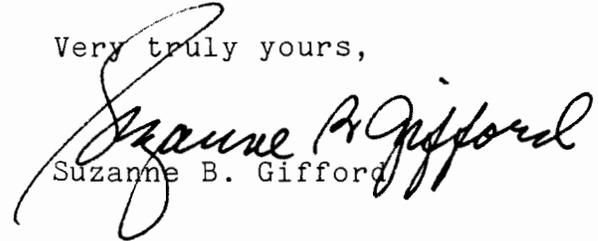
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Because the effect and meaning of Sections 18700(a)(2)(A) and (B) are unclear we are requesting your advice and opinion as to whether the above-referenced person is required to file a Statement of Economic Interests or whether he has been incorrectly included in the list of covered District Consultants.

Please let me know if any further information is required.

Very truly yours,

A handwritten signature in cursive script, reading "Suzanne B. Gifford". The signature is written in black ink and is positioned above the typed name.

Suzanne B. Gifford

Enclosures

cc: Charles H. Goldstein, Esq.